

*Articles of the EU Constitution related to the  
Common Foreign and Security Policy (CFSP)*

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# ***General Principles of EU law***

## ***1. Fundamental principles***

### **Article I-11**

*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 proposed 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 institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments shall ensure compliance with that principle in accordance with the procedure set out in that 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.

## ***2. Primacy of EU law***

### **Article I-6**

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

The Constitution and law adopted by the institutions of the Union in exercising competences conferred on it shall have primacy over the law of the Member States.

## ***3. The EU Court has jurisdiction on questions of competence***

### **Article III- 365**

*EU-Court reviews:*

*- legality of legal acts*

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

*- lack of competence and infringement of:*

- procedural requirements*
- the Constitution*
- rule of law*

2. For the purposes of paragraph 1, the Court of Justice of the European Union shall 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-375**

2. 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) COMMON FOREIGN AND SECURITY POLICY**

### ***1. Definition of the Union's external action***

***According to the Constitution, the Union's external relations have been divided into:***

- Common Foreign and Security Policy and the Security and Defence Policy,***
- Common Commercial Policy,***
- Cooperation with third countries and humanitarian aid,***
- Adoption of restrictive measures against third countries,***
- Conclusion of international agreements,***
- Union's relation with international organisations and third countries and union delegations***  
***and***
- Solidarity clause.***

***The Constitution makes important changes, more by means of structural modifications, most notably in the creation of the post of Minister for Foreign Affairs (see below), than by improvement of procedures; these will remain practically unchanged. The role of the EP in foreign policy will not change fundamentally, although it will have to be consulted and informed as a matter of fact in the area of CFSP (and thus of CSDP) and will play a more prominent role in common commercial policy and the conclusion of international agreements.***

### Common commercial policy

*The common commercial policy's scope regarding trade in services and intellectual property will be widened.*

*The EP will be given a more prominent role, with the ordinary legislative procedure taking precedence in establishing measures to put the common commercial policy into practice; negotiations leading to international agreements will regularly be reported to the EP; such agreements will be concluded only with the consent of the European Parliament.*

*A watered-down form of 'cultural exception' requires unanimity "for the negotiation and conclusion of agreements in the field of trade in cultural and audiovisual services, where these risks prejudicing the Union's cultural and linguistic diversity".*

### Development cooperation

*The European Development Fund will be included in the budget.*

### Humanitarian aid

*The Constitution will create a specific legal basis for humanitarian aid, which will include the creation of a Voluntary Humanitarian Aid Corps (using the ordinary legislative procedure).*

## **2. The Common Foreign and Security Policy**

*Although a special chapter has been dedicated to the Common Foreign and Security Policy under the title "Union's external relations", the CFSP can best be described as the definition and development of a common political guideline regarding the Union's relations with other countries. Such a policy will hence apply to ALL areas of the Union's external action and aim at their coherence and consistency. Accordingly, the CFSP's definition is to be found in Chapter I "provisions having general application". Paradoxically, the further provisions of the CFSP have been laid down in a distinct chapter.*

*Some new legal bases will be created: a solidarity clause between Member States in the event of a terrorist attack or natural disaster, and international agreements with neighbouring states.*

*The following new structural changes are planned:*

- Creation of the post of the Union's Foreign Minister*
- Setting up of a European External action Service*
- Setting up of a European Diplomatic Service*
- Setting up a European Armaments, Research and Military Capabilities Agency;*

*Some new legal bases will be created: a solidarity clause between Member States in the event of a terrorist attack or natural disaster, and international agreements with neighbouring states.*

**General clause for the framing of a CFSP**

*Common Foreign and Security Policy is based on:*  
- *solidarity among Member States*  
- *identification of common interests*  
- *convergence of actions*

*The European Council shall identify the Union's interests*

*Prime Ministers and/or Foreign Ministers adopt decisions*

*Shared responsibility for putting the policy into action*

*Member States shall consult each other before taking action on the international scene*

*Mutual solidarity among Member States*

*Decisions are taken unanimously here, but with qualified majority in some cases in Part Three*

*Member States and EU-Foreign Minister have the right of initiative*

*Laws and framework laws excluded*

*Passerelle: Prime Ministers can unanimously change voting procedure to qualified majority*

*EP shall be consulted and be kept informed*

**Article I-40**

1. The European Union shall conduct a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions.

2. The European Council shall identify the Union's strategic interests and determine the objectives of its common foreign and security policy. The Council shall frame this policy within the framework of the strategic guidelines established by the European Council and in accordance with Part III.

3. The European Council and the Council shall adopt the necessary European decisions.

4. The common foreign and security policy shall be put into effect by the Union Minister for Foreign Affairs and by the Member States, using national and Union resources.

5. Member States shall consult one another within the European Council and the Council on any foreign and security policy issue which is of general interest in order to determine a common approach. Before undertaking any action on the international scene or any commitment which could affect the Union's interests, each

Member State shall consult the others within the European Council or the Council. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity.

6. European decisions relating to the common foreign and security policy shall be adopted by the European Council and the Council unanimously, except in the cases referred to in Part III.

The European Council and the Council shall act on an initiative from a Member State, on a proposal from the Union Minister for Foreign Affairs or on a proposal from that Minister with the Commission's support. European laws and framework laws shall be excluded.

7. The European Council may, unanimously, adopt a European decision authorising the Council to act by a qualified majority in cases other than those referred to in Part III.

8. The European Parliament shall be regularly consulted on the main aspects and basic choices of the common foreign and security policy. It shall be kept informed of how it evolves.

## ***Definition of the CFSP:***

*Union shall defend the principles of:*

- *democracy*
- *rule of law*
- *human rights*
- *fundamental freedoms*
- *human dignity*
- *equality*
- *solidarity*
- *international law*
- *partnerships*
- *global organisations*
- *United Nations*

*The Union's external policies:*

- *safeguard of common interests*
- *consolidate human rights*
  
- *peace*
  
- *sustainable development*
  
- *a free world market*
  
- *the environment*
  
- *humanitarian aid*
  
- *globalisation*

*Union must ensure consistency between different areas of external action and internal policies*

### **Article III-292**

1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

- (a) safeguard its values, fundamental interests, security, independence and integrity;
- (b) consolidate and support democracy, the rule of law, human rights and the principles of international law;
- (c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;
- (d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
- (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
- (f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;
- (g) assist populations, countries and regions confronting natural or man-made disasters;
- (h) promote an international system based on stronger multilateral cooperation and good global governance.

3. The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and the external aspects of its other policies.

*The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the Union Minister for Foreign Affairs, shall ensure that consistency and shall cooperate to that effect.*

## **2. Common Security and Defence Policy (CSDP) as being a part of the Common Foreign and Security Policy (CFSP)**

***In the context of the CFSP, the framing of a Common Security and Defence Policy plays an important role. The Constitution clearly restates that the CSDP shall be an integral part of the CFSP.***

***Security policy will be modernised in a number of areas:***

- updating the Petersberg tasks (addition of a reference to tasks involving disarmament, military advice, post-conflict stabilisation and the fight against terrorism, including actions carried out on the territory of third countries);***
- creation of new forms of flexibility and cooperation in defence matters (setting up a mission by a group of Member States) and of a start-up fund for military defence independent of the Union budget;***
- setting up a European Armaments, Research and Military Capabilities Agency;***

***General provision for the setting up of a CSDP***

*Operational capability: both military and civilian means can be used outside the EU for peacekeeping, conflict prevention and strengthening of international security. The Union shall use national capabilities*

*Common defence to be decided unanimously*

*Specific character of certain Member States defence policy shall be respected*

*NATO*

*Obligation to make military capabilities available to the EU Multinational forces can be part of common defence*

*Improve military capabilities*

### **Article I-41**

1. The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civil and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.

2. The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States, it shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation, under the North Atlantic Treaty, and be compatible with the common security and defence policy established within that framework.

3. Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make them available to the common security and defence policy.

Member States shall undertake progressively to improve their military capabilities. An Agency in the field of defence capabilities development, research, acquisition and

<i>European Armaments and Strategic Research Agency</i>	armaments (European Defence Agency) shall be established to identify operational requirements, to promote measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, to participate in defining a European capabilities and armaments policy, and to assist the Council in evaluating the improvement of military capabilities.
<i>Defence issues implemented by unanimity</i>	4. European decisions relating to the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the Union Minister for Foreign Affairs or an initiative from a Member State. The Union Minister for Foreign Affairs may propose the use of both national resources and Union instruments, together with the Commission where appropriate.
<i>A group of states can carry out a Union task</i>	5. The Council may entrust the execution of a task, within the Union framework, to a group of Member States in order to protect the Union's values and serve its interests. The execution of such a task shall be governed by Article III-310.
<i>New: Structured co-operation can be undertaken within Union structure</i>	6. Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework. Such cooperation shall be governed by Article III-312. It shall not affect the provisions of Article III-309.
<i>Mutual defence clause</i>	7. If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States. Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.
<i>EP shall be consulted and informed</i>	8. The European Parliament shall be regularly consulted on the main aspects and basic choices of the common security and defence policy. It shall be kept informed of how it evolves.

## ***2.1. Petersberg tasks - (now also include the fight against terrorism)***

***The Petersberg tasks are a list of security, defence and peacemaking tasks, originally set out by the Western European Union in June 1992. The tasks have been introduced into the TEU under the Amsterdam Treaty as a new EU competence, allowing the EU to act. The Constitution proposes to add the fight against terrorism to the Petersberg tasks.***

### **Article III-309**

<i>Use of civilian or military means for - disarmament - humanitarian tasks - military assistance - combat forces - conflict prevention - peacemaking</i>	1. The tasks referred to in Article I-41(1), in the course of which the Union may use civilian and military means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.
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stabilisation

Council decides by  
unanimity

2. The Council shall adopt European decisions relating to the tasks referred to in paragraph 1, defining their objectives and scope and the general conditions for their implementation. The Union Minister for Foreign Affairs, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure coordination of the civilian and military aspects of such tasks.

## 2.2 Mutual assistance - A core of a Common Defence policy

***According to the Constitution, the European Council has to frame a common defence policy which would comprise mutual (assistance) defence commitments. As long as a common defence policy has not been framed, the Member States can establish a closer cooperation to commit themselves to mutual defence. Once a common defence policy is established, the Member States would be able to make use of structured and enhanced cooperation in the area of CFSP and CSDP (see below II.2.4).***

Common defence to be  
decided unanimously

Specific character of certain  
Member States defence  
policy shall be respected

NATO

Mutual defence clause can be  
established as closer  
cooperation until a true  
common defence policy is  
established by the European  
Council

### Article I-41

2. The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States, it shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation, under the North Atlantic Treaty, and be compatible with the common security and defence policy established within that framework.

7. If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States. Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.

## 2.3 Solidarity clause

***The new Constitution now also provides for a so-called solidarity clause should a Member State be the victim of terrorist attack or natural or man-made disaster. Although the solidarity clause, Article III-329 is mentioned in a different Chapter, it is to be considered as part of the***

***CFSP and CSDP, especially because the fight against terrorism has been added to the Peterberg tasks (see above).***

***Solidarity clause***

*Member States and Union shall act jointly against terrorism and disasters*

*- Prevention*

*- Protection*

*- Assistance:  
\* terrorism*

*\* disaster*

**Article I-43**

1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:

(a) - prevent the terrorist threat in the territory of the Member States;  
- protect democratic institutions and the civilian population from any terrorist attack;  
- assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack;

(b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.

2. The detailed arrangements for implementing this Article are set out in Article III-329.

## ***2.4 Enhanced and structured cooperation***

### ***2.4.1 Enhanced cooperation***

***At present, the use of enhanced cooperation is possible for CFSP. However, the use of enhanced cooperation for military and defence issues has been explicitly excluded according to the provision of Article 27b TEU. The new Constitution does not provide for such an "exclusion clause". Thus, those Member States would be able to use the instrument of enhanced cooperation for issues related to military and defence. Nevertheless, the use of enhanced cooperation for the defence area will only be possible, when a common defence policy has been framed by the European Council. The EP only has to be informed and consulted for the use of closer cooperation.***

***Enhanced cooperation will require the involvement of one third of the Member States. It will apply only to the Union's non-exclusive competences. In general, authorisation to proceed with enhanced cooperation will be granted by the Council by a qualified majority, after obtaining the consent of the European Parliament, on a proposal from the Commission.***

***In the CFSP, the opinion of the Minister for Foreign Affairs and of the Commission is required. The European Parliament will only be informed. Member States not participating in enhanced cooperation will take part in Council meetings even though they will not be involved in the decision-making process.***

### **Enhanced Cooperation**

*Decision making:  
Commission or Member  
States propose  
Council decides by qualified  
majority, after assent from  
EP*

*In the area of Common  
Foreign and Security Policy  
the Council, after hearing  
the Minister of Foreign  
Affairs and Commission,  
decides by qualified  
majority (majority of  
Member States representing  
60% of the population)*

### **Article III-325**

1. Member States which wish to establish enhanced cooperation between themselves in one of the areas covered by the Constitution, with the exception of the common foreign and security policy, shall address a request to the Commission, specifying the scope and objectives of the enhanced cooperation proposed. The Commission may submit a proposal to the Council of Ministers to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.

Authorisation to proceed with enhanced cooperation shall be granted by a decision of the Council of Ministers, acting by a qualified majority on a proposal from the Commission and after obtaining the assent of the European Parliament.

2. **In the framework of the common foreign and security policy, the request of the Member States which wish to establish enhanced cooperation between themselves shall be addressed to the Council of Ministers. It shall be forwarded to the Minister for Foreign Affairs, who shall give an opinion on whether the enhanced cooperation is consistent with the Union's common foreign and security policy, and to the Commission, which shall give its opinion in particular on whether the enhanced cooperation proposed is consistent with other Union policies. It shall also be forwarded to the European Parliament for information.**

Authorisation to proceed with enhanced cooperation shall be granted by a decision of the Council of Ministers.

## **2.4.2 Structured cooperation**

***Furthermore, Article I-41.6 states that Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish structured cooperation within the Union framework.***

***The main difference to enhanced cooperation in the ESDP are***

- ***Member States must have high military capabilities;***
- ***No minimum of participating states required.***

***The differences to enhanced cooperation are***

-

### **Defence policy**

*Structured co-operation can  
be undertaken within Union  
structure*

### **Article I-41**

6. Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework. Such cooperation shall be governed by Article III-312. It shall not affect the provisions of Article III-309.

### Article III-312

*Member States with high military capabilities may establish structured cooperation...*

1. Those Member States which wish to participate in the permanent structured cooperation referred to in Article I-41(6), which fulfil the criteria and have made the commitments on military capabilities set out in the Protocol on permanent structured cooperation shall notify their intention to the Council and to the Union Minister for Foreign Affairs.

*The Council adopts a decision to establish structured cooperation by qualified majority*

2. Within three months following the notification referred to in paragraph 1 the Council shall adopt a European decision establishing permanent structured cooperation and determining the list of participating Member States. The Council shall act by a qualified majority after consulting the Union Minister for Foreign Affairs.

*Structured cooperation open to all Member States*

3. Any Member State which, at a later stage, wishes to participate in the permanent structured cooperation shall notify its intention to the Council and to the Union Minister for Foreign Affairs.

*The Council confirms participation of Member State by qualified majority*

The Council shall adopt a European decision confirming the participation of the Member State concerned which fulfils the criteria and makes the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation. The Council shall act by a qualified majority after consulting the Union Minister for Foreign Affairs. Only members of the Council representing the participating Member States shall take part in the vote.

*Only participating Member States can vote*

A qualified majority shall be defined as at least 55% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

*Suspension of a Member State's participation*

4. If a participating Member State no longer fulfils the criteria or is no longer able to meet the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation, the Council may adopt a European decision suspending the participation of the Member State concerned.

The Council shall act by a qualified majority. Only members of the Council representing the participating Member States, with the exception of the Member State in question, shall take part in the vote.

A qualified majority shall be defined as at least 55% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

5. Any participating Member State which wishes to withdraw from permanent structured

cooperation shall notify its intention to the Council, which shall take note that the Member State in question has ceased to participate.

6. The European decisions and recommendations of the Council within the framework of permanent structured cooperation, other than those provided for in paragraphs 2 to 5, shall be adopted by unanimity. For the purposes of this paragraph, unanimity shall be constituted by the votes of the representatives of the participating Member States only.

### ***3. Institutional changes***

#### ***3.1 Foreign Affairs 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-28**

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

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

##### ***Tasks***

The European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the Union Minister for Foreign Affairs.

The European Council may end his or her term of office by the same procedure.

2. The Union Minister for Foreign Affairs shall conduct the Union's common foreign and security policy. He or she shall contribute by his or her proposals to the development of that policy, which he or she shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.

**Double Hat**

3. The Union Minister for Foreign Affairs shall preside over the Foreign Affairs Council.
4. The Union Minister for Foreign Affairs shall be one of the Vice-Presidents of the Commission. He or she shall ensure the consistency of the Union's external action. He or she shall be responsible within the Commission for responsibilities incumbent on it in 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 to the extent that this is consistent with paragraphs 2 and 3.

***The Foreign Minister implements the CFSP together with the Member States and has the right to initiate proposals together with the support of the Commission.***

*Shared responsibility for putting the policy into action*

*Decisions are taken unanimously here, but with qualified majority in some cases in Part Three*

*Member States and EU-Foreign Minister have the right of initiative*

**Article I-39**

4. **The common foreign and security policy shall be put into effect by the Union Minister for Foreign Affairs and by the Member States, using national and Union resources.**

7. European decisions relating to the common foreign and security policy shall be adopted by the European Council and the Council of Ministers unanimously, except in the cases referred to in Part III. **The European Council or the Council of Ministers shall act on a proposal from a Member State, from the Union Minister for Foreign Affairs or from that Minister with the Commission's support.** European Laws and framework laws are excluded.

***In the CSDP, the Foreign Minister and the Member States have the right of proposal.***

**Article I-41:**

*Defence issues implemented by unanimity*

4. European decisions relating to the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the Union Minister for Foreign Affairs or an initiative from a Member State. The Union Minister for Foreign Affairs may propose the use of both national resources and Union instruments, together with the Commission where appropriate.

### Article III-292

*Union shall defend the principles of:- democracy:*

- rule of law
- human rights
- fundamental freedoms
- human dignity
- equality
- solidarity
- international law
- partnerships
- global organisations
- United Nations

*The Union's external policies:*

- safeguard of common interests
- consolidate human rights
  
- peace
  
- sustainable development
  
- a free world market
  
- the environment
  
- humanitarian aid
  
- globalisation

*Union must ensure consistency between different areas of external action and internal policies*

1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

(a) safeguard its values, fundamental interests, security, independence and integrity;

(b) consolidate and support democracy, the rule of law, human rights and the principles of international law;

(c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;

(d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;

(e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;

(f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;

(g) assist populations, countries and regions confronting natural or man-made disasters;

(h) promote an international system based on stronger multilateral cooperation and good global governance.

3. The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and the external aspects of its other policies.

The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the Union Minister for Foreign Affairs, shall ensure that consistency and shall cooperate to that effect.

### ***3.2 European Union delegations and External Action service***

#### ***Union delegations***

*Union delegations, under the authority of the Foreign Minister, represent the Union*

#### **Article III-328**

1. Union delegations in third countries and at international organisations shall represent the Union.
2. Union delegations shall be placed under the authority of the Union Minister for Foreign Affairs. They shall act in close cooperation with Member States' diplomatic and consular missions.

#### ***External Action Service shall assist Foreign Affairs Minister***

*Foreign Minister:*  
- chairs the Foreign Affairs Council  
- makes proposals  
- implements decisions  
- represents the Union externally (with the President of the European Council)

#### **Article III-296**

1. The Union Minister for Foreign Affairs, who shall chair the Foreign Affairs Council, shall contribute through his or her proposals towards the preparation of the common foreign and security policy and shall ensure implementation of the European decisions adopted by the European Council and the Council.
2. The Minister for Foreign Affairs shall represent the Union for matters relating to the common foreign and security policy. He or she shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organisations and at international conferences.
3. In fulfilling his or her mandate, the Union Minister for Foreign Affairs shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a European decision of the Council. The Council shall act on a proposal from the Union Minister for Foreign Affairs after consulting the European Parliament and after obtaining the consent of the Commission.

*Foreign service*

### ***3.3 Establishment of a European Armaments, Research and Military Capabilities Agency***

*Obligation to make military capabilities available to the EU Multinational forces can be part of common defence*

*Improve military capabilities*

*European Armaments and*

#### **Article I-41**

3. Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make them available to the common security and defence policy.

Member States shall undertake progressively to improve their military capabilities. An Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency) shall be established to identify operational

<i>Strategic Research Agency</i>	requirements, to promote measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, to participate in defining a European capabilities and armaments policy, and to assist the Council in evaluating the improvement of military capabilities.
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**Article III-212**

<p>European Armaments, research and Military Capabilities Agency</p> <ul style="list-style-type: none"> <li>- identifies military needs</li> <li>- promotes harmonisation of operational needs</li> <li>- manages common programmes</li> <li>- supports defence technology research</li> <li>- strengthens defence sector</li> </ul> <p>Agency open to all Member States</p>	<p>1. The Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency), established by Article I-41(3) and subject to the authority of the Council, shall have as its task to:</p> <ul style="list-style-type: none"> <li>(a) contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;</li> <li>(b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;</li> <li>(c) propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes;</li> <li>(d) support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;</li> <li>(e) contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure.</li> </ul> <p>2. The European Defence Agency shall be open to all Member States wishing to be part of it. The Council, acting by a qualified majority, shall adopt a European decision defining the Agency's statute, seat and operational rules. That decision should take account of the level of effective participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects. The Agency shall carry out its tasks in liaison with the Commission where necessary.</p>
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#### ***4. Decisions in the area of CFSP***

***The implementation of the CFSP - by unanimous European Council or Council decision, except in certain cases provided for by the Constitution or where the European Council decides differently - will not be subject to the 'ordinary legislative procedure'. The adoption of laws or framework laws will be excluded. The EP will from now always be informed and consulted, also in CSDP.***

## **CFSP**

*Unanimity  
Member States and EU-  
Foreign Minister have the  
right of initiative*

*Laws and framework laws  
excluded*

*Decisions are taken  
unanimously here, but with  
qualified majority in some  
cases in Part Three*

*EP consulted*

## **Article I-40**

6. European decisions relating to the common foreign and security policy shall be adopted by the European Council and the Council unanimously, except in the cases referred to in Part III. The European Council and the Council shall act on an initiative from a Member State, on a proposal from the Union Minister for Foreign Affairs or on a proposal from that Minister with the Commission's support. European laws and framework laws shall be excluded.

7. The European Council may, unanimously, adopt a European decision authorising the Council to act by a qualified majority in cases other than those referred to in Part III.

8. The European Parliament shall be regularly consulted on the main aspects and basic choices of the common foreign and security policy. It shall be kept informed of how it evolves.

## **CSDP**

*EP shall be consulted and  
informed*

## **Article I-41**

8. The European Parliament shall be regularly consulted on the main aspects and basic choices of the common security and defence policy. It shall be kept informed of how it evolves.

### ***4.1- Unanimity required for CFSP and CSDP***

## **CFSP**

*Decisions are taken  
unanimously here, but with  
qualified majority in some  
cases in Part Three*

*Member States and EU-  
Foreign Minister have the  
right of initiative*

*Laws and framework laws  
excluded*

## **Article I-40**

6. European decisions relating to the common foreign and security policy shall be adopted by the European Council and the Council unanimously, except in the cases referred to in Part III. The European Council and the Council shall act on an initiative from a Member State, on a proposal from the Union Minister for Foreign Affairs or on a proposal from that Minister with the Commission's support. European laws and framework laws shall be excluded.

## CSDP

## Article I-41

*Common defence to be decided unanimously*

*Specific character of certain Member States defence policy shall be respected*

NATO

4. European decisions relating to the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the Union Minister for Foreign Affairs or an initiative from a Member State. The Union Minister for Foreign Affairs may propose the use of both national resources and Union instruments, together with the Commission where appropriate.

### 4.1.1 Constructive abstention

***However, the Constitution provides for the possibility of constructive abstention in the whole area of CFSP and thus also in CSDP.***

*General rule: Unanimity with constructive abstention*

*Abstention by 1/3 of weighted votes blocks a decision*

## Article III-201

1. The European decisions referred to in this Chapter shall be adopted by the Council acting unanimously.

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration. In that case, it shall not be obliged to apply the European decision, but shall accept that the latter commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent at least one third of the Member States comprising at least one third of the population of the Union, the decision shall not be adopted.

### 4.1.2 "CFSP passerelle"

***Furthermore, the Constitution provides for the possibility to change from unanimity to qualified majority. This "CFSP passerelle" is either applicable to the cases others than those referred to in part III (Art. I-40.7) or in cases referred to in part III (Art. III-300.3).***

***This "CFSP passerelle" does not apply to the CSDP.***

***Finally, in opposition to the general passerelle clause (Art. IV-444), this "CFSP passerelle" does not require the information of the national Parliaments.***

*"CFSP passerelle" for cases others than those*

## Article I-40

***mentioned in part III***

*Prime Ministers can unanimously change voting procedure to qualified majority*

7. The European Council may, unanimously, adopt a European decision authorising the Council to act by a qualified majority in cases other than those referred to in Part III.

***"CFSP passerelle" for cases mentioned in part III***

**Article III-201**

Extension of qualified majority by unanimity in European Council

3. The European Council may decide unanimously that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2.

***No "CFSP passerelle" for Defence***

**Article III-300**

4. Paragraphs 2 and 3 shall not apply to decisions having military or defence implications.

**4.2 Qualified majority**

***Finally, the Council can decide by qualified majority in certain cases: The use of qualified majority - like the use of the "CFSP passerelle"- is excluded for issues having military of defence implicatons.***

**Article III-201**

Council by qualified majority:  
- when European Council has decided Union interest

2. By way of derogation from paragraph 1, the Council shall act by a qualified majority:  
a) when adopting European decisions defining a Union action or position on the basis of a European decision of the European Council relating to the Union's strategic interests and objectives, as referred to in Article III-293(1);

- following the initiative of the Foreign Minister acting on the request of the European Council

b) when adopting a European decision defining a Union action or position, on a proposal which the Union Minister for Foreign Affairs has presented following a specific request to him or her from the European Council, made on its own initiative or that of the Minister;

- implementation of actions and positions

c) when adopting a European decision implementing a European decision defining a Union action or position;

- appointment of special representative

Veto right for vital areas of national policy

Qualified majority can send the matter to the European Council

*No qualified majority on defence matters*

d) when adopting a European decision concerning the appointment of a special representative in accordance with Article III-302.

If a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a European decision to be adopted by a qualified majority, a vote shall not be taken. The Union Minister for Foreign Affairs will, in close consultation with the Member State involved, search for a solution acceptable to it. If he or she does not succeed, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for a European decision by unanimity.

3. In accordance with Article I-40(7) the European Council may unanimously adopt a European decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2 of this Article.

4. Paragraphs 2 and 3 shall not apply to decisions having military or defence implications.

## 5. Financial provisions

### Article III-313

Administrative expenditures: EU budget

Operational expenditures: always EU budget, unless military and defence operations

If not EU budget, then Member States' budgets, unless Council decides otherwise

Costs for military and defence operations not for those abstaining

Rapid access to budget for urgent financing

Consult the EP

A start up fund

Qualified majority for

- establishing the "....." fund

1. Administrative expenditure which the implementation of this Chapter entails for the institutions shall be charged to the Union budget.

2. Operating expenditure to which the implementation of this Chapter gives rise shall also be charged to the Union budget, except for such expenditure arising from operations having military or defence implications and cases where the Council decides otherwise.

In cases where expenditure is not charged to the Union budget it shall be charged to the Member States in accordance with the gross national product scale, unless the Council decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article III-300(1), second subparagraph, shall not be obliged to contribute to the financing thereof.

3. The Council shall adopt a European decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory activities for the tasks referred to in Article I-41(1) and Article III-309. It shall act after consulting the European Parliament.

Preparatory activities for the tasks referred to in Article I-41(1) and Article III-309 which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions.

The Council shall adopt by a qualified majority, on a proposal from the Union Minister for Foreign Affairs, European decisions establishing:

(a) the procedures for setting up and financing the start-up fund, in particular the

	amounts allocated to the fund;
- administration of the fund	(b) the procedures for administering the start-up fund;
- financial control	(c) the financial control procedures
Foreign Minister can use fund	When the task planned in accordance with Article I-41(1) and Article III-309 cannot be charged to the Union budget, the Council shall authorise the Union Minister for Foreign Affairs to use the fund. The Union Minister for Foreign Affairs shall report to the Council on the implementation of this remit.