

Consumer protection in the EU - Present provisions and the EU Constitution

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1) 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

1. 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

- lack of competence and infringement of:

- procedural requirements

- the Constitution

- rule of law

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.

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

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) Consumer protection

General remarks:

According to the Constitution, the entire area of consumer protection is to be considered as a shared competence where the Member States lose the right to decide (legislate) on their own when the Union takes a common decision for a topic.

At present, the TEC distinguishes between measure taken according to Article 251 TEC, for which the Community only has the "framework" competence, and those taken according to Article 95 TEC, measures falling under the shared competence.

1. The Community's consumer protection policy according to the TEC

Consumer protection is basically dealt with in Article 153 of the EC Treaty (former Article 129a), which was inserted by the Treaty of Maastricht. It is intended to promote consumers' health, safety, economic and legal interests, and their right to information. Decisions are taken according to Article 251: co-decision procedure.

Article 153 also explicitly refers to another legal basis for the attainment of its objectives, namely to Article 95 (former Article 100a), which requires the codecision procedure for all measures involving closer alignment of Member States' legislation on completion of the single market where consumer protection is concerned. At the same time, it stipulates that specific action supporting and supplementing the policy pursued by the Member States is to be adopted under the codecision procedure, after consultation of the Economic and Social Committee.

A Member State may keep or introduce stricter consumer protection measures than those laid down by the Community, as long as they are compatible with the Treaty and if the Commission has been notified. Its approval is not needed for measures that are stricter than those adopted according to Article 153 since they do not aim at the harmonisation of laws but at the protection of consumers (however, the approval of the Commission is needed for rules that are stricter than measures taken according to Article 95, since they aim at the harmonisation of the laws- see below).

According to Article 153.1 TEC, consumer protection comprises:

- the right to protection of health and safety;***
- the right to protection of economic interests;***
- the right to damages;***
- the right to information and education;***
- the right to representation.***

1.1. Two legal bases to enact measures in the area of consumer protection policy

To take measure in the field of consumer policy, the Community can act on the basis of Article 153 or of 95 TEC.

Art. 153 applies if a measure primarily aims at raising the level of consumer protection

ARTICLE 153 (ex Article 129a) TEC

High, not the highest, level of consumer protection

1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.

2. Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities.

3. The Community shall contribute to the attainment of the objectives referred to in paragraph 1 through:

- a) measures adopted pursuant to Article 95 in the context of the completion of the internal market;
- b) measures which support, supplement and monitor the policy pursued by the Member States.

Measures by qualified majority and conciliation procedure

4. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt the measures referred to in paragraph 3(b).

Stricter national rules, if compatible with the Treaty – but not for the Internal Market in paragraph a)

5. Measures adopted pursuant to paragraph 4 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. The Commission shall be notified of them.

Art. 95 applies if a measure primarily aims at the realisation of the single market:

ARTICLE 95 (ex Article 100a) TEC

Laws of the Internal Market by qualified majority and conciliation procedure

1. By way of derogation from Article 94 and save where otherwise provided in this Treaty, the following provisions shall apply for the achievement of the objectives set out in Article 14. The Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

*excluding
-taxation*

2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.

*-movement of persons
-employees' rights*

High level of protection for health, safety, environment,

3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of

consumer protection

Keep better rules

-environment

-working environment

Introduce better rules

-environment

-working environment

- specific problem for a State

The Commission decides:

-excluding:

-discriminatory treatment

-hidden trade restrictions

-obstruct the functioning of
the Internal Market

protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.

4. If, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

5. Moreover, without prejudice to paragraph 4, if, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.

6. The Commission shall, within six months of the notifications as referred to in paragraphs 4 and 5, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.

1.2. Limits of the Community's competence in the area of consumer protection

The competence of the Community to take measures for the protection of the consumers is limited by the following:

- Article 153.3 TEC: The Community only has the so-called "framework competence" which means it can only "contribute" to the attainment of the objectives by fixing minimum, not maximum standards (it must however be pointed out, that measures that primarily aim at the realisation of the single market and are taken according to article 95 TEC fall under the shared competence);

- Article 153.5 TEC: The Member States can keep or introduce more stringent rules as long as they are compatible with the Treaty (it must however be pointed out, that the keeping of more stringent rules than measures taken according to article 95 need the approval of the Commission and that the later introduction of such rules is excluded, Article 95.4 and 5 TEC);

- Article 153.5 TEC: Measure taken to protect consumers must be compatible with all other provisions of the Treaty, and especially with the internal market rules.

2. Consumer protection according to the EU Constitution

In principle, the area of Consumer protection would remain unchanged. However and according to Article I-14 of the EU Constitution, the shared competence applies to the area of consumer protection. At present (see above), consumer protection is an area in which the Community only has a "framework" competence.

The Union has to ensure a high, but not the highest, level of consumer protection within all its policies:

Article II-98

High level of consumer protection is to be ensured by the EU policies

Union policies shall ensure a high level of consumer protection.

Article III-120

Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities.

Article III-235

Objective: a high level of protection, not the "highest" level

1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.

2. The Union shall contribute to the attainment of the objectives referred to in paragraph 1 through:

(a) measures adopted pursuant to Article III-172 in the context of the establishment and functioning of the internal market;

(b) measures which support, supplement and monitor the policy pursued by the Member States.

Legislative procedure and consultation of EcoSoc

3. European laws or framework laws shall establish the measures referred to in paragraph 2(b). Such laws shall be adopted after consultation of the Economic and Social Committee.

*Stricter national rules can be kept, if compatible with the Constitution
Commission must be notified*

4. Acts adopted pursuant to paragraph 3 shall not prevent any Member State from maintaining or introducing more stringent protective provisions. Such provisions must be compatible with the Constitution. They shall be notified to the Commission

Consumer protection has hence also to be taken into account when setting up internal market rules:

Internal market rules

Article III-172

Internal market laws and framework laws made by legislative procedure, qualified majority voting

*Excluding:
-taxation
-movement of persons
-employees' rights*

High level of protection for health, safety, environment, consumer protection, but not the "highest" level

*Protection of the environment
Keep better rules for the:
-environment
-working environment*

*Introduce better rules for the:
- environment
- working environment
- specific problems arising for a State after harmonisation*

*The Commission decides whether a measure is:
-excluding
-discriminatory treatment
-a hidden trade restriction
-an obstruction to the functioning of the Internal Market*

Extend period by six months

If a national derogation from harmonisation is

1. Save where otherwise provided in the Constitution, this Article shall apply for the achievement of the objectives set out in Article III-130. European laws or framework laws shall establish measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. Such laws shall be adopted after consultation of the Economic and Social Committee

2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons or to those relating to the rights and interests of employed persons

3. The Commission, in its proposals submitted under paragraph 1 concerning health, safety, environmental protection and consumer protection, shall take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council shall also seek to achieve this objective.

4. If, after the adoption of a harmonisation measure by means of a European law or framework law or by means of a European regulation of the Commission, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article III-154, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

5. Moreover, without prejudice to paragraph 4, if, after the adoption of a harmonisation measure by means of a European law or framework law or by means of a European regulation of the Commission, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions and the reasons for them.

6. The Commission shall, within six months of the notifications referred to in paragraphs 4 and 5, adopt a European decision approving or rejecting the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they constitute an obstacle to the functioning of the internal market.

In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger to human health, the Commission may notify the Member State concerned that the period referred to in this paragraph will be extended for a further period of up to six months.

7. When, pursuant to paragraph 6, a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall

approved, Commission shall propose adaptation for all Health not included in the foregoing, so-called, environmental guarantee

Directly to the Court

Safeguard clause under EU control

immediately examine whether to propose an adaptation to that measure.

8. When a Member State raises a specific problem on public health in a field which has been the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures.

9. By way of derogation from the procedure laid down in Articles III-360 and III-361, the Commission and any Member State may bring the matter directly before the Court of Justice of the European Union if it considers that another Member State is making improper use of the powers provided for in this Article.

10. The harmonisation measures referred to in this Article shall, in appropriate cases, include a safeguard clause authorising the Member States to take, for one or more of the non-economic reasons referred to in Article III-154, provisional measures subject to a Union control procedure.

The limits of the competence of the Union to take measures for the protection of the consumers remain practically unchanged:

- ***Although the area of consumer protection is considered as being a shared competence in the new Constitution, the Union shall only "contribute" to the attainment of the objectives by fixing minimum, not maximum standards (Article III-235.1);***
- ***The Member States can keep or introduce more stringent rules (Article III-235.4);***
- ***Measure taken to protect consumers must be compatible with other provisions of the Constitution, and especially with the internal market rules (Article III 235.4).***

This means that the principle that consumer protection rules are subject to the "higher ranked" internal market rules, will be maintained by the Constitution:

- ***the "leading area" internal market has to take into account the consumer protection and not vice-versa (Article III-172);***
- ***Measures adopted in the frame of consumer protection must be compatible with the Constitution and thus with the internal market rules (Article III-235.4);***
- ***The present TEC and the Constitution only provide for a "high", and not the "highest" level of consumer protection.***

Although consumer protection rules are subject to the "higher" ranking internal market rules, they may prevail on the latter in very specific cases. Thus, Member States can restrict the free movement of goods on grounds of consumer protection, if the health and the security of the consumer are at stake:

Article III-154

.... the free movement of agricultural goods can only be restricted on grounds of:

- ***morality***
- ***public policy***
- ***public security***

Article III-153 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between

- protection of health and life of humans, animals or plants
- national treasures
- industrial and commercial property

Member States

However, such restrictions shall not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. It is up to the EU Court in Luxemburg to decide on possible conflicts of interpretation.

III) INSTITUTIONAL PROVISIONS

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

1) EUROPEAN PARLIAMENT

The European Parliament will, jointly with the Council, 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-396.7 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 750. The allocation of seats before the elections scheduled for 2009, shall be decided by the European Council, on a proposal from Parliament and with its consent, with a minimum threshold of six seats per Member State.

1.1 COMPOSITION OF THE EUROPEAN PARLIAMENT AT PRESENT:

Bulgaria	18
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
Netherlands	27
Austria	18
Poland	54
Portugal	24
Romania	35
Slovenia	7
Slovakia	14
Finland	14
Sweden	19
United Kingdom	78
TOTAL	785

From the date of Romania's and Bulgaria's accession and until 2009, the European Parliament will therefore be composed of up to 785 MEPs.

Note: According to the present Nice Treaty, the number of MEPs is limited to 736 MEP (which may be temporarily exceeded according to the Accession Act).

1.2 COMPOSITION OF THE EUROPEAN PARLIAMENT ACCORDING TO THE CONSTITUTION:

The Constitution limits the number of MEPs to 750

Article I-20

Direct elections every 5 years, max. 750 MEPs

Minimum of 6 members per Member State and maximum of 96 members per Member State

2. The European Parliament shall be composed of representatives of the Union's citizens. They shall not exceed seven hundred and fifty in number. Representation of citizens shall be digressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats.

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-21

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

THE EUROPEAN COUNCIL PRESIDENT

Article I-22

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

Tasks of the President

1. The European Council shall elect its President, by a 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 or her mandate in accordance with 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;
 - shall present a report to the European Parliament after each of its meetings.

Represents the EU in the wider world on CFSP issues

President cannot have a national office

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.

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

3) COUNCIL OF MINISTERS (COUNCIL)

The General Affairs Council shall ensure consistency in the Council's work. The proposed 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.

3.1 WEIGHTING OF VOTES IN THE COUNCIL AT PRESENT

Bulgaria	10
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
Romania	14
Slovenia	4
Slovakia	7
Finland	7

Sweden	10
United Kingdom	29
Total	345

Qualified majority:

- 255 out of 345
- majority of Member States
- 62% of the population

3.3 VOTING IN THE COUNCIL ACCORDING TO THE PROPOSED CONSTITUTION-ARTICLE I-25

Qualified majority will become the general rule for the adoption of decisions within the Council, which will be defined as consisting of 55% of the Members of the Council (yet at least 15 Member States) comprising at least 65% of the population. For cases in which the Convention has not achieved consensus on changing over to qualified majority voting, a transitional measure (known as the ‘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 72% of Member States representing at least 65% of the population of the Union.

4) THE EU COMMISSION

The Commission’s monopoly of legislative initiative is clearly restated. Until 2009, it will be composed of one Commissioner per Member State. From 2009 on, the Commission shall be composed of members from at least two-thirds of the Member States.

Note: The present Nice Treaty stipulates in the Protocol on enlargement that when the EU is composed of 27 Member States, the number of Commissioners shall be less than the number of Member States.

Article I-26

Composition:

no longer one from each Member State

5. The first Commission appointed under the provisions of the Constitution shall consist of one national of each Member State, including its President and the Union Minister for Foreign Affairs who shall be one of its Vice-Presidents.

6. As from the end of the term of office of the Commission referred to in paragraph 5, the Commission shall consist of a number of members, including its President and the Union Minister for Foreign Affairs, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number.

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

The members of the Commission shall be selected from among the nationals of the Member States on the basis of a system of equal rotation between the Member States. This system shall be established by a European decision adopted unanimously by the European Council and on the basis of the following principles:

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

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

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.

Article I-27

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

- 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

1. Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission.

This candidate shall be elected by the European Parliament by a majority of its component members. If he or she does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure.

2. The Council, by common accord with the President-elect, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission. They shall be selected, on the basis of the suggestions made by Member States, in accordance with the criteria set out in Article I-26(4) and (6), second subparagraph.

The President, the Union Minister for Foreign Affairs and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament. On the basis of this consent the Commission shall be appointed by the European Council, acting by a qualified majority.

3. The President of the Commission shall:

(a) lay down guidelines within which the Commission is to work;

(b) decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and as a collegiate body;

(c) appoint Vice-Presidents, other than the Union Minister for Foreign Affairs, from among the members of the Commission.

A member of the Commission shall resign if the President so requests. The Union Minister for Foreign Affairs shall resign, in accordance with the procedure set out in Article I-28(1), 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-hat' 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

Double Hat

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.

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.