

**Articles of the EU Constitution related to  
culture policy**

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# ***I) GENERAL PRINCIPLES OF EU LAW***

## ***1. FUNDAMENTAL PRINCIPLES***

### **Article I-II**

*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. 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**

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) CULTURE**

### **1. Culture at present**

***The article and chapter on culture, Article 151 TEC, was incorporated into the TEC through the Treaty of Maastricht. It states that "the community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore".***

***To promote the general objectives set out in article 151.1 TEC, the Community is supposed to promote cooperation between the Member States and, if necessary, to support and complement their activities in the following areas:***

***- the dissemination of the culture and history of the European peoples;***

- *the conservation of cultural heritage of European significance;*
- *the non-commercial cultural exchanges;*
- *the artistic, literary and audiovisual creation;*
- *the cooperation with third countries and the competent international organisations in the sphere of culture.*

***Competence and decision-making:***

*In the area of culture, the Community can act using directives, regulations and recommendations.*

*The Community has neither an exclusive nor a shared competence, but only a "supporting" competence, which can be divided into the following activities:*

- *promotion of cooperation between Member States and*
- *support and complementation of the Member States' activities.*

*The main competence in the area of culture thus remains with the Member States.*

*Furthermore, binding legislative acts, taken unanimously with the co-decision of the EU Parliament, exclude any harmonisation of the laws.*

*Finally, the Community can - by unanimity - adopt non-binding recommendations addressed to the Member States.*

*The competence of the Community in the sphere of culture is furthermore restricted by the constraint to respect national and regional diversity.*

**PRESENT TEC**

*Objectives:*

- *Flourishing of the cultures of the Member States*
- *Promotion of a common cultural heritage*

*But respect of the national and regional diversity*

*Actions:*

- *encourage cooperation between Member States*
- *support and supplement Member states actions*

*-dissemination of the cultures of the European peoples*

**ARTICLE 151 (ex Article 128) TEC**

1. The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

2. Action by the Community shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:

- improvement of the knowledge and dissemination of the culture and history of the European peoples;

*-protection of the cultural heritage*

- conservation and safeguarding of cultural heritage of European significance;
- non-commercial cultural exchanges;
- artistic and literary creation, including in the audiovisual sector.

*International cooperation, especially with the Council of Europe*

3. The Community and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.

*Promotion of cultural diversity must be considered by all policies of the Community*

4. The Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures.

***Directives and regulations:***  
*co-decision procedure but with **unanimity** in the Council*

5. In order to contribute to the achievement of the objectives referred to in this Article, the Council:

- acting in accordance with the procedure referred to in Article 251 and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States. The Council shall act unanimously throughout the procedure referred to in Article 251;

***Recommendations:***  
*unanimity*

- acting unanimously on a proposal from the Commission, shall adopt recommendations.

## ***2. Culture according to the Constitution***

***According to Article III-280 of the Constitution, culture remains a "supporting, coordinating and complementary" competence. Thus it is neither an exclusive nor shared competence.***

***However, an important change is being proposed by the Draft Constitution: Whereas at present all acts (directives, regulations or recommendations) adopted in the area of culture according to Article 151.5 TEC require unanimity, the Draft Constitution proposes qualified majority for the adoption of laws and framework laws (III-181.5a with I-22.3) and for the adoption of recommendations (III- 181.5b with I-22.3).***

***N.B. It is also to note that according to the new Draft Constitution, agreements in the field of trade in cultural and audiovisual services are to be negotiated and concluded by unanimity (the present Treaty of Nice states "by common accord").***

## Article III-280

1. The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore

2. Action by the Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and complementing their action in the following areas:

(a) improvement of the knowledge and dissemination of the culture and history of the European peoples;

(b) conservation and safeguarding of cultural heritage of European significance;

(c) non-commercial cultural exchanges;

(d) artistic and literary creation, including in the audiovisual sector .

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.

4. The Union shall take cultural aspects into account in its action under other provisions of the Constitution, in particular in order to respect and to promote the diversity of its cultures.

5. In order to contribute to the achievement of the objectives referred to in this Article:

(a) European laws or framework laws shall establish incentive measures, excluding any harmonisation of the laws and regulations of the Member States. They shall be adopted after consultation of the Committee of the Regions;

(b) the Council, on a proposal from the Commission, shall adopt recommendations.

***Law or framework law***  
*adopted through the normal*  
*co-decision procedure =*  
***qualified majority***

***Recommendations adopted***  
***by qualified majority***

### **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
<b>TOTAL</b>	<b>785</b>

*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 degressively 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*

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

*President cannot have a  
national office*

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
<b>Total</b>	<b>345</b>

**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*

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

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.

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.