

**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

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NOTE

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In the light of the discussions on Thursday 17 June on the draft Constitution, the Presidency invites Heads of State or Government to give their agreement to the texts set out in document CIG 81/04, as amended and complemented by the texts annexed to the present document. These documents contain modifications to the basic text of the Constitution as contained in document CIG 50/03 together with its addendums and corrigendums.

On the issue of qualified majority voting, the Presidency's proposals contain a number of elements which will require further discussion.

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INDEX

PART I	INSTITUTIONS.....	3
Annex 1	The European Commission	4
Annex 2	Definition of qualified majority voting	7
Annex 3	Draft Decision relating to implementation of Article I-24.....	8
Annex 4	European Parliament seats	10
PART II	NON-INSTITUTIONAL ISSUES.....	11
Annex 5	Provisions specific to Member States whose currency is the euro	12
Annex 6	Coordination of Economic Policy	13
Annex 7	Declaration on the Stability and Growth Pact.....	14
Annex 8	Measures relating to excessive deficits	15
Annex 9	Multiannual Financial Framework	16
Annex 10	Explanations relating to the Charter of Fundamental Rights	17
Annex 11	Provisions specific to Member States whose currency is the euro <i>(revised Annex 22 from CIG 81/04)</i>	18
Annex 12	Eurojust <i>(revised Annex 26 from CIG 81/04)</i>	20
Annex 13	Enhanced Cooperation <i>(revised Annex 55 from CIG 81/04)</i>	21
Annex 14	Declaration by Member States	23

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PART I

INSTITUTIONS

THE EUROPEAN COMMISSION

Article I-25: The European Commission

1. The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure that the Constitution and the measures adopted by the Institutions pursuant thereto are applied. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall implement the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Constitution. With the exception of the common foreign and security policy and other cases provided for in the Constitution, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.
2. Union legislative acts may be adopted only on the basis of a Commission proposal, except where the Constitution provides otherwise. Other acts shall be adopted on the basis of a Commission proposal where the Constitution so provides.
3. **The Commission's term of office shall be five years.**
4. **The Members of the Commission shall be chosen on the ground of their general competence and European commitment and their independence shall be beyond doubt.**
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 3, 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.**

They shall be selected 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 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 of the Union.

7. In carrying out its responsibilities the Commission shall be completely independent. **Without prejudice to Article I-27(2)**, the Members of the Commission shall neither seek nor take instructions from any government or other institution, body, office or agency. They shall refrain from any action incompatible with their duties or the performance of their tasks.

8. The Commission, as a body, shall be responsible to the European Parliament. Under the procedures set out in Article III-243, the European Parliament may vote on a censure motion on the Commission. If such a motion is carried, the Members of the Commission shall resign as a body **and the Union Minister for Foreign Affairs shall resign from the Commission.**

Article I-26: The President of the European Commission

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 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 intends to appoint 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-25(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 approval by the European Parliament. On the basis of this approval 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 shall carry out its tasks;
- (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-27(1), if the President so requests.**

Declaration for incorporation in the Final Act
re Article I-25

The Conference considers that when the Commission no longer includes nationals of all Member States, the Commission should pay particular attention to the need to ensure full transparency in relations with all Member States. Accordingly, the Commission should liaise closely with all Member States, whether or not they have a national serving as Member of the Commission, and in this context pay special attention to the need to share information and consult with all Member States.

The Conference also considers that the Commission should take all the necessary measures to ensure that political, social and economic realities in all Member States, including those which have no national serving as Member of the Commission, are fully taken into account. These measures should include ensuring that the position of those Member States is addressed by appropriate organisational arrangements.

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**DEFINITION OF QUALIFIED MAJORITY
VOTING**

Article I-24

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

However, the qualified majority shall also be attained if the negative votes are cast by fewer than four members of the Council.

2. **By derogation from paragraph 1**, when the Council is not acting on a proposal from the Commission or from the Union Minister for Foreign Affairs, the qualified majority shall be defined as **72%** of the members of the Council, representing Member States comprising at least **65%** of the population of the Union.¹

[3. Abstentions shall not be taken into account when counting the total number of Council members and of population.]

Cases where only some Council members have the right to vote:

In cases where only some members of the Council have the right to vote (for example enhanced cooperation or Eurozone), the provisions of the Constitution which specifically define the qualified majority in such cases will be adapted. Such adaptation will consist in inserting in these provisions the percentages provided for in Article I-24 paragraph 1 and in paragraph 2 [as well as the rule of paragraph 3], so as to be applicable only to Council members which have the right to vote and to the population of the Member States which they represent. As regards the adaptation of the figure in the second subparagraph of paragraph 1, the number of Council members will be the minimum number capable of constituting a blocking minority plus one.

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¹ Examples of cases where the Council acts without proposal from the Commission:

- in JHA, when the Council acts on initiative from the Member States,
- in CFSP, when the Council acts on its own initiative,
- in Economic and Monetary policy, when it acts on a recommendation from the Commission or from the ECB,
- in the case of suspension of a Member State or withdrawal of a Member State,
- in various nominations.

**DRAFT DECISION RELATING TO THE
IMPLEMENTATION OF ARTICLE I-24¹**

Draft Council Decision relating to the implementation of Article I-24

THE COUNCIL OF THE EUROPEAN UNION,

Whereas:

- 1. It is considered appropriate to adopt provisions allowing for a smooth transition from the system for decision-making in the Council by Qualified Majority as defined in the Treaty of Nice and set out in Article 2, paragraph 2 of the *Protocol on the transitional provisions relating to the institutions and bodies of the Union* annexed to the Constitution, which will continue to apply until 31 October 2009 and the voting system foreseen under Article I-24 of the Constitution, which will apply with effect from 1 November 2009.**
- 2. It is recalled that it is the practice of the Council to devote every effort to strengthening the democratic legitimacy of decisions taken by qualified majority.**
- 3. It is judged appropriate to maintain the present Decision as long as is necessary to ensure smooth transition to the new voting system foreseen in the Constitution,**

DECIDES:

Article 1

If members of the Council, representing:

- (a) at least 30% of the population of the Union, or**
- (b) at least 40% of the Member States,**

indicate their opposition to the Council adopting an act by a qualified majority, the Council shall discuss the issue.

Article 2

The Council shall, in the course of these discussions, do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by Union law, a satisfactory solution to address concerns raised by the members of the Council referred to in Article 1.

¹ The draft Decision will be adopted on the day the Treaty enters into force.

Article 3

To this end, the President of the Council, with the assistance of the Commission and respecting the Rules of Procedure of the Council, shall undertake any initiative necessary to facilitate a wider basis of agreement in the Council. The members of the Council shall lend him their assistance.

Article 4

The present Decision shall remain in force at least until 2014. Thereafter the Council may adopt a European decision repealing it.

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EUROPEAN PARLIAMENT SEATS

Article I-19 (2)

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 attributed more than [ninety-six] seats.

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

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PART II

NON-INSTITUTIONAL ISSUES

**PROVISIONS SPECIFIC TO MEMBER
STATES WHOSE CURRENCY
IS THE EURO**

Article III-92 (2)

2. After consulting the European Parliament and after discussion in the European Council, the Council, on a proposal from the Commission, shall adopt a European decision establishing which Member States with a derogation fulfil the necessary conditions on the basis of the criteria set out in paragraph 1, and shall abrogate the derogations of the Member States concerned. **The Council shall act having received a recommendation of a majority of those among its members representing Member States whose currency is the euro and comprising at least three fifths of the population of those Member States¹; these members shall act within 6 months of the Council receiving the Commission's proposal.**

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¹ The draft of this sentence will have to be adapted in the light of the final drafting of Article I-24 on the definition of qualified majority.

COORDINATION OF ECONOMIC POLICY

Article I-11 (3)

3. The Union shall have competence **to provide a framework for the coordination by the Member States of their** economic and employment policies.

Article I-14 (1)

1. The Member States shall coordinate their economic policies within the Union. **To this end, the Council shall adopt measures, in particular broad guidelines for these policies.**

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**DECLARATION ON THE STABILITY AND
GROWTH PACT**

**Declaration to be incorporated in the Final Act
re Article III-76**

With regard to Article III-76, the Conference confirms that raising growth potential and securing sound budgetary positions are the two pillars of the economic and fiscal policy of the Union and the Member States. The Stability and Growth Pact is an important tool to achieve these goals.

The Conference reaffirms its commitment to the provisions concerning the Stability and Growth Pact as the framework for the coordination of budgetary policies in the Member States of the European Union.

The Conference confirms that a rules-based system is the best guarantee for commitments to be enforced and for all Member States to be treated equally.

Within this framework, the Conference also reaffirms its commitment to the goals of the Lisbon Strategy: job creation, structural reforms, and social cohesion.

The Union aims at achieving balanced economic growth and price stability. Economic and budgetary policies thus need to set the right priorities towards economic reforms, innovation, competitiveness and strengthening of private investment and consumption in phases of weak economic growth. This should be reflected in the orientations of budgetary decisions at the national and EU level in particular through restructuring of public revenue and expenditure while respecting budgetary discipline in accordance with the Constitution and the Stability and Growth Pact.

Budgetary and economic challenges facing the Member States underline the importance of sound budgetary policy throughout the economic cycle.

The Conference agrees that Member States should use periods of economic recovery actively to consolidate public finances and improve their budgetary positions. The objective is to have a budgetary surplus in good times which creates the necessary room to accommodate economic downturns and thus contribute to the long-term sustainability of public finances.

The Member States look forward to possible proposals of the Commission as well as further contributions of Member States with regard to strengthening and clarifying the implementation of the Stability and Growth Pact. The Member States will take all necessary measures to raise the growth potential of their economies. Improved economic policy coordination could support this objective.

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**MEASURES RELATING TO
EXCESSIVE DEFICITS**

Article III-76 (6)

6. The Council shall, on a proposal from the Commission, having considered any observations which the Member State concerned may wish to make and after an overall assessment, decide whether an excessive deficit exists. In that case it shall adopt, **on a recommendation from the Commission**, recommendations addressed to the Member State concerned with a view to bringing that situation to an end within a given period. Subject to paragraph 8, those recommendations shall not be made public.

Within the scope of this paragraph, the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned.

A qualified majority shall be defined as the majority of the other members of the Council, representing Member States comprising at least three fifths of the population of the participating Member States.¹

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¹ The draft of this sentence will have to be adapted in the light of the final drafting of Article I-24 on the definition of qualified majority.

MULTIANNUAL FINANCIAL FRAMEWORK

Article I-54

1. The multiannual financial framework shall ensure that Union expenditure develops in an orderly manner and within the limits of its own resources. It shall determine the amounts of the annual ceilings of appropriations for commitments by category of expenditure in accordance with of Article III-308.
2. A European law of the Council shall lay down the multiannual financial framework. The Council shall act **unanimously** after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.
3. The annual budget of the Union shall comply with the multiannual financial framework.
4. **The European Council may adopt, by unanimity, a European decision allowing for the Council to act by a qualified majority when adopting the European law of the Council referred to in paragraph 2.**

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**EXPLANATIONS RELATING TO THE
CHARTER OF FUNDAMENTAL RIGHTS**

5th paragraph of the Preamble

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

Article II-52: Scope and interpretation of rights and principles
(New (7))

7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

Declaration for incorporation in the Final Act
concerning the explanations relating to the Charter of Fundamental Rights

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

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PROVISIONS SPECIFIC TO MEMBER STATES WHOSE CURRENCY IS THE EURO
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Article III-88

1. In order to ensure the proper functioning of economic and monetary union, and in accordance with the relevant provisions of the Constitution, **the Council shall, in accordance with the relevant procedure from among those referred to in Articles III-71 and III-76, with the exception of the procedure set out in paragraph 13 thereof, adopt** measures specific to those Member States whose currency is the euro:

- (a) to strengthen the coordination of their budgetary discipline and surveillance of it;
 - (b) to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance.
2. *[unchanged]*

Article III-91 (2)

2. The following provisions of the Constitution shall not apply to Member States with a derogation:

- (a) – (h) *[unchanged]*
- (i) **European decisions establishing common positions on issues of particular relevance for economic and monetary union within the competent international financial institutions and conferences (Article III-90(1));**
- (j) **measures to ensure unified representation within the international financial institutions and conferences (Article III-90(2)).**

In the Articles referred to above, "Member States" shall therefore mean Member States whose currency is the euro.

Article III-91 (4)

4. The voting rights of members of the Council representing Member States with a derogation shall be suspended for the adoption by the Council of the measures referred to in the Articles listed in paragraph 2, **and in the following instances:**

- (a) recommendations made to those Member States whose currency is the euro in the framework of multilateral surveillance, including on stability programmes and warnings (Article III-71(4));**
- (b) measures relating to excessive deficits concerning those Member States whose currency is the euro (Article III-76(6), (7), (8) and (11)).**

[remainder of paragraph unchanged]

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EUROJUST

Article III-174 (2)

2. **In this context**, European laws shall determine Eurojust's structure, operation, field of action and tasks. Those tasks may include:

- (a) the initiation **of** criminal investigations, **as well as proposing the initiation of** prosecutions, conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;
- (b) the coordination of investigations and prosecutions referred to in point (a);**
- (c) the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.

European laws shall also determine arrangements for involving the European Parliament and Member States' national Parliaments in the evaluation of Eurojust's activities.

Declaration for incorporation in the Final Act
re Article III-174 (2)

The Conference considers that the European laws referred to in Article III-174 (2) should take into account national rules and practices relating to the initiation of criminal investigations.

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ENHANCED COOPERATION

Article III-324 (1)

1. When enhanced cooperation is being established, it shall be open to all Member States, subject to compliance with any conditions of participation laid down by the European authorising decision. It shall also be open to them at any other time, subject to compliance with the acts already adopted within that framework, in addition to any such conditions.

The Commission and the Member States participating in enhanced cooperation shall ensure that they **promote** participation by as many Member States as possible.

Article III-325 (2)

2. The request of the Member States which wish to establish enhanced cooperation between themselves within the framework of the common foreign and security policy shall be addressed to the Council. It shall be forwarded to the Union Minister for Foreign Affairs, who shall give an opinion on whether the enhanced cooperation contemplated 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 European decision of the Council **acting unanimously**.

Article III-326 (2)

2. Any Member State which wishes to participate in enhanced cooperation in progress in the framework of the common foreign and security policy shall notify its intention to the Council, the Union Minister for Foreign Affairs and the Commission.

The Council shall confirm the participation of the Member State concerned, after consulting the Union Minister for Foreign Affairs and after noting where necessary that the conditions of participation have been fulfilled. The Council, on a proposal from the Union Minister for Foreign Affairs, may also adopt any transitional measures necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation. However, if the Council considers that the conditions of participation have not been fulfilled, it shall indicate the arrangements to be adopted to fulfil those conditions and shall set a deadline for re-examining the request for participation.

For the purposes of this paragraph, the Council shall act **unanimously and** in accordance with Article I-43(3).

Article III-328

1. Where a provision of the Constitution which may be applied in the context of enhanced cooperation stipulates that the Council shall act unanimously, the Council, acting unanimously in accordance with the arrangements laid down in Article I-43(3), may decide to act by qualified majority.
2. Where a provision of the Constitution which may be applied in the context of enhanced cooperation stipulates that the Council shall adopt European laws or framework laws under a special legislative procedure, the Council, acting unanimously in accordance with the arrangements laid down in Article I-43(3), may decide to act under the ordinary legislative procedure. The Council shall act after consulting the European Parliament.
3. **Paragraphs 1 and 2 shall not apply to decisions having military or defence implications.**

Declaration for incorporation in the Final Act re Article III-325

The Conference declares that Member States should indicate, when they address a request to the Commission to establish enhanced cooperation, if they intend already at that stage to make use of the provisions in Article III-328 providing for the extension of qualified majority Voting or the ordinary legislative procedure.

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DECLARATION BY MEMBER STATES

**Declaration by the Kingdom of Spain and
the United Kingdom of Great Britain and Northern Ireland**

The Treaty establishing the Constitution applies to Gibraltar as a European territory for whose external relations a Member State is responsible. This shall not imply changes in the respective positions of the Member States concerned.

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