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# The EU Constitutional Treaty and EMU

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## INTRODUCTION

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At the meeting of the European Council on 17-18 June 2004, heads of state or government from the 25 EU member states adopted the Treaty establishing a Constitution for Europe. The treaty was signed by the EU member states and three candidate countries (Bulgaria, Romania and Turkey) on 29 October 2004. The Constitutional Treaty must be ratified in all EU member states before it can enter into force, and in several of the member states ratification will depend on the result of a referendum on the treaty. The Constitutional Treaty is planned to enter into force on 1 November 2006.

So far, all new EU treaties have further developed the Treaty of Rome from 1957 as the basis for EU cooperation. The latest treaty revisions took the form of the Nice Treaty, which entered into force in February 2003. With the Constitutional Treaty, the rules have been rewritten to make them more transparent and accessible. The Constitutional Treaty will thus replace the existing treaties, but there are no plans for major changes to EU cooperation as we know it. In most of the specific areas of cooperation, the rules on which the member states have previously agreed will be carried forward. The Constitutional Treaty does, however, extend the cooperation in a few areas. For instance, the framework has been strengthened to enable the EU to ensure greater efficiency and consistency in its external actions. Moreover, judicial cooperation will be strengthened. Another important objective of the Constitutional Treaty is to ensure the decision-making powers and efficiency of the EU also in an enlarged EU of 25 or more member states.

This article gives an overview of issues in the Constitutional Treaty of significance to economic and monetary cooperation in the EU. The Constitutional Treaty confirms the existing framework for economic and monetary union, EMU, but does, however, provide a few adjustments to the rules. The overall framework of the Constitutional Treaty is presented in the introduction to this article.

KEY ASPECTS OF THE CONSTITUTIONAL TREATY		Chart 1
Part 1	<i>Fundamental provisions:</i> - objectives and values - competences - decision-making procedures and institutions	
Part 2	<i>Charter of Fundamental Rights:</i> - dignity and freedoms - equality and solidarity - citizens' rights and justice	
Part 3	<i>Policies and functioning of the EU:</i> - justice and home affairs - EU's external actions - economic and monetary policy and EU finances - internal market and other policies	
Part 4	<i>General and final provisions:</i> - treaty revision procedures - ratification and entry into force	

## OVERALL FRAMEWORK OF THE CONSTITUTIONAL TREATY

The Constitutional Treaty is overall comprised of four parts, cf. the overview in Chart 1. Part I comprises definitions of the EU, its values, objectives, competences, decision-making procedures and institutions. Part II incorporates the Charter of Fundamental Rights. Part III, the most extensive part of the Treaty, contains detailed descriptions of the policies and functioning of the EU, including economic and monetary cooperation. Part IV contains the general and final provisions, such as procedures for adoption of treaty revisions. In addition, there are a number of related protocols and declarations, including the Protocol on the Statute of the European System of Central Banks and of the European Central Bank.

### Decision-making procedures and institutions

The Constitutional Treaty establishes that the institutional framework of the EU comprises the European Parliament, the European Council, the Council of Ministers, the European Commission and the European Court of Justice. These institutions are described in Box 1. The European Central Bank, the ECB, does not form part of the institutional framework of the EU and is therefore mentioned under "other institutions". The Constitutional Treaty leaves the institutional structure largely intact, but, as will appear, brings a number of changes in the functioning of the individual institutions. This is to ensure that the EU institutions are efficient and democratic also in the enlarged EU of 25 or more member states.

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**THE EU'S INSTITUTIONAL FRAMEWORK ACCORDING TO THE  
CONSTITUTIONAL TREATY**

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Box 1

*The European Parliament* is the institution directly representing the citizens of the EU. The number of MEPs cannot exceed 750 (the current maximum number is 732). The smallest member states are allocated at least 6 seats in the European Parliament, while the largest member states are allocated a maximum of 96 seats. The competences of the European Parliament as co-legislator with the Council are enhanced, as the Constitutional Treaty extends the scope of the ordinary legislative procedure.

*The European Council* is comprised of the heads of state or government of the member states, along with its president and the president of the Commission. It provides the EU with political impetus and its main task is to define the general political directions and priorities. It exercises no legislative functions and its decisions are generally taken by consensus. Under the Constitutional Treaty, a permanent President of the European Council is to be appointed for a term of two and a half years.

*The Council of Ministers* is comprised of a minister from each member state and it exercises the legislative function in conjunction with the European Parliament. It generally acts by a qualified majority. The Council of Ministers meets in different configurations and under the Constitutional Treaty, only the General Affairs Council and the Foreign Affairs Council – both typically consisting of the ministers for foreign affairs of the member states – are given permanent status. The European Council subsequently draws up a list of the other Council configurations. For example, the Ecofin Council, consisting of the economic and finance ministers of the member states, is expected to be continued. A group presidency model will be established under which three member states will share the presidency for a term of 18 months. Each of the member states will chair the various Council configurations for alternating six-month periods. The system is thus similar to the current system. The Foreign Affairs Council will, however, be chaired by the Union Minister for Foreign Affairs. He or she will be responsible for the Union's common foreign and security policy and otherwise for ensuring the consistency of the EU's external relations.

*The European Commission's* main tasks are to take initiatives with a view to promoting the general interests of the EU. In principle, legislative acts may be adopted only on the basis of a Commission proposal. In addition to its right of initiative, the Commission also exercises coordinating, executive and management functions. Up until 2014, the Commission will consist of one commissioner from each member state. After 2014, the number of commissioners will be reduced to two-thirds of the number of member states, unless the European Council decides to alter the number. The commissioners will alternate on the basis of a system of equal rotation between the member states.

*The European Court of Justice* ensures that in the interpretation and application of the Constitutional Treaty, the law is observed. The Court of Justice consists of one judge from each member state.

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The Constitutional Treaty seeks to clarify and simplify institutional issues in the EU. This implies e.g. that the number of legal acts has been reduced significantly, leaving only six different types: laws, framework laws, regulations, decisions, recommendations and opinions. Moreover,

the number of areas in which the Council of Ministers takes decisions by qualified majority has been extended under the Constitutional Treaty. In addition, the current co-decision procedure between the Council and the European Parliament will become the ordinary legislative procedure in the EU. Unanimity voting has, however, been retained in a number of areas. While there are still exceptions to the ordinary legislative procedure, there are fewer special legislative procedures than under the current treaty. For example, the consultation procedure is discontinued. Moreover, the Constitutional Treaty opens up the possibility of a transition from unanimity to qualified majority voting or from a special legislative procedure to the ordinary legislative procedure in the areas specified in Part III of the Constitutional Treaty (the general bridging clause). This transition can be made following a unanimous decision by the European Council, having obtained the consent of the European Parliament. If just one national parliament opposes the transition, it will not take place.

A new definition of qualified majority is introduced in the Council. As the new definition is based on the "double-majority" system, the existing voting weights will lapse. A qualified majority requires the votes of at least 55 per cent of the member states, representing at least 65 per cent of the population of the EU. Moreover, a minimum of 15 member states must support a proposal, while a blocking minority requires at least four member states. It is also established that when the Council does not act on a proposal from either the European Commission or the Union Minister for Foreign Affairs, a qualified majority is defined as the votes of at least 72 per cent of the member states, representing at least 65 per cent of the population of the EU. The new definition of qualified majority will take effect on 1 November 2009.

### **Competences and other selected issues**

The Constitutional Treaty sets out more specific provisions on the relationship between the EU and the member states, as well as a clearer description of EU competences. It is specified that the EU has only the competences conferred upon it by the member states. Moreover, the Constitutional Treaty distinguishes between areas in which the EU has exclusive competence; areas in which the EU shares a competence with the member states; and areas in which the EU has only the competence to carry out supporting, coordinating or complementary action. In addition, there is the common foreign and security policy and the coordination of the economic and employment policies. These constitute special categories of competence under which the cooperation maintains its

intergovernmental nature. The use of EU competences is also governed by the principles of subsidiarity and proportionality known from the existing treaty basis. The Constitutional Treaty makes it possible for national parliaments to monitor the subsidiarity principle, and the role of the national parliaments is strengthened in general.

The Constitutional Treaty contains a flexibility clause. This clause authorises the Council, acting unanimously, to adopt a proposal in order to attain one of the objectives set out in the Constitutional Treaty, even though the Constitutional Treaty does not provide for the necessary powers. The flexibility clause has been extended relative to the existing clause, as it applies to all policy areas set out in Part III of the Constitutional Treaty (and not just the Internal Market as is the case with the current article 308). At the same time, parliamentary control is strengthened, as the European Parliament may block use of the flexibility clause. Today, the European Parliament only has to be consulted.

The main principles of the current rules on the establishment of enhanced cooperation will be transferred to the Constitutional Treaty and this possibility will, as a principal rule, apply to all areas of EU cooperation. The aim is to further the objectives of the EU and such cooperation is open to all member states. At the same time, it should be used only as a last resort. In order to establish enhanced cooperation, at least one third of the member states must participate.

For the first time, the Constitutional Treaty establishes a formalised procedure for voluntary withdrawal from the EU.

It should also be noted that the Danish opt-outs will remain in the Constitutional Treaty. However, due to the structure of the Constitutional Treaty, the opt-out on justice and home affairs will be more wide-reaching than is the case today, as for instance police cooperation is also included. A new aspect is that the protocol on Denmark's position also includes a right for Denmark to decide on a general reshaping of the opt-out on justice and home affairs. A referendum would have to be held on a change of this nature and it would make it possible for Denmark to decide, on a case-by-case basis, to participate in the cooperation on justice and home affairs.

## **ECONOMIC POLICY IN THE EU**

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The economic policy cooperation in the EU is characterised by a common foreign-exchange and monetary policy for the euro-area member states, while fiscal policy remains a matter for national governments. In order to ensure sound public finances and avoid inappropriate interaction between the common monetary policy and national fiscal policies, the

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 EXISTING FRAMEWORK FOR THE COOPERATION ON ECONOMIC POLICY  
 IN THE EU
 

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Box 2

The framework for economic-policy cooperation in the EU includes a procedure on coordination of economic policy, the central instrument of which is "the broad guidelines of the economic policies", cf. Article 99 (new Article III-179). The guidelines set out recommendations for the economic policies of the EU in general, along with specific recommendations for the individual member states. While the guidelines are not legally binding, they are politically binding, and the Ecofin Council may make a recommendation to a member state if its economic policy is not consistent with the broad policy guidelines, or risks jeopardising the proper functioning of EMU.

The Treaty also contains a prohibition on monetary financing of public deficits (current Article 101/new Article III-181), as well as a prohibition on one member state being liable for the debt of another member state, the "no bail out clause" (current Article 103/new Article III-183).

The central fiscal-policy provision is set out in the current Article 104 (new Article III-184), including the prohibition of "excessive deficits" and the procedure to be initiated in case of non-compliance. Elsewhere in the Treaty (Protocol No. 20), an excessive deficit is defined as a budget deficit exceeding 3 per cent of GDP or a gross government debt exceeding 60 per cent of GDP. While all EU member states<sup>1</sup> fall within the prohibition, only the euro-area member states may be given notice to take measures to reduce excessive deficits. Sanctions may ultimately be imposed on non-complying euro-area member states. To supplement the treaty provisions on fiscal policy, the EU member states in 1997 adopted the Stability and Growth Pact, comprised of a resolution of the European Council and two Council regulations.<sup>2</sup> The Stability and Growth Pact is designed to promote lasting budgetary discipline and commits all EU member states to seek to attain the goal of a public budget in balance or in surplus in the medium term. The Pact elaborates on the procedure set out in Article 104, providing for a relatively strict time frame for implementing the procedure from the time that it is established that a member state has an excessive deficit until sanctions are imposed.

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<sup>1</sup> The UK is exempt from the prohibition, as long as it does not participate in the euro.  
 Resolution of the European Council: *Official Journal* C 236, 2 August 1997. The two Council regulations: *Official Journal* L 209, 2 August 1997.

Treaty – as well as the Stability and Growth Pact – contains a number of provisions for fiscal policy and other economic policy. While all EU member states are required to comply with these treaty provisions, sanctions may only be imposed on euro-area member states. See Box 2 for further details.

The economic policy framework is maintained in the Constitutional Treaty and several of the articles are thus transferred to the Treaty more or less verbatim. As will appear, a few adjustments have been made, however. Overall, these adjustments reflect that the euro is now a reality and that a number of EU member states seemingly wish to remain outside the euro area for some time to come. However, the adjustments

are not only of a technical nature. For example, the decision-making competence of the euro-area member states has been strengthened slightly, as has the position of the Commission.

### **The Constitutional Treaty's adjustments of economic-policy cooperation**

A new aspect is that the Constitutional Treaty contains a section directed exclusively at the euro-area member states (Articles III-194 to III-196). Here it is stated that it is possible to adopt measures with a view to strengthening the coordination and surveillance of the budgetary discipline of the euro-area member states. It also appears that overall economic-policy guidelines shall be drawn up for the euro area alone.

The Euro Group is an informal group of the economic and finance ministers of the euro-area member states. This group will be incorporated in the Constitutional Treaty. The Euro Group will continue to convene informally, as necessary, to discuss issues related to the euro. It is also established that a permanent president of the Euro Group must be elected for a term of two and a half years (new Article III-195 and Protocol No. 12).

Under the Constitutional Treaty, the decision-making competence of the euro-area member states is strengthened somewhat. This means that decisions regarding potential inconsistencies between the economic policy of a euro-area member state and the overall guidelines must be made by the economic and finance ministers of the euro-area member states alone (new Article III-197 (4)). The same applies to the stability programmes. Pursuant to the excessive deficit procedure, the voting rights of the EU member states outside the euro area will already be suspended on decisions regarding the existence of an excessive deficit, i.e. a public budget deficit exceeding 3 per cent of GDP. Under the current rules, the EU member states outside the euro area now take part in these decisions. When a new country submits an application to accede to the euro area, the Ecofin Council will, in future, make the decision based on the recommendation of a qualified majority of the ministers representing the euro-area member states (new Article III-198).

The Constitutional Treaty slightly strengthens the Commission's position within the context of the excessive deficit procedure and the multi-lateral surveillance of economic policy. If the Commission finds that an excessive deficit exists or may occur in a member state, it shall address an opinion to the member state concerned and notify the Ecofin Council accordingly (new Article III-184 (5)). Under the current treaty basis (Article 104 (5)), the Commission is required only to address an opinion to the Ecofin Council. In future, the Ecofin Council is to decide whether an excessive deficit exists, acting on a proposal from the Commission.

This decision is currently based on a recommendation. This change strengthens the Commission's position, as the Ecofin Council may only amend a proposal from the Commission (cf. new Article III-395) by acting unanimously, while a recommendation from the Commission can be amended by qualified majority vote. All other decisions regarding the excessive deficit procedure must, as before, be based on recommendations from the Commission. Within the context of multilateral surveillance, the Commission may, in future, address a "direct" warning to the member state concerned (new Article III-179 (4)), if the economic policy of the member state is not consistent with the broad policy guidelines or risks jeopardising the proper functioning of EMU. Under the current rules (Article 99(4)), the Commission can only recommend that the Ecofin Council address a recommendation to the member state concerned.

In the area of economic-policy cooperation, the Constitutional Treaty introduces the ordinary legislative procedure in three new areas, thereby increasing the influence of the European Parliament. These areas are surveillance of compliance with the overall economic-policy guidelines (new Article III-179 (6)); the possibility of amending certain articles of the Statute of the European System of Central Banks (new Article III-187(3)); and the measures necessary for the use of the euro (new Article III-191). The existing treaty basis instead applies *inter alia* the consultation procedure and the assent of the European Parliament.

A new aspect is that a declaration (No. 17) on the Stability and Growth Pact is annexed to the Constitutional Treaty, meaning that the pact is, for the first time, confirmed by treaty. The declaration confirms the obligations of the member states under the pact and highlights, among other things, that member states are to use periods of economic recovery to consolidate public finances and improve their budgetary positions.

## **MONETARY COOPERATION IN THE EU**

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The rules on monetary cooperation in the EU are not amended in substance by the Constitutional Treaty. This entails that the relationship between the ECB and the national central banks will continue as before, while the primary objective of the ECB is still to maintain price stability. See Box 3 for more details. The rules governing monetary cooperation are set out in the treaty and the Statute of the European System of Central Banks and, as a general rule, these provisions have been transferred to the Constitutional Treaty almost verbatim. A few adjustments have been made, however.



The euro-area member states have pursued a common monetary and foreign-exchange policy since the euro was introduced on 1 January 1999. The primary objective of this policy is to maintain price stability (current Article 105/new Article III-185). In addition, the monetary policy is to support the general economic policies in the euro area, provided that this does not conflict with the primary objective of price stability. Monetary policy is conducted through the common central banking system, the Eurosystem, consisting of the national central banks of the euro-area member states and the ECB. The European System of Central Banks (ESCB) consists of the ECB and the national central banks of all EU member states. For as long as some EU member states are outside the euro, it is necessary to distinguish between the Eurosystem and the ESCB.

The ECB and the national central banks are independent in the performance of their tasks (current Article 108/new Article III-188). The national central banks form an integrated part of the ESCB's work. They participate in the ECB's decision-making bodies and in the decision-making process. Moreover, decisions are predominantly implemented by the national central banks. The Governing Council is the ECB's supreme decision-making body. The central banks of the EU member states that have not adopted the euro participate only in the cooperation that is conducted through the General Council.

The non-euro-area member states regard their foreign-exchange policies as a matter of common interest (current Article 124/new Article III-200). With the exception of Denmark and the UK, both of which have a treaty-bound derogation, all other EU member states outside the euro area are obliged to introduce the euro in the course of time according to the treaty. To be able to participate in the euro, the member states will have to fulfil the convergence criteria, including the criterion on participation in the EU's exchange rate mechanism, ERM II, without severe tensions for at least two years. Currently, the only ERM II participants are Denmark, Estonia, Lithuania and Slovenia.

### **Adjustments in the Constitutional Treaty to the monetary cooperation**

The "Eurosystem" refers to the ECB and the national central banks of the euro-area member states. The concept has been introduced by the ECB to make it easier to understand the central-bank structure of the euro area, as the existing treaty basis only mentions the ECB and the ESCB. A new aspect is that the Constitutional Treaty now also refers explicitly to the Eurosystem.

The procedure for appointment of members to the ECB's Executive Board is amended by the Constitutional Treaty (Article III-382). Such appointments are no longer subject to common accord of the heads of state or government. Instead, appointments are determined by qualified majority voting, bringing this procedure in line with the appointment procedures for other EU positions.