

Draft Treaty establishing a Constitution for Europe

Drafting suggestions on Articles of interest to Ecofin ministers, reflecting a high degree of consensus reached at the Informal Ecofin in Stresa

Price stability should be explicitly mentioned in the Union's objectives.

Article I-3.3

The Union shall work for the sustainable development of Europe based on balanced, and non-inflationary economic growth ..”

Legislative Council

Article I-23.1

Delete the Legislative Council, or amend as:

The ~~Legislative and~~ General Affairs Council shall ensure consistency in the work of the Council of Ministers. ... When ~~it acts~~ acting in ~~its~~ their legislative function, the ~~Council of Ministers~~ respective Council formations shall consider and, jointly with the European Parliament, enact European laws and European framework laws, in accordance with the provisions of the Constitution. ~~In this function, each Member State's representation shall include one or two representatives at ministerial level with relevant expertise, reflecting the business on the agenda of the Council of Ministers.~~

The Eurosystem, and the independence of the national central banks

Article I-29.3

1. *The European Central Bank, together with the national central banks, shall constitute the European System of Central Banks. The European Central Bank, together with the national central banks of the Member States which have adopted the Union currency, the euro, shall constitute the Eurosystem. The Eurosystem shall conduct the monetary policy of the Union.*

2. *The European System of Central Banks and the Eurosystem shall be governed by the decision-making bodies of the European Central Bank. The primary objective of the European System of Central Banks and the Eurosystem shall be to maintain price stability. Without prejudice to the objective of price stability, it shall support general economic policies in the Union with a view to contributing to the achievement of the Union's objectives. It shall conduct other Central Bank tasks according to the provisions of Part III and the Statute of the European System of Central Banks and the European Central Bank.*

3. *The European Central Bank is an Institution which has legal personality and shall be independent for its finances. It alone may authorise the issue of the banknotes denominated in euro. The European Central Bank and the national central banks of the Member States having adopted the euro may issue such notes. Member States having adopted the euro may issue euro coins subject to approval by the ECB of the volume of the issue. In the exercise of its powers and for its finances, it shall be independent. When exercising their powers and carrying out their tasks and duties, the ECB, the national central banks, and any member of their decision making bodies shall be completely independent in accordance with the provisions of Article III-80. Union Institutions and bodies, and the governments of the Member States shall undertake to respect this principle...*

Application of the Lamfalussy process for harmonising financial services legislation

Article I-35 paragraphs 1 and 2

1. European laws and European framework laws may delegate to the Commission the power to enact delegated regulations to supplement or amend certain non-essential elements of the European law or framework law. The objectives, content, scope and duration of the delegation shall be explicitly defined in the European laws and framework laws. A delegation may not cover the essential elements of an area. These shall be reserved for the European law or framework law. 2. The conditions of application to which the delegation is subject shall be explicitly determined in the European laws and framework laws. They may consist of the following possibilities: The law or framework law shall lay down in advance rules and general principles for the mechanisms for assistance by the Member States with delegated regulations of the Union."

[If the amendment to Article I-35 can not be achieved, a joint Council-Commission declaration could be considered on the need for the Commission to, in the enactment of delegated regulations in the financial services area, be assisted by experts appointed by all the Member States.]

The Union's finances

Article I-52.3

The expenditure shown in the budget shall be authorised for the annual budgetary period in accordance with the European law of the Council of Ministers referred to in Article III-318.

Article I-52.4

The implementation of expenditure shown in the budget shall require the prior adoption of a binding legal act providing a legal basis for Union action and for the implementation of the expenditure in accordance with the European law of the Council of Ministers referred to in Article III-318. This act must take the form of a European law, a European framework law, a European regulation or a European decision.

Article I-52.5

With a view to maintaining budgetary discipline, the Union shall not adopt any act which is likely to have appreciable implications for the budget without providing an assurance that the proposal or measure in question is capable of being financed within the limit of the Union's own resources and the expenditure ceilings of the multiannual financial framework referred to in Article 54."

Article I-54 paragraph 2

A European law of the Council of Ministers shall lay down the multiannual financial framework. The Council of Ministers shall act unanimously after obtaining the consent of the European Parliament, ~~which shall be given by a majority of its component members consulting the European Parliament~~

The “direct” warning should not be extended to the BEPGs

Article III-71.4

Where it is established, under the procedure referred to in paragraph 3, that the economic policies of a Member State ~~are not consistent with the broad guidelines referred to in paragraph 2 or that they risk jeopardising the proper functioning of economic and monetary union,~~ the Commission may address a warning to the Member State concerned. The Council of Ministers, on a recommendation from the Commission, may address the necessary recommendations to the Member State concerned. The Council of Ministers, on a proposal from the Commission, may decide to make its recommendations public.

Where it is established, under the procedure referred to in paragraph 3, that the economic policies of a Member State are not consistent with the broad guidelines referred to in paragraph 2, the Council of Ministers, on a recommendation from the Commission, may address the necessary recommendations to the Member State concerned. The Council of Ministers, on a proposal from the Commission, may decide to make its recommendations public.

Budgetary surveillance

Art III-71.3 sub paragraph 2

For the purpose of this multilateral surveillance. Member States shall forward information to the Commission on important ~~steps~~ measures taken by them in the field of their economic policy and such other information as they deem necessary.

Article III-71.6

European laws of the Council of Ministers may lay down detailed rules for the multilateral surveillance procedure referred to in paragraphs 3 and 4. The Council of Ministers shall act after consulting the European Parliament.

Art. III-76.5

If the Commission considers that an excessive deficit in a Member State exists or may occur, it shall address an opinion to the Council of Ministers ~~Member State concerned.~~"

Article III-76.6

The Council of Ministers 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, ~~according to the same procedures~~ 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."

Art. III-76.9

If a Member State persists in failing to put into practice the recommendations of the Council of Ministers, the Council of Ministers may adopt a European decision giving notice to the Member State to take, within a specified time-limit, ~~steps~~ measures for the deficit reduction which is judged necessary by the Council of Ministers in order to remedy the situation.

Conferring of specific tasks to the ECB relating to prudential supervision of financial institutions

Article III-77.6

European laws of the Council may confer upon the European Central Bank specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings. ~~Such laws shall be adopted after consultation of the European Central Bank.~~ The Council shall act unanimously, after consulting the ECB, and obtaining the consent of the European Parliament.

Appointment of members of the ECB

Article III-84.2(b)

The President, the Vice-President and the other members of the Executive Board shall be appointed from among persons of recognised standing and professional experience in monetary or banking matters ~~by common accord of the governments of the Member States at the level of Heads of State or Government~~ the European Council acting by qualified majority, on a recommendation from the Council of Ministers, after it has consulted the European Parliament and the Governing Council of the European Central Bank¹.

¹ The first sentence of Art. III-91.4 will also have to be adjusted as follows to take account of the above change: *4. The voting rights of members of the European Council or the Council of Ministers representing Member States with a derogation shall be suspended for the adoption by the Council of Ministers of the measures referred to in the Articles listed in paragraph 2.*

Retaining a reference to the Economic Policy Committee

A new Article III-86a should be introduced reading:

“(1) The Council shall, by simple majority, adopt a European decision establishing an Economic Policy Committee with advisory status and its statutes.

“(2) Without prejudice to Articles III-86, III-102, and III-247, the Committee shall, in close co-operation with the Economic and Financial Committee, contribute to the preparation of the work of the Council and the Committee by providing economic analyses, reports and draft formulations for policy recommendations, particularly on structural policies.”

External representation of the euro zone

Article III-90

~~“1. In order to secure the euro's place in the international monetary system, the The Council of Ministers, on a proposal from the Commission and after consulting the European Central Bank, shall adopt a European decision establishing common positions on matters of particular interest for economic and monetary union as regards issues of particular relevance to economic and monetary union within the competent international financial institutions and conferences in compliance with the allocation of powers laid down in Articles III-71 and III-77.~~

~~2. For the measures referred to in paragraph 1, only members of the Council of Ministers representing Member States which are part of the euro area shall vote. A qualified majority shall be defined as the majority of the votes of the representatives of the Member States which are part of the euro area, representing at least three fifths of their population. Unanimity of those members of the Council of Ministers shall be required for an act requiring unanimity.~~

~~3. 2. The Council of Ministers, on a proposal from the Commission, may adopt appropriate measures to ensure unified representation within the international financial institutions and conferences. The procedural provisions of paragraphs 1 and 2 shall apply.”~~

Improving the decision-making process for the euro area

(Consensus amongst Eurogroup ministers)

Art. III-91(2)

Add to the (a)-(h) points the following:

(i) decisions establishing common positions as regards issues of particular relevance to economic and monetary union within the competent 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)).”

Article III-91.4

The voting rights of members of the European Council or the Council of Ministers representing Member States with a derogation shall be suspended for the adoption by the Council of Ministers of the measures referred to in the Articles listed in paragraph 2. The same shall apply to (a) surveillance recommendations relating to Member States participating in the euro area – including on stability programs and early warnings (Art. III-71(4)). (b) measures on excessive deficits relating to Member States participating in the euro area (Art. III-76(6)-(8) and (11)), and (c) the lifting of a country’s derogation (Art. III-92(2)).

A qualified majority shall be defined as a majority of the votes of the representatives of the Member States without a derogation, representing at least three fifths of their population. Unanimity of those Member States shall be required for any act requiring unanimity.”

The reference to the European Monetary System in the Article on the convergence assessments must be kept

Article III-92.1(c) *The reports shall also examine whether a high degree of sustainable convergence has been achieved, by analysing how far each of these Member States has fulfilled the following criteria: ... (c) the observance of the normal fluctuation margins provided for by the exchange-rate mechanism of the European Monetary System, for at least two years, without devaluing against the euro;*

Urgent financial aid for non developing countries

Article III-222

When the situation in a third country requires urgent financial aid from the Union, the Council of Ministers shall adopt the necessary European decisions on a proposal from the Commission within the framework of a European law of the Council of Ministers.

In addition, a Declaration should be included in the Final Act of the Intergovernmental Conference:

The conference affirms that, for the purposes of applying balance of payments aid to third countries under the provisions set out in Article III-222, the Council shall decide in the composition of Economic and Finance Ministers

Agreements on monetary or foreign exchange regime matters

Art. III-228.3

By way of derogation from Article III-227, where agreements concerning monetary or foreign exchange regime matters ~~agreements on matters relating to the monetary or exchange rate system~~ are to be the subject of negotiations between the Union and one or more States or international organizations, the Council of Ministers, acting on a recommendation from the Commission and after consulting the European Central Bank, shall decide the arrangements for the negotiation and for the conclusion of the agreements.

The enabling clause to change the Statute of the EIB should be deleted

Article III-299

~~The Statute of the European Investment Bank is laid down in a Protocol. European laws may amend Articles 4, 11, and 12 and Article 18(5) of the Statute of the Bank, either at the request of the European Investment Bank and after consultation of the Commission, or on a proposal from the Commission and after consultation of the European Investment Bank.~~

Financial provisions

Art. III-308

Where no European law of the Council of Ministers establishing a new financial framework has been adopted by the end of the previous financial framework, the ceilings and other provisions corresponding to the last year of that framework shall be extended until such time as that law is adopted. The last Financial Perspective before entry into force of the Constitution shall be treated as the multiannual financial framework which has been adopted in accordance with Article I-54.

Article III-310.8

If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee does not approve a joint text or if the Council of Ministers rejects the joint text, ~~the Parliament may, within fourteen days, acting by a majority of its component members and three fifths of the votes cast, confirm its amendments. Where the Parliament amendment is not confirmed, the position of the Council of Ministers on the budget item which is the subject of the amendment shall be deemed to be adopted. However, if the Parliament, acting by a majority of its component members and three fifths of the votes cast, rejects the joint text, it may ask for a new draft budget to be submitted.~~ a budget providing, in the case of each budget item which is subject to disagreement, for the lowest amount proposed either by the Council or the Parliament or, where it is higher, the figure in the budget law for the previous year shall be adopted.

Article III-318.1

European laws of the Council of Ministers shall: (a) lay down the financial rules which determine in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts; (b) lay down rules concerning the responsibility of financial controllers, authorising officers and accounting officers. They shall be adopted after consultation of the European Parliament and of the Court of Auditors."

The Staff Regulation:

Article III-333

The Staff Regulations of officials and the Conditions of Employment of other servants of the Union shall be laid down by a European law of the Council of Ministers. It shall be adopted after consultation of the Institutions concerned."

Role of the Commission in the Eurogroup

Article 1 of the Protocol on the Eurogroup

The Ministers of the Member States which have adopted the euro shall meet informally. Such meetings shall take place, when necessary, to discuss questions related to the specific responsibilities they share with regard to the single currency. The Commission shall participate in the meetings. ~~The Commission and the~~ European Central Bank shall be invited to take part in such meetings, which shall be prepared by the representatives of the Ministers with responsibility for finance of the Member States which have adopted the euro and the Commission

Annex

Necessary adaptations of Protocols and Declarations of Ecofin concern

Protocols

A number of EMU relevant Protocols need to be adjusted and/or updated for purely technical reasons:

1. Protocol on the Statute of the European System of Central Banks and of the European Central Bank
2. Protocol on the Statute of the European Investment Bank (the EIB, as per a Board of Directors consensus, has put forward a proposal for modernizing and upgrading its Statutes to cope with the future development of its activity in the context of a more competitive and demanding environment, as requested by its Board of Governors)
3. Protocol on the location of the seats of the institutions and of certain bodies and departments of the European Communities and of Europol
4. Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland
5. Protocols on Denmark: No. 5 on the position on the position of Denmark (1997) annexed to the Treaty of the European Union and to the Treaty establishing the European Community; No. 22 on the position of Denmark (1992) annexed to the Treaty establishing the European Community; No. 26 on certain provisions relating to Denmark (1992) annexed to the Treaty establishing the European Community
6. Protocol on France
7. Protocol on certain provisions relating to Denmark
8. Protocol on the excessive deficit procedure
9. Protocol on the convergence criteria referred to in Article 109 J. of the Treaty establishing the European Community (deletion of the reference to the EMI)
10. Protocol on the privileges and immunities of the European Communities

Others may have become obsolete and do not have to be repeated:

- Protocol on the transition to the third stage of Economic and Monetary Union (yet this Protocol contains the principle of the irreversibility of EMU which is worth containing)
- Protocol amending the Protocol on the privileges and immunities of the European Communities (this Protocol needs to be inserted into the Protocol on the privileges and immunities)
- Protocol on Portugal
- Protocol on the European Monetary Institute

Declarations

A number of Declarations need to be repeated as well:

1. The Declaration on Part Three, Title VII of the present Treaty needs to be repeated as Declaration on Article 20 of the Constitution: "The conference affirms that the President of the European Council shall invite the Economic and Finance Ministers to participate in European Council meetings when the European Council is discussing matters relating to economic and monetary union."
2. Declaration on Article 111 of the Treaty establishing the European Community
3. Declaration on disputes between the ECB and the EMI and their servants
4. Declaration on Articles 109, 130r and 130y of the Treaty establishing the European Community

5. Declaration on Article 109 of the Treaty establishing the European Community
6. Declaration on monetary cooperation with non-Community countries
- 7.
8. Declaration on Part Three, Titles III and VI, of the Treaty establishing the European Community

A number of other Declarations may have become obsolete:

- Declaration on Article 181a of the Treaty establishing the European Community
- Declaration by the Presidency and the Commission on the monetary capacity of the Community
- Declaration by the Portuguese Republic on monetary questions
- Joint declaration on the inclusion of the peseta and the escudo in ECU
- Declaration by the Hellenic Republic on monetary questions
- Declaration of intent on the association of the independent countries of the Franc Area with the European Economic Community (EC Treaty)
- Declaration of intent on the association of the independent countries of the Franc Area with the European Economic Community (Euratom Treaty)
- Declaration on monetary relations with the Republic of San Marino, the Vatican City and the Principality of Monaco
- Declaration by the Republic of Austria on Article 109g of the EC Treaty .
