

# TREATY ESTABLISHING A CONSTITUTION FOR EUROPE

*SYNTHESIS NOTE*

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Following the Nice Treaty's call for "a deeper and wider debate about the future of the European Union", the Laeken European Council adopted on 15 December 2001 a "Declaration on the Future of the European Union" committing the European Union (EU) to greater democracy, transparency and efficiency, and to preparing a Constitution for European citizens. A European Convention on the Future of Europe, convened by the Laeken Council, was held from 28 February 2002 to 20 June 2003, to prepare for the Intergovernmental Conference (IGC), including a Forum in which civil society organisations could participate.

The IGC was convened in Rome on 4 October 2004 under the Italian presidency with the task of approving the Draft Treaty agreed by the Convention. Despite high initial hopes, agreement was not reached due to differences over the size and composition of the Commission and the definition and scope of qualified majority voting (QMV). A new push, led by the Irish presidency, inaugurated on 1 January 2004, strove to complete the negotiation phase by June 2004. The enlargement of the EU to 25 Member States on 1 May 2004 was another major EU milestone coinciding with this constitutional moment.

EU Member States reached agreement on a new Constitutional Treaty for Europe at the European Council in Brussels on 17 and 18 June 2004.

The Constitutional Treaty will have to be ratified by all Member States in accordance with their respective constitutional provisions (parliamentary approval and/or referendum). It will only enter into force once it has been ratified by all Member States. Until then, the Treaty of Nice will remain in force.

The Constitutional Treaty consists of four parts together with the preamble, annexes, protocols and declarations.

## **PREAMBLE**

- PART I** Definition of the objectives, powers, decision-making procedures and institutions of the Union;
- PART II** The Charter of Fundamental Rights of the Union;
- PART III** Policies and actions of the Union incorporating the provisions of the current Treaties;
- PART IV** Final clauses, including the procedures for adopting and reviewing the Constitution;

## **ANNEXES**

## **PROTOCOLS**

## **DECLARATIONS**

Figure 1: The Structure of the Constitutional Treaty

## I. TEN NOVELTIES IN THE CONSTITUTIONAL TREATY

1. The EU will acquire a single legal personality under domestic and international law.
2. The charter of fundamental rights will be incorporated in the Constitution.
3. The same legal instruments and the same procedures will apply across the single institutional framework of the Union. European laws and framework laws are the only legislative instruments that the Union can adopt. Co-decision between the Council of Ministers and the European Parliament becomes the ordinary legislative procedure.
4. A new delimitation of legislative competences between the Union and Member States is introduced. Competences are divided into three categories: exclusive competences of the Union, shared competences between the Union and Member States, and policy areas where the Union only takes supporting or complementary actions, but cannot harmonise national laws. The flexibility clause in Article I-18 allows the EU to act in areas not made explicit in the Constitution, but only if all Member States agree, with the consent of the European Parliament (EP), and where this is necessary to achieve an agreed objective of the Union within the framework of the policies defined in Part III of the Constitution. New provisions (legal bases) have been introduced in Part III of the Constitution on energy, sport, space policy, civil protection and tourism.
5. Qualified majority voting is generalised, unanimity will be applied in clearly defined areas.
6. 'Enhanced cooperation' will apply to all areas covered by the Constitution apart from the area of exclusive competences, as well as to the Common Foreign and Security Policy under specific conditions. Furthermore, a new mechanism of 'permanent structured cooperation' will apply in the area of defence, enabling a group of Member States fulfilling the operational criteria listed in a Protocol to cooperate more closely and jointly undertake more demanding military tasks.
7. An area of justice and security is emerging with the introduction of the office of a European public prosecutor. QMV will apply to key domains, such as asylum, immigration and judicial cooperation in criminal matters, although 'emergency brakes' are provided to prevent the adoption of a decision by referring the matter to the European Council.
8. A withdrawal clause enables Member States to leave the Union.
9. Control of the subsidiarity principle is devolved to national parliaments, which can ask the Commission to "recall" or revise a text.
10. A "*passerelle*" mechanism is introduced whereby the European Council can decide, by unanimity, to introduce QMV where the Constitutional Treaty envisages the application of unanimity. Member States that take part in an initiative of 'enhanced cooperation' can also use the "*passerelle*" provision.

## II. CHANGES IN THE INSTITUTIONAL FRAMEWORK

The Constitutional Treaty sets out the key institutions of the EU (Article I-19): the European Parliament, the European Council, the Council of Ministers, the Commission and the Court of Justice. Additionally, two new posts are created: the European Council President and the Union Minister for Foreign Affairs.

The Constitutional Treaty makes more precise the collective aims of the institutions. They are to practice full mutual cooperation, promote the values of the Union, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of the EU's policies and actions.

### 1. European Parliament (Art. I-20)

The size of the EP is fixed at 750 with a minimum and maximum number of seats per country (respectively 6 and 96). Within these limits, a unanimous decision of the European Council will establish before 2009 the actual distribution of seats by country, taking into account the countries that will have joined the EU at that point.

The legislative and budgetary powers of the EP jointly with the Council are re-ascertained. The budgetary powers of the EP are extended to the so-called compulsory expenditure, that is, agricultural spending. Therefore, the distinction between compulsory and non-compulsory expenditure is abolished. However, in case of disagreement between the Council and the EP both of them shall decide on the budget in the framework of a conciliation committee within 21 days. Otherwise, the Commission shall submit a new draft budget.

### 2. European Council (Art. I-21)

The European Council is established as an institution distinct from the Council of Ministers (Art. I-19 and Art. I-21).

Its principle function shall be to provide the necessary impetus for the EU's development and define its general political directions and priorities. It shall be composed of the Heads of State and Government of the Member States, its President (a new figure in the Union's institutional architecture) and the President of the Commission. The newly introduced Union Minister for Foreign Affairs of the Union will also take part in its work.

The system of rotating presidencies will be abolished. The post of the President of the European Council is introduced (Art. I-22). The duration of his term will be for two and a half years, renewable once. The role of this President will be to chair and drive forward the work of the European Council. He or she shall also serve as a high-level representative of the EU in the area of the Common Foreign and Security Policy.

Decisions shall be taken by consensus, as is currently the case. QMV shall be used for certain procedural issues such as the appointment of the President of the European Council.

### **3. European Commission (Art. I-26)**

The first Commission appointed under the provisions of the Constitution (in 2009), will consist of one national per Member State. As of 2014, the Commission will consist of a number of members corresponding to two thirds of the total number of Member States, selected on a basis of equal rotation.

The Constitutional Treaty confirms the current missions of the Commission, including promoting the general European interest of the EU, ensuring the application of the treaties (now 'Constitution'), overseeing the application of EU law, executing the budget and managing programmes. The Commission will maintain its legislative initiative apart from specific cases. The Commission will further take charge of the EU's external representation, with the exception of the Common Foreign and Security Policy and certain other cases, and initiate the EU's annual and multi-annual programming.

### **4. Council of Ministers (Art. I-23)**

The system of rotation of the presidency of the Council is maintained under the umbrella of a system of 'team presidencies' including three countries closely cooperating over 18 months on the basis of a common programme. Each country will chair all configurations of the Council (except the Foreign Affairs Council) for a period of six months.

The Council's role as the main legislative body together with the European Parliament is affirmed, together with its budgetary competencies.

The Council is to meet in public when it deliberates and votes on draft legislative acts. Hence, Council meetings will be divided into two parts, dealing respectively with deliberations on EU legislative acts and non-legislative activities.

The Council shall meet in a variety of configurations. Two specific Council configurations will be created to replace the existing General Affairs and External Relations Council: the General Affairs Council and the Foreign Affairs Council. The list of other Councils is to be decided by the European Council.

The General Affairs Council, chaired by the Member State holding the presidency of the Council, will be responsible for ensuring consistency in the work of the different Councils, preparing and ensuring the follow-up to meetings of the European Council. This task is to be fulfilled in liaison with the President of the European Council and the Commission.

The Foreign Affairs Council, chaired by the Union Minister for Foreign Affairs, is responsible for elaborating the EU's external action on the basis of strategic guidelines laid down by the European Council and ensuring that the EU's action is consistent.

## **5. Minister for Foreign Affairs (Art. I-28)**

The post of the EU Minister for Foreign Affairs is created merging the tasks of the High Representative for the Common Foreign and Security Policy with those of the Commissioner for external relations.

The Union Minister will be a fully-fledged member of the Commission as one of its Vice-Presidents. At the same time, he will preside over the Foreign Affairs Council. He will resign from the Commission if a motion of censure against the College is passed by the EP, or if personally requested to do so by the President of the Commission, as will be the case for other Commissioners (although in this case the agreement of the European Council will be required).

A new European External Action Service is set up to assist the Minister for Foreign Affairs (Art.III-296.3). The organisation and functioning of the new Service, which will include seconded national diplomats and officials from the Council and the Commission, will be established by a Council decision on a proposal from the Foreign Affairs Minister and with the consent of the Commission. This wording gives the Council the responsibility for the final decision. A declaration attached to the Constitutional Treaty specifies that the High Representative, the Commission and Member States should begin preparatory work to set up the new service as soon as the Constitutional Treaty is signed.

## **6. Court of Justice of the European Union (Article I-29)**

The final main institution is the Court of Justice of the EU. This comprises the existing Court of Justice, the High Court (the current Court of First Instance) as well as specialised courts (currently 'judicial panels').

It is responsible for ensuring respect for the law in the interpretation and application of the Constitution and EU law. The composition of each court remains unchanged.

### III. DECISION-MAKING PROCESS

The legislative procedure currently known as the “co-decision” procedure with the Council of Ministers and the European Parliament as equal co-legislators is largely extended under the Constitutional Treaty to become the ordinary legislative procedure.

Decisions of the Council by qualified majority become the general rule, unless the Constitution clearly provides otherwise (Art.I-23.3).

Six instruments are made available in the Constitutional Treaty for the various decision-making processes. Two – European laws and European framework laws – are legislative acts (equivalent to the current regulations and directives respectively) adopted jointly, for the most part, by the Council of Ministers and the EP. The rule is that such laws can only be adopted on the basis of a proposal from the Commission.

European regulations and European decisions are legally binding and are adopted without the involvement of the EP and depending on competence, by the European Council, the Council, the Commission or the European Central Bank (ECB).

Additionally, European laws and European framework laws can give the power to the Commission to adopt 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.

The remaining two instruments are recommendations and opinions, neither of which are legally binding.

In addition to the six instruments, specific mechanisms exist for implementing the Common Foreign and Security Policy and the area of freedom, security and justice.

In the area of Common Foreign and Security Policy, emphasis is given on the adherence of Member States to strategic guidelines agreed by the European Council, consultation, mutual solidarity and European decisions. Regarding the area of freedom, security and justice, emphasis is placed on Member States’ cooperation, mutual confidence and the approximation ‘where necessary’ of national laws by European decisions.

#### 1. Definition of qualified majority voting (QMV)

When QMV is foreseen, the Council will vote on the basis of the principle of double majority of Member States and population. QMV will require 55% (but at least 15) of the Member States representing at least 65% of EU's population. A blocking minority can be formed by at least four Member States.

However, Council members representing at least three-quarters of a blocking minority (either at the level of Member States or the level of population) can demand that the Council further discusses the issue with a view to finding a compromise. This measure will be applied until at least 2014 when the Council may decide to withdraw it.

Where the Council acts on its own initiative, an initiative of a Member State or on a recommendation from the Commission or the European Central Bank, QMV will be defined as 72% of Member States representing 65% of the EU's population. This occurs notably in the fields of justice and home affairs, Common Foreign and Security Policy, economic and monetary policy and in a possible future case of suspension or withdrawal of a Member State.

In areas where only some Member States have the right to vote (e.g. euro zone or enhanced cooperation), the same percentages would apply (depending on the policy area) but only to those Member States with voting rights.

## **2. Unanimity**

Unanimity will continue to apply in the field of taxation, questions of social security, some areas of trade in services, intellectual property and investment, some areas of environmental policy, anti-discrimination measures, European legislation on social and cohesion funds (through 1 January 2007) some areas of immigration policy and a number of areas in the area of foreign, security and defence policy. Laws on own resources, the financial perspectives and future revisions of the Constitution will also have to be adopted unanimously.

The new voting system is due to take effect from 1 November 2009.

## **3. Enhanced co-operation (Art. I-44 and III-416)**

The concept of enhanced cooperation between Member States was introduced with the Amsterdam Treaty. The aim of this type of cooperation is to enable a limited number of Member States, capable and willing to do so, to move ahead with European integration, in full respect of the Union's institutional framework. Strict conditions were set and, in practice, it was never used.

The Treaty of Nice made the conditions under which such cooperation could be established more flexible.

Enhanced cooperation is now anchored in the Constitutional Treaty.

It shall comply with the Unions' Constitution and laws and not undermine the internal market or economic, social and territorial cohesion (Art.III-416). It shall be open to all Member States (Art.III-418).

Enhanced cooperation can be established in all areas covered by the Constitution with the exception of the areas of exclusive competence and the Common Foreign and Security Policy (Art.III-419.1). Authorisation to proceed with enhanced cooperation shall be granted by a European decision of the Council, on a proposal from the Commission and after the consent of the European Parliament.

Enhanced cooperation can be introduced within the framework of the Common Foreign and Security Policy but only with a unanimous decision of the Council (Art. III-419.2).

Acts adopted through enhanced cooperation are binding only on the Member States involved and for the non-participating Member States once they decide to join.

A “*passerelle*” provision is introduced in Article III-422, stating that Member States taking part in enhanced cooperation may decide, by unanimity, to apply qualified majority amongst themselves, and/or use the ordinary legislative procedure, where the Treaty provides otherwise<sup>1</sup>. This provision does not apply to decisions with military or defence implications.

#### **4. Future extension of majority voting (Article IV-444)**

In Part IV of the Constitutional Treaty (Art.IV-444), the so-called “*passerelle*” mechanism has been introduced. According to this mechanism, the European Council can decide, by unanimity, to apply qualified majority where unanimity is provided for by the Constitutional Treaty in Part III. Similarly, special legislative procedures can be replaced by the ordinary legislative procedure.

However, a national parliament can block the “*passerelle*” by communicating its opposition within six months from the notification of the proposed decision.

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<sup>1</sup> A declaration has been attached to the Constitutional Treaty suggesting that Member States may indicate - when they request authorisation to establish enhanced cooperation - whether they intend to make use of the option offered by Article III-422.

## IV. SELECTION OF OTHER CHANGES

### 1. Charter of fundamental rights

The Charter of Fundamental Rights is incorporated in Part II of the Constitutional Treaty. The substantive content of the Charter remains essentially unchanged from when it was drawn up.

The incorporation of the Charter into the Constitutional Treaty raises the issue of its legal value and its subsequent interpretation by the European Court of Justice.

To tackle these issues, several provisions clarifying the interpretation and application of the Charter have been introduced (Article II-112). It is pointed out that where the rights result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions. Furthermore, those Charter principles implemented by legislative and executive acts adopted by the EU and the Member States when implementing EU law shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality. Full account is to be taken of national laws and practices as specified in this Charter.

A specific reference has been also introduced regarding the explanatory statements by the Praesidium of the Convention that drafted the Charter, as guiding principles for the courts of the EU and the Member States.

These statements restrain the interpretative power of national courts and of the European Court of Justice, and prevent the potential expansion of the scope of the rights guaranteed by the Charter under future case law. In order to ensure awareness of these new provisions, the preamble to the Charter also stresses the significance of the explanatory statements.

### 2. Treaty Revision (Article IV-443)

The “Convention model” to prepare recommendations for an IGC to revise the Constitutional Treaty is formerly introduced in the Treaty. At the same time, the convening of the IGC, as well as the requirement of unanimous agreement and unanimous ratification by all Member States, are still maintained.

A new provision introduced by the IGC in Article IV-445 sets a simplified procedure for revising internal Union policies. It only applies to the provisions of Title III of Part III on the internal policies of the Union and includes the possibility for the European Council to introduce amendments by unanimity, with subsequent unanimous national ratification by the Member States. There is no longer an obligation to convene an IGC in order to agree those amendments.

### **3. Area of freedom, security and justice (Article III-257)**

QMV replaces unanimity as the rule for decision-making in key domains, such as asylum, immigration and judicial cooperation in criminal matters.

The Constitutional Treaty enables the Council to set up the office of the European Public Prosecutor by means of a unanimous decision with the consent of the EP (Art.III-274). The remit of the Prosecutor will initially be limited to 'combating crimes affecting the financial interests of the Union. This can later be extended to include 'serious crime with a cross-border dimension. A unanimous decision of the Council will be necessary with the consent also of the EP.

Furthermore, the role of Eurojust has been expanded. Eurojust's powers are set in Article III-273 of the Constitutional Treaty. Eurojust has the authority to initiate criminal investigations and to coordinate investigations and prosecutions by competent national authorities. At the same time the EP and national parliament are to be more closely involved in overseeing Eurojust activities.

### **4. Economic Policy Provisions**

Price stability is retained amongst the objectives of the Union (I-3). This is an important and positive outcome, which business called for during the Convention.

The coordination of economic policies will be the responsibility of the Member States (I-12.3 and I-15). Part I of the Constitution is therefore consistent with the relevant provisions in Part III (Chapter II, Section 1). Meanwhile, the Commission's powers in the Broad Economic Policy Guidelines process have been marginally enhanced: the Commission now has the right to 'address a warning' to a Member State (III-179.4), once it has already been established by Council that a Member State's economic policies are not consistent with the Guidelines. Finally, the general rules on multilateral surveillance within the Guidelines process will in future be updated by the ordinary legislative procedure (III-179.6), meaning an increase in the power of the EP in the matter. Previously, the now defunct 'cooperation' procedure applied.

Where Council confers prudential supervision tasks upon the ECB, the IGC decided to retain unanimity (III-185). Similarly, for amendments to the Statute of the European Investment Bank, the transition to QMV proposed by the Convention is deleted and unanimity is maintained (III-393). By contrast, the IGC introduced QMV for the nomination of the President and Executive Board members of the ECB (III-382). This is an important step forward, as these nomination have up to now been subject to 'common accord' of the Governments of the Member States (a form of super unanimity between sovereign Governments).

## 5. Taxation Policy

The Constitution has maintained eventually the text of EC Treaty articles 93 and 94 on indirect and direct taxation (III-171 and III-173). This must be seen however in the context of the decision by IGC to retain the proposal of the Convention for QMV to be introduced within an enhanced cooperation initiative (III-422).

In the free movement of capital chapter, the IGC agreed a new text giving to Council the power to approve unanimously a restrictive tax measure introduced by a Member State against a non-EU country. The measure must be 'justified by one of the objectives of the Union and compatible with the proper functioning of the internal market' (III-158.4).

## 6. Eurozone

Within the Stability and Growth Pact provisions, the Commission's powers have been marginally increased (III-184). In the first instance, the Commission now has the right to address an opinion to a Member State where there is a risk of an excessive deficit or where the Commission believes an excessive deficit actually exists (III-184.5). Previously, the Commission's powers were limited to making a 'recommendation' to Council that such a risk or such a deficit existed. It was then up to the Council to decide whether to act or not to act. Secondly, the Commission now has the right of 'proposal' (rather than just a 'recommendation' as previously) to the Council in the process leading to the formal decision by Council that an excessive deficit exists. The importance of this is that Council can only modify the text of the decision by unanimity (minus the affected Member State of course). Previously, it could do so by QMV. Finally, the Constitution provides for the Council to adopt 'without undue delay' recommendations to an offending Member State on bringing its deficit situation to an end within a given period (III-184.6). The wording in quotation marks is new.

Finally, a non-binding 'Declaration on the Stability and Growth Pact' was adopted stating that, in relation to the implementation of the Excessive Deficit rules, 'raising growth potential and securing sound budgetary positions are the two pillars of the economic and fiscal policy' of the EU and its Member States, and that 'the Stability and Growth Pact is an important tool to achieve these goals'. The Declaration goes on to confirm the commitment of the Member States to the 'rules-based system' of the Stability and Growth Pact and also to the goals of the Lisbon Strategy.

A new section is added to the Treaty entitled 'Provisions specific to Member States whose currency is the euro'. This outlines enhanced economic coordination arrangements, including extra 'economic policy guidelines' for eurozone Member States (III-194.1). In addition, 'ever-closer coordination of economic policies' of eurozone members is foreseen, and the currently informal eurogroup is formalised (Protocol on the Euro Group, Protocol 12 annexed to the Constitution). This Protocol also provides that a Minister for Finance from a eurozone member shall be elected by his eurozone peers, by

simple majority, to chair the group for two and a half years (Protocol on the Euro Group, Article 2), and that the Commission and ECB will be involved/invited to the meetings (Protocol on the Euro Group, Article 1).

In economic policy coordination and the economic governance generally, the voting rights of non-eurozone members have been curtailed (III-197). The IGC further agreed that applications for membership of the eurozone would first be considered by the eurozone Member States, before any final decision is taken by the full Council (III-198.2 2<sup>nd</sup> paragraph).

## **7. Budgetary Provisions**

The automatic transition to QMV in 2007 on the financial framework, originally agreed in Nice and affirmed in the Convention, has been rowed back. Any change to QMV decision-making will now be subject to a prior decision by the European Council (I-55.4).

On own resources, implementation measures will now be subject to the legislative procedure (I-54.4), as will procedures relating to revenue under own resources (III-412.2).

## **8. Common Commercial Policy (Art. III-314)**

The involvement of the European Parliament in the conduct of the common commercial policy has been increased. The measures defining the framework for implementing the common commercial policy are to be adopted by European laws under the usual legislative procedure.

Generally, for the negotiations and conclusions of the agreements with one or more third countries or international organisations the Council acts by a qualified majority.

Unanimity has been retained, however, for trade in services, the commercial aspects of intellectual property, and foreign direct investment, but only where the EU internally acts by unanimity. Unanimity is also required for the conclusion of agreements in the field of trade in cultural and audiovisual services (where there are risks for the Union's cultural and linguistic diversity), social, educational and health services (where they risk disturbing or prejudicing national organisation or responsibility). Transport is excluded from this chapter.

## **9. Social policy (Article III-209)**

The Constitutional Treaty neither increases the competences of the EU in the social chapter of the Treaty nor extends the use of QMV.

A new horizontal “social” clause has been introduced to the beginning of Part III, according to which the Union shall take account of social policy goals in the definition and implementation of all other policies (“a high level of employment, adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health”, III-117).

Unanimity is still required for measures concerning social security, the social protection of workers, the representation and collective defence of workers’ interests, and the conditions of employment of third-country nationals legally residing in the EU.

A declaration confirms that those areas in which the EU may promote coordinating measures – employment, labour law and working conditions, vocational training, social security, the prevention of occupational accidents and diseases, occupational hygiene, and the right of association and collective bargaining – ‘fall essentially within the competence of the Member States’. Therefore, any EU measures are to be of a complementary nature, strengthening cooperation between the Member States and not harmonising national systems.

In the context of the provisions on the free movement of workers, the Council shall use QMV instead of unanimity in the restricted areas where the EU has the competence to act with regard to social security, as established in Article III-136 first paragraph.

With regard to the free movement of workers, the move to QMV is, however, subject to an ‘emergency brake’, set in the second paragraph of Article III-136. When a Member State believes that a proposed measure would ‘infringe the principles of its social security system or would affect the financial balances of that system’, it may request for the measure to be referred to the European Council. The European Council will then, within four months, refer the measure back to the Council for adoption or request a new draft measure from the Commission.

## **10. Intellectual Property (Article III-176)**

A new provision is introduced in Part III of the Constitutional treaty allowing for EU instruments to provide uniform intellectual-property rights protection throughout the Union as part of the process of establishing the internal market.

The language arrangements for such European-wide intellectual property rights are to be decided by the Council of Ministers acting unanimously after consulting the EP.

## **11. Energy (Art. III-256)**

Energy is listed for the first time as an area of shared competence between the EU and Member States in Part I.

Aim of the energy policy is to ensure the functioning of the energy market, security of energy supply in the Union and promote energy efficiency and saving and the development of new and renewable forms of energy. Measures are to be adopted using co-decision and after consultation of the Committee of the Regions and the Economic and Social Committee.

A provision has been added stating that laws “will not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply”. The only exception is where measures are adopted – by unanimity – as part of the EU's environmental policy. Similarly, measures that are primarily of a fiscal nature are adopted by unanimity and with only consultation of the EP.

## **12. Research and technological development (Article III-248)**

A reference to achieving ‘a European research area in which researchers, scientific knowledge and technology circulate freely’ and to industry within the EU becoming more competitive is added to the objectives of the EU action in this area.

A provision has also been included for a European law establishing the measures necessary for the implementation of the European research area. The law is to be adopted using co-decision and after consulting the Economic and Social Committee.

According to a declaration, due respect is to be paid in EU actions to the fundamental orientations and choices of the research policies of the Member States.

## **13. Public health (Art. III-278)**

The current complementary competence of the EU in the area of public health focuses on the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education. This is supplemented with a competence to adopt measures concerning the ‘monitoring, early warning of and combating serious cross-border threats to health’.

To this end, the EU is to ‘encourage cooperation between the Member States to improve the complementarity of their health services in cross-border areas’.

The EU acquires a competence to promote incentive measures protecting public health through European laws or framework laws with regard to tobacco and alcohol abuse (Art.III-278.5).

It is furthermore stressed that EU action in the area shall respect the responsibility of the Member States for the definition of their health policy and for the organisation and delivery of health services and medical care. This includes 'management of health services and medical care and the allocation of the resources assigned to them'.

## V. EVALUATION OF MAIN CHANGES FROM THE PERSPECTIVE OF UNICE

### 1. UNICE's main objectives as defined in 2002:

- Strengthen Europe's competitiveness, increase its adaptability in the face of structural change and improve its employment prospects;
- Ensure the long-term success of the internal market and economic and monetary union;
- Make a success of enlargement (without undermining or diluting the *acquis communautaire*);
- Improve Europe's capacity to defend and promote European interests at international level;
- Well-functioning of institutions with application of the principle of subsidiarity, thereby need for increased use of co- and self-regulation;
- Preservation of the Community method;
- Particularity of the social dialogue which must be clearly distinguished from consultation of civil society;

### 2. General assessment

In general, UNICE welcomes the final document, as two main requests were taken on board.

- A reference to a "highly competitive" European Union is incorporated in the first part of the Constitution among the objectives of the Union. This is a considerable change, as in the current Treaty of the European Union (TEU), competitiveness is not mentioned. It is only mentioned in the Treaty establishing the European Communities (TEC). Therefore, the new Constitution gives competitiveness a more prominent place. This is far more important, as many articles in Part III of the new Constitution (The Union policies) make a reference to the objectives of the Union. Competitiveness is additionally reiterated in many articles of Part III (e.g. art. III-209 on social policy).
- Secondly, UNICE is particularly pleased about the fact that a new article on the social partners has been introduced in Part I of the Constitution, clearly recognising their role as well as the particularity and autonomy of the social dialogue.

The final proposal is also more readable (abolition of the pillar structure, decisions on simplification).

### 3. More specific comments on the Constitutional Treaty

#### PART I OF THE CONSTITUTION:

- ➔ UNICE welcomes the reference to a “**highly competitive**” Union. Social objectives as “aiming at full employment” were unavoidable due to the political composition of the Convention.
- ➔ UNICE welcomes the fact that the Union is given a legal personality.
- ➔ UNICE is pleased that decisions of the Council by QMV are generalised, unless the Constitution provides otherwise, as is the case in the areas of taxation and social policy.
- ➔ The drafting of the article on the Commission is in line with UNICE’s demands for a **strong Commission**, keeping the **exclusive right of initiative**. The idea of “non-voting Commissioners” has been dropped from the final text.
- ➔ UNICE welcomes that “**price stability**” is stated as the main objective of the ECB and its **independence** is guaranteed.
- ➔ UNICE is particularly satisfied with the **special article on social partners** and **social dialogue** (art. I-48).
- ➔ UNICE is pleased that the provisions on EU resources do not make proposals with the view of introducing a European tax.
- ➔ UNICE called for a provision “The Union should promote co- and self-regulation”, but no such provision was retained.

#### PART III OF THE CONSTITUTION: THE POLICIES AND FUNCTIONING OF THE UNION:

- ➔ UNICE deplores that in this part of the Constitution **only social policy, environmental and consumer protection requirements** are set to be taken into account in the definition and implementation of the Union policies, but not other aspects such as for e.g. competitiveness or impact assessment.
- ➔ UNICE opposes extension of QMV in the field of taxation and is pleased to note that unanimity decision-making is maintained in the area.
- ➔ UNICE welcomes the fact that employment policies will remain consistent with the broad economic policy guidelines.
- ➔ UNICE is satisfied that the Constitutional Treaty neither increases competences of the EU in the social chapter of the Treaty nor extends the use of QMV. Nevertheless, with a “*passerelle clause*” the Council may subject certain areas (protection of workers where their employment

contract is terminated, representation and collective defence of the interests of workers and employers, conditions of employment for third-country nationals legally residing in Union territory) to the ordinary legislative procedure.

- In the area of common commercial policy, UNICE requested **QMV for all fields of trade**. The Constitutional Treaty stresses that measures defining the framework for implementing the common commercial policy are to be adopted by European laws under the usual legislative procedure. Nevertheless, unanimity has to a large extent been retained, namely for trade in services, the commercial aspects of intellectual property, and foreign direct investment. Unanimity is also required for the conclusion of agreements in the field of trade in cultural, audiovisual, social, educational and health services, under specific conditions.

#### **PART IV OF THE CONSTITUTION: GENERAL AND FINAL PROVISIONS:**

*No special concerns for UNICE*

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