

The Treaty establishing a Constitution for Europe

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The Treaty establishing a Constitution for Europe

The Treaty establishing a Constitution for Europe is the founding act of a Union that is more cohesive and more understandable to the general public. It systematises and generally rationalises the law in force and existing practices. Amongst other innovations, the Constitutional Treaty confers on the Union legal personality, establishes the post of permanent President of the European Council, allows national parliaments to play a role in the adoption of Union rules, designates a single person, the Minister for Foreign Affairs, to represent the Union internationally, permits States that wish to do so to withdraw from the Union, clarifies the division of powers between the EU and the Member States, introduces a new terminology for legislative acts, establishes an ordinary legislative procedure and incorporates and makes justiciable the Charter of Fundamental Rights of the Union.

Structure of the Treaty

The Treaty consists of a Preamble, four Parts numbered I to IV in Roman numerals, and 36 protocols. Two annexes are attached to the Treaty, together with 41 declarations adopted by the Conference and nine which the Conference noted. The Treaty has 448 articles.

The Treaty is arranged as follows:

Preamble

Part I — Definition and objectives of the Union

Part II — The Charter of Fundamental Rights of the Union

Part III — The policies and functioning of the Union

Part IV — General and final provisions

Protocols and annexes

Final act

Territorial scope of the Treaty

The Constitutional Treaty applies to the territories of the 25 EU Member States, namely Belgium, the Czech Republic, Denmark, Germany, Estonia, Greece, Spain, France, Ireland, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Slovenia, the Slovak Republic, Finland, Sweden and the United Kingdom, including Guadeloupe, French Guyana, Martinique, Réunion, the Azores, Madeira and the Canary Islands.

The legal rules applicable to the Overseas Countries and Territories and other areas listed in the Treaty are governed by special provisions. The Treaty also applies to European territories for whose external relations a Member State is responsible.

Union membership

The EU shall be open to all European States which respect the values of the Union and are committed to promoting them together.

In order to prevent a serious breach of the fundamental rights of a Member State, the Council may address recommendations to that State, on a proposal by one third of the Member States, by a majority decision of four fifths and with the consent of the European Parliament. If the Council finds that a Member State has seriously and consistently breached the values of the Union, it may decide to suspend certain of the rights deriving from the application of the Constitution to that State.

A Member State may decide to withdraw from the Union in accordance with its own constitutional

requirements. The treaties did not previously provide for that possibility.

Founding principles of the Union

The European Union established by the Constitution succeeds the European Community and the European Union, as established by the 1992 Maastricht Treaty. It has legal personality.

Values of the Union

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

Objectives of the Union

The Union's aim is to promote peace, its values and the wellbeing of its peoples. It shall provide its citizens with an area of freedom, security and justice without internal frontiers and an internal market where competition is free and undistorted. The Union shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall combat social exclusion and discrimination and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion and solidarity among Member States. It shall respect its rich cultural and linguistic diversity and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

The Union shall uphold and promote its values and interests in its relations with the wider world. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and development of international law, including respect for the principles of the United Nations Charter.

Fundamental freedoms and non-discrimination

The Union shall guarantee the free movement of persons, services, goods and capital, and freedom of establishment, and it shall prohibit any discrimination on grounds of nationality.

Sincere cooperation between the Union and the Member States

Relations between the Union and the Member States shall be based on the principle of sincere cooperation.

Primacy of Union law

The Constitution and law adopted by the institutions of the Union in exercising the competences conferred on it shall have primacy over the law of the Member States.

Fundamental rights and citizenship of the Union

The protection of human rights under the Union is consolidated. The Charter of Fundamental Rights is incorporated in the Constitution, and the Union is to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, shall constitute general principles of Union law.

Every national of a Member State shall be a citizen of the Union. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Constitution.

Union competences

The limits of Union competences are governed by the principle of conferral. The use of those competences is governed by the principles of subsidiarity and proportionality. Accordingly, the Union may act in areas which do not fall within its exclusive competence only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the proposed action, be better achieved at EU level. However, the substance and form of the EU action shall not exceed what is necessary to achieve the objectives of the Constitution.

The national Parliaments are to be regularly informed of the work of the Commission and shall be granted a power of scrutiny with a view to ensuring respect for the principle of subsidiarity.

The Union may have:

- exclusive competence, in the exercise of which only the Union may legislate and adopt legally binding acts and the Member States shall act only if so empowered by the Union or for the implementation of Union acts;
- shared competence, in the exercise of which the Union and the Member States may legislate and adopt legally binding acts;
- competence to support, coordinate or supplement the action of Member States in certain areas.

The Member States shall coordinate their economic and employment policies in accordance with the arrangements laid down by the Union.

The Union shall have competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.

The Commission may initiate the necessary measures if action by the Union appears necessary for the attainment of one of the objectives referred to in the Constitution, should the Constitution not provide for the necessary powers of action.

Institutional framework of the Union

The institutional framework of the Union comprises:

- the European Parliament,
- the European Council,
- the Council of Ministers,
- the European Commission,
- the Court of Justice of the European Union.

The other institutions are the European Central Bank and the Court of Auditors. The consultative bodies are the Committee of the Regions and the Economic and Social Committee.

The European Council is now established as an institution of the Union. Another important innovation is the creation of the post of Union Minister for Foreign Affairs.

The **European Parliament** shall, with the Council, exercise legislative and budgetary powers. It shall also exercise powers of political scrutiny and consultation. It shall elect the President of the Commission by a majority of its Members, on a proposal from the European Council. This strengthens the political link between the President of the Commission and the European Parliament. The Constitution sets the number of Members of the European Parliament at 750 but leaves it to the European Council to determine its

composition by a European decision, provided that the number of seats ranges between 6 and 96 seats for each Member State. Members of the European Parliament are elected for five years by direct universal suffrage.

The **European Council** shall provide the Union with the necessary impetus for its development and shall define its general political directions and priorities. It shall consist of the Heads of State or Government of the Member States, its President and the President of the Commission. However, these last shall not participate in the votes. The Union Minister for Foreign Affairs shall take part in its work.

The **Council of Ministers** shall, with the European Parliament, exercise legislative and budgetary powers. It shall define the policies of the Union and coordinate its activities. It shall consist of a representative of each Member State at ministerial level who may commit the government of the Member State in question and cast its vote. It acts by a qualified majority except where the Constitution provides otherwise. It shall meet in various configurations, including the General Affairs Council and the Foreign Affairs Council. The other configurations shall be determined by the European Council. The work of the Council shall be prepared by a Committee of Permanent Representatives of the Governments of the Member States (**COREPER**). It shall meet in public when it deliberates and votes on a draft legislative act. The Presidency of Council configurations, other than that of Foreign Affairs, shall be held by Member State representatives in the Council on the basis of equal rotation.

The **European Commission** shall promote the general interest of the Union and take appropriate initiatives to that end. Its main tasks are to ensure the application of the Constitution and measures adopted by the institutions, to oversee the application of Union law, implement the budget and manage programmes, and exercise coordinating, executive and management functions. It shall also be responsible for the Union's external representation, with the exception of the common foreign and security policy. As a general rule, the right of legislative initiative lies with the Commission. The composition of the Commission is restricted to one national per Member State for the first Commission after the entry into force of the Constitution and, in subsequent Commissions, is fixed at two thirds of the number of Member States, selected by a system of equal rotation, unless the European Council decides otherwise. Its members are selected from persons whose independence can be fully guaranteed by virtue of their general competence and commitment to Europe. The President of the Commission shall be appointed by the European Council and elected by the European Parliament by a majority of its members.

The **Union Minister for Foreign Affairs** has a multiple role. Appointed by the European Council with the agreement of the Commission, he shall conduct the Union's common foreign and security policy. He shall chair the Foreign Affairs Council. He shall be one of the Vice-Presidents of the Commission and ensure the consistency of the Union's external action.

The **Court of Justice of the European Union** includes the Court of Justice, the Court of First Instance and specialised courts. It shall ensure that the law is observed in the interpretation and application of the Constitution. Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law. The Court of Justice shall consist of one judge from each Member State and shall be assisted by Advocates General. The Court of First Instance shall include at least one judge per Member State.

The **European Central Bank** is an independent institution with legal personality. It alone may authorise the issue of the euro. The European Central Bank and the national central banks constitute the European System of Central Banks. The European Central Bank and the national central banks whose currency is the euro (the Eurosystem) shall conduct the monetary policy of the Union.

The **Court of Auditors** is the institution that audits the Union accounts. It shall examine the accounts of all Union revenue and expenditure and shall verify sound financial management.

The **Committee of the Regions** and the **Economic and Social Committee** assist the European Parliament, the Council and the Commission in an advisory capacity.

The legal acts of the Union

The legal instruments used by the institutions in the exercise of Union competences shall be European laws, European framework laws, European regulations, European decisions, recommendations and opinions.

The legislative acts shall be as follows:

- **European law**, of general application, binding in its entirety and directly applicable in all the Member States;
- **European framework law**, binding, as to the result to be achieved, upon each Member State to which it is addressed but leaving the choice of form and means to the national authorities.

The non-legislative acts shall be as follows:

- the **European regulation**, of general application for the implementation of legislative acts and certain provisions of the Constitution. It may either be binding in its entirety and directly applicable in all Member States or binding, as to the result to be achieved, upon every Member State to which it is addressed but leaving the choice of form and means to the national authorities;
- the **European decision**, binding in its entirety; it may be general or addressed to specific recipients;
- **recommendations** and **opinions**, which have no binding force.

European laws and framework laws, as well as European regulations and decisions which do not specify to whom they are addressed, shall be published in the *Official Journal of the European Union*.

Laws and framework laws may delegate to the Commission the power to adopt **delegated European regulations** which supplement or amend certain non-essential elements of the law or framework law. However, laws and framework laws must explicitly define the objectives, substance, scope and duration of the delegation of power. A mechanism is to be established so that the European Parliament and the Council may monitor compliance with those conditions.

Finally, where uniform conditions for the implementation of legally binding Union acts are needed, those acts shall confer implementing powers on the Commission or, in specific cases, on the Council. Union implementing acts shall take the form of **European implementing regulations** or **European implementing decisions**.

Decision-making procedures

Legislative procedure

The Constitution provides for an **ordinary legislative procedure**, applicable to European laws and framework laws adopted jointly by the European Parliament and the Council. The ordinary procedure is supplemented by **special legislative procedures**. This is a radical departure from the arrangement under previous treaties, since they had to specify the legislative procedure to be followed, article by article. The ordinary legislative procedure is now the rule. The exceptions are clearly indicated in the Constitution.

The ordinary legislative procedure may incorporate up to three readings. After the Commission has submitted a proposal to the European Parliament and the Council, Parliament shall adopt its position at first reading and communicate it to the Council. If the Council approves Parliament's position, the text is adopted; if it does not approve it, it shall adopt its position and communicate it to Parliament, stating the reasons that led it to adopt its position. The Commission shall inform Parliament of its position. At second reading, Parliament may, within three months, approve the Council's position, not take a decision, reject it

(when the act is deemed not to have been adopted), or amend it. The act shall be adopted in the first two instances and is to be referred back to the Council where amendments have been tabled. The Council may either approve the amendments and adopt the act or not approve them and convene the Conciliation Committee. The Conciliation Committee, a joint committee of the Council and Parliament, has six weeks from the date on which it is convened to reach agreement on a joint text. If the joint text is approved, there is a third reading, in which the act is adopted by a majority of votes in Parliament and by a qualified majority in the Council. The periods may be extended in certain circumstances.

According to the new double majority rule provided for in the Constitution, a qualified majority in the Council requires at least 55 % of the Member States, including at least 15 Member States accounting for at least 65 % of the EU population.

There are, in addition, specific provisions for the determination of the blocking minority — constituting exceptions to the general double majority rule — and a special clause applicable in the event of a narrow majority. These govern cases where the Council does not take a decision on a proposal from the Commission or the Union Minister for Foreign Affairs.

Budgetary procedure

The budgetary procedure is modelled on the ordinary legislative procedure, but it requires only a single reading and, where necessary, conciliation. The Commission submits a draft budget to the European Parliament and the Council, and they adopt the budget. The Commission presents an annual evaluation report on the implementation of the budget to the European Parliament and the Council.

Procedures for revising the Constitutional Treaty

Ordinary revision procedure

The European Parliament, the Commission and the Member States may each submit proposals for amendment of the Treaty.

The Convention becomes the body responsible for considering the proposed amendments and adopting a recommendation to the Intergovernmental Conference (IGC) by consensus. In the case of minor amendments, the European Council may decide not to convene the Convention. The amendments shall enter into force after ratification by the Member States.

Simplified revision procedure

The European Council may decide, by unanimous European decision, to apply the qualified majority vote or the ordinary legislative procedure in certain areas of Part III of the Constitution that are subject to the unanimous voting procedure or the special legislative procedure. Each national parliament may make known its opposition to that initiative within six months and block the adoption of the decision. This procedure does not apply to decisions with military implications or those in the area of defence.

Simplified revision procedure concerning internal policies and action

The government of any Member State, the European Parliament or the Commission may submit to the European Council proposals for revision in relation to the internal policies and action of the Union. The European Council, acting unanimously after consulting the European Parliament, the Commission and the European Central Bank (if the changes concern the monetary area), may adopt a European decision. However, ratification by all the Member States is still required.

The policies of the Union

The Constitution lays down general implementing clauses providing guidance on the definition and

implementation of all EU policy. In this way, the Union ensures the consistency of the various policies and action by taking all its objectives into account.

The Union also takes the following into account in its action:

- gender equality, environmental and consumer protection, the promotion of sustainable development and the proper functioning of services of general economic interest;
- combating discrimination based on gender, race or ethnic origin, religion or belief, disability or sexual orientation;
- animal welfare;
- the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, a high level of education, training and protection of human health.

The action of the Union is founded on a clearly defined legal basis and is more or less incisive depending on whether it concerns an area in which the Union has exclusive, shared, coordinating, supplementary or supporting competence.

Areas in which the Union has exclusive competence include:

- customs union;
- the establishing of the competition rules necessary for the functioning of the internal market;
- monetary policy for the Member States whose currency is the euro;
- the conservation of marine biological resources under the common fisheries policy;
- common commercial policy;
- the conclusion of international agreements, under certain conditions.

The areas in which the Union has shared competence include:

- internal market;
- social policy;
- economic, social and territorial cohesion;
- environment;
- agriculture and fisheries;
- consumer protection;
- transport;
- trans-European networks;
- energy;
- area of freedom, security and justice;
- common safety concerns in public health matters;
- development cooperation policy;
- cooperation with third countries;
- humanitarian aid;
- restrictive measures against third countries;
- relations with neighbouring countries.

The areas in which the Union has coordinating, supplementary or supporting competence include:

- economic policies;

- employment policy;
- common foreign and security policy;
- defence policy;
- public health;
- industry;
- tourism;
- education, vocational training, youth and sport;
- civil protection;
- administrative cooperation.

Seat

The seat of the institutions and of certain bodies and services of the European Union is established in Protocol 6 attached to the Constitutional Treaty. It incorporates the substance of Protocol 8, introduced by the 1997 Treaty of Amsterdam. Under the Protocol, Parliament has its seat in Strasbourg, the Council and the Commission in Brussels, the Court of Justice and the Court of Auditors in Luxembourg, and the European Central Bank in Frankfurt. The European Council meets in Brussels, but the seat of that institution is not laid down by any provision of positive law.