

DECISION 92-308 DC OF 9 APRIL 1992
Treaty on European Union

On 11 March 1992 the President of the Republic referred to the Constitutional Council, pursuant to Article 54 of the Constitution, the question whether, in view of the agreements entered into by France and the terms of their entry into force, authorisation to ratify the Treaty on European Union, signed at Maastricht on 7 February 1992, must be preceded by revision of the Constitution.

THE CONSTITUTIONAL COUNCIL,

Having regard to the Constitution of 4 October 1958,

Having regard to the Preamble to the Constitution of 27 October 1946,

Having regard to Ordinance 58-1067 of 7 November 1958 enacting the Institutional Act on the Constitutional Council, and in particular sections 18(2), 19 and 20 thereof,

Having regard to Act 52-387 of 10 April 1952 authorising ratification of the Treaty establishing the European Coal and Steel Community, signed at Paris on 18 April 1951, together with Decree 52-993 of 20 August 1952 publishing that Treaty,

Having regard to Act 57-880 of 2 August 1957 authorising ratification of (1) the Treaty establishing the European Economic Community and the annexes thereto, (2) the Treaty establishing the European Atomic Energy Community and (3) the Convention on certain institutions common to the European Communities, together with Decree 58-84 publishing these international agreements,

Having regard to Act 65-506 of 30 June 1965 authorising ratification of the Treaty establishing a single Council and a single Commission of the European Communities, the Protocol, the Final Act and the annexes, all signed on 8 April 1965, together with Decree 67-606 of 28 July 1967 publishing these international agreements,

Having regard to Act 70-583 of 8 July 1970 authorising ratification of the Decision of the Council of the European Communities of 21 April 1970 replacing the financial contributions of the Member States by the Communities' own resources, together with Decree 71-168 of 26 February 1971 publishing that Decision,

Having regard to Act 70-584 of 8 July 1970 authorising ratification of the Treaty amending certain budgetary provisions of the Treaty establishing a single Council and a single Commission of the European Communities, together with Decree 71-169 of 26 February 1971 publishing that Treaty,

Having regard to Act 72-339 of 3 May 1972 authorising ratification of the Treaty signed at Brussels on 22 January 1972 for the accession of new Member States to the European Economic Community and the European Atomic Energy Community, together with Decree of 5 April 1972 deciding that a Bill would be presented to the people at a referendum,

Having regard to Act 77-710 of 5 July 1977 authorising ratification of the Treaty amending certain budgetary provisions of the Protocol on the statute of the European Investment Bank,

Having regard to Act 76-1196 of 24 December 1976 authorising ratification of the Treaty of 22 July 1975 amending certain budgetary provisions of the Treaties establishing the European Communities and the Treaty establishing a single Council and a single Commission of the European Communities,

Having regard to Act 77-680 of 30 June 1977 authorising approval of the provisions annexed to the Decision of the Council of the European Communities of 20 September 1976 concerning the election of the European Parliament by direct universal suffrage, together with Decree 79-92 of 30 January 1979 publishing those provisions,

Having regard to Act 79-1112 of 22 September 1979 authorising ratification of the Treaty for the accession of Hellenic Republic to the European Economic Community and the European Atomic Energy Community, together with Decree 81-35 publishing that Treaty,

Having regard to Act 84-1213 of 29 December 1984 authorising ratification of the Treaty amending the Treaties establishing the European Communities,

Having regard to Act 85-1 of 2 January 1985 authorising approval of the agreement reached in the Council of the European Communities on 2 and 3 October 1984 on the financing of supplementary and amending budget No 1 of the Communities,

Having regard to 85-1335 of 18 December 1985 authorising approval of the Decision of the Council of the European Communities of 7 May 1985 on the system of the Communities' own resources,

Having regard to Act 85-1334 of 18 December 1985 authorising ratification of the Treaty for the accession of the Kingdom of Spain and the Republic of Portugal to the European Economic Community and the European Atomic Energy Community, together with Decree 86-415 of 11 March 1986 publishing that Treaty,

Having regard to Act 86-1275 of 16 December 1986 authorising ratification of the Single European Act, together with Decree 87-990 of 4 December 1987 publishing that Treaty,

Having regard to Act 88-1253 of 30 December 1988 authorising approval of a Decision of the Council of the European Communities on the system of the Communities' own resources,

Having regard to Decree 53-192 of 14 March 1953 on the ratification and publication of international agreements signed by France, as amended by Decree 86-707 of 11 April 1986, and in particular section 3 thereof,

Having regard to the letter dated 25 March 1992 whereby the President of the Republic states that his referral concerns "all the international agreements entered into by France in the Treaty itself, the Protocols annexed to it and the Declarations of the Ministerial Conference, including those of which the Conference took note, where they interpret the provisions of the Treaty",

Having heard the rapporteurs,

On the following grounds:

ON THE CONTENT OF THE INTERNATIONAL AGREEMENT REFERRED TO THE CONSTITUTIONAL COUNCIL:

1. The international agreement which the Constitutional Council is asked to review for constitutionality consists of three sets of components.
2. Articles A to S establish a European Union among the High Contracting Parties; the provision governing the Union are subdivided into seven Titles; Title I, entitled "Common provisions", consists of Articles A to F; Title II consists of a single Article G containing provisions amending the Treaty establishing the European Economic Community and establishing a European Community; the amendments and amplifications relate not only to the Articles of the Treaty but also to the title of Annex III and to the Protocol on the Statute of the European Investment Bank; Title III of the Treaty on European Union contains Article H amending and amplifying the treaty establishing the European Coal and Steel Community, Title IV contains Article I amending and

amplifying the Treaty establishing the European Atomic Energy Community; Title V, entitled “Provisions on a common foreign and security policy”, consists of Articles J and J.1 to J.11; Title VI, entitled “Provisions on cooperation in the fields of justice and home affairs”, consists of Articles K and K.1 to K.9; Title VII consists of Articles L to S generically entitled “Final Provisions”.

3. The High Contracting Parties agree to annex to the Treaty sixteen Protocols to the Treaty establishing the European Community and the Protocol mentioned at item 17 to the Treaty on European Union and to the Treaties establishing the European Communities.

4. When signing these agreements at Maastricht on 7 February 1992, the High Contracting Parties adopted a set of thirty-three Declarations.

ON THE FACT THAT THE TREATY ON EUROPEAN UNION MODIFIES EARLIER INTERNATIONAL AGREEMENTS:

5. The referral asks the Constitutional Council for a decision “in the light of the international agreements entered into by France”.

6. Titles II, III and IV of the Treaty on European Union modify international agreements earlier entered into by France and incorporated into its domestic legal order through the combined effect of the statutes authorising their ratification and their publication either in the *Journal officiel de la République française* or in the Official Journal of the European Communities, in accordance with section 3 of Decree No 53-192 of 14 March 1953, as amended.

7. Paragraph 14 of the Preamble to the 1946 Constitution, to which the Preamble to the 1958 Constitution refers, declares that France “shall respect the rules of public international law”; one of these is the “*Pacta sunt servanda*” rule, whereby any treaty that is in force is binding on the parties and must be executed in good faith; Article 55 of the 1958 Constitution moreover provides: “Treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, in regard to each agreement or treaty, to its application by the other party”.

8. It is for the Constitutional Council, upon a referral pursuant to Article 54 of the Constitution relating to a treaty amending or amplifying one or more international agreements already incorporated into the domestic legal order, to determine the scope of the treaty referred to it in the light of the international agreements which the treaty is to amend or amplify.

ON PARAMETERS FOR REVIEW PROVIDED FOR BY ARTICLE 54 OF THE CONSTITUTION:

9. By the Preamble to the 1958 Constitution, the French people declared its solemn “attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, confirmed and complemented by the Preamble to the Constitution of 1946”.

10. Article 3 of the Declaration of Human and Civic Rights states that “The principle of any sovereignty lies primarily in the Nation”; the first paragraph of Article 3 of the 1958 Constitution provides that “national sovereignty shall belong to the people, who shall exercise it through their representatives and by means of referendum”.

11. Paragraph 14 of the Preamble to the Constitution of 1946 states that France “shall respect the rules of public international law”; paragraph 15 states that “subject to reciprocity, France shall consent to the limitations upon its sovereignty necessary to the organisation and preservation of peace”.

12. Article 53 of the 1958 Constitution provides, like Article 27 of the 1946 Constitution, for “treaties or agreements relating to international organisation”; such treaties or agreements may be ratified by the President of the Republic only by way of statute.

13. It follows from these various institutional provisions that respect for national sovereignty does not preclude France, acting in accordance with the Preamble to the 1946 Constitution, from concluding international agreements for participation in the establishment or development of a permanent international organisation enjoying legal personality and decision-making powers on the basis of transfers of powers decided on by the Member States, subject to reciprocity.

14. However, should an international agreement entered into to this end involve a clause conflicting with the Constitution or jeopardising the essential conditions for the exercise of national sovereignty, authorisation to ratify would require prior revision of the Constitution.

15. The Constitutional Council should undertake its review of the Treaty on European Union in the light of these principles.

ON THE NEED FOR RECIPROCAL AGREEMENTS:

16. In accordance with Article R of the Treaty on European Union, the agreements contained in the provisions referred to the Constitutional Council will take effect only after the last instrument of ratification has been deposited;

this requirement applies both to the Treaty itself and to the Protocols annexed to it and the Declarations adopted by the Intergovernmental Conference; it follows that these international agreements are reciprocal agreements; the requirement of paragraph 15 of the Preamble to the 1946 Constitution is accordingly satisfied.

ON THE GUARANTEE OF CIVIC RIGHTS AND FREEDOMS:

17. Article F(2) of the Treaty on European Union reads: “The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law”; these rights are guaranteed by the Court of Justice of the European Communities, notably in actions brought by individuals.

18. The provisions of Article F(2), in conjunction with the decisions given by the national courts in the exercise of their jurisdiction, are such as to guarantee the rights and freedoms of the citizen; the international agreement referred to the Constitutional Council violates no constitutional principle or rule.

ON THE ESTABLISHMENT OF UNION CITIZENSHIP:

19. By Article B of the Treaty on European Union the Union sets itself the objective of “strengthening the protection of the rights and interests of the nationals of its Member States through the introduction of citizenship of the Union”; Article G amends the Treaty of Rome of 25 March 1957 establishing the European Economic Community in order to establish a European Community; Article 8 of the latter Treaty, as amended, provides that there shall be “citizenship of the Union” and that “every person holding the nationality of a Member State shall be a citizen of the Union”.

20. The rights enjoyed by Union citizens include the right conferred by Article 8b of the Treaty establishing the European Community to vote and stand as a candidate at both municipal elections and elections to the European Parliament in the Member State in which they reside.

Regarding recognition of the right to vote and stand as candidate at municipal elections:

21. By Article 8b(1) inserted in the Treaty establishing the European Community, “every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State”; it is provided that this right shall be exercised subject to detailed arrangements to be adopted by the Council, consisting of a ministerial representative of each Member State, acting unanimously on a proposal from the Commission and after consultation of the European Parliament; it is provided at the end of Article 8b(1) that “these arrangements may provide for derogations where warranted by problems specific to a Member State”.

22. The purpose of the “detailed arrangements to be adopted” will be to govern the mode of exercise of the right to vote and stand for election; these will include evidence of enjoyment of civic rights in the State of origin, the duration of residence in the State of which the person concerned is not a national and the prohibition of dual registration.

23. The fact that detailed arrangements are to be adopted at a later date and may include derogations does not preclude the Constitutional Council from exercising its review on the question whether this clause of the international agreement referred to it does not itself contain a provision that contravenes a provision of constitutional status.

24. The first paragraph of Article 3 of the Constitution provides that “national sovereignty shall belong to the people, who shall exercise it through their representatives and by means of referendum”; the third paragraph of that Article provides that “suffrage may be direct or indirect as provided by the Constitution. It shall always be universal, equal and secret”; the fourth paragraph provides that “All French citizens of either sex who have reached their majority and are in possession of their civil and political rights may vote as provided by statute”.

25. By Article 24 of the Constitution the Senate, which is elected by indirect suffrage, represents the territorial units of the Republic, by the first paragraph of Article 72 of the Constitution, “the territorial units of the Republic shall be the communes, the departments and the overseas territories. Any other territorial unit shall be created by statute”; by the second paragraph of the latter Article, “these units shall be self-governing through elected councils and in the manner provided by statute”.

26. It follows from all these provisions that the decision-making body of a territorial unit of the Republic may come into being only after an election by universal suffrage; the Senate, which is to represent the territorial units of the Republic, must be elected by an electorate that itself is an emanation of these units; the designation of municipal councillors thus has an impact on the election of Senators; the Senate, as a House of Parliament, takes part in the exercise of national authority; the fourth paragraph of Article 3 of the Constitution implies that only “French citizens” are entitled to vote and stand as candidates at elections to decision-making bodies of territorial subdivisions of the Republic, and in particular municipal councils and the Council of Paris.

27. As it stood, Article 8b(1) inserted in the Treaty establishing the European Community by Article G of the international agreement referred to the Constitutional Council is unconstitutional.

Regarding recognition of the right to vote and stand as a candidate at elections to the European Parliament:

28. Article 8b(2), in conjunction with Article 138(3), maintains the possibility of introducing a uniform procedure for elections to the European Parliament, subject to adoption by the Member States in accordance with their respective constitutional requirements.

29. Without prejudice to those provisions, Article 8b(2) provides: “every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and stand as a candidate at elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised in accordance with detailed arrangements to be adopted before 31 December 1993 by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these detailed arrangements may provide for derogations where warranted by problems specific to a Member State”.

30. The fact that the right to vote and stand as candidate for elections to the European Parliament is to be exercised in accordance with detailed arrangements to be adopted at a later date, which may include derogations, does not preclude the Constitutional Council from exercising its review on the question whether this clause of the international agreement referred to it does not itself contain a provision that contravenes a provision of constitutional status.

31. The combined effect of the fourth paragraph of Article 3 of the Constitution and the other paragraphs of the same Article is that the constitutional rule confining voting rights to “French citizens” is mandatory only in relation to the exercise of the right of suffrage “as provided by the Constitution”.

32. The legal basis for the European Parliament is not the 1958 Constitution but the international agreements entered into on a basis of reciprocity on the basis of the constitutional provisions mentioned earlier; by Article E of the Treaty on European Union the European Parliament exercises its powers on the conditions and for the purposes provided by the Treaties establishing the European Communities and subsequent Treaties and Acts amending and amplifying them and by the other provisions of the Treaty on European Union; this principle is illustrated by the amendments made to Article 4 of the Treaty establishing the European Community, Article 7 of the Treaty establishing the European Coal and Steel Community and Article 3 of the Treaty establishing the European Atomic Energy Community by Articles G, H and I respectively of the Treaty on European Union; it is therein provided that the European Parliament, like the other Community institutions, shall act “within the limits of the powers conferred upon it”.

33. It follows that the conferment of a right to vote and stand as candidate for elections to the European Parliament on a basis of reciprocity on Union citizens residing in a Member State of which they are not nationals is not contrary to Article 3 of the Constitution.

34. Moreover, the Treaty on European Union does not have the effect of changing the legal status of the European Parliament; the Parliament is not a sovereign assembly with general lawmaking power such as might participate in the exercise of national sovereignty; it belongs to a *sui generis* legal order which, although integrated into the legal system of the various Member States, is not part of the institutional system of the French Republic.

35. This being so, Article 8b(2) inserted in the Treaty establishing the European Community by Article G of the international agreement referred to the Constitutional Council is unconstitutional.

ON THE ESTABLISHMENT OF A SINGLE MONETARY POLICY AND A SINGLE EXCHANGE-RATE POLICY:

36. Article B of the Treaty on European Union declares the promotion of balanced and sustainable economic and social progress, including in particular an Economic and Monetary Union ultimately including a single currency, to be an objective of the European Union; Article G, as has already been observed, amends the Treaty of Rome establishing the European Economic Community in order to establish a European Community, and contains a series of provisions for the attainment of that objective.

37. The new wording Article 2 of the Treaty of Rome sets the Community the task of achieving “economic and monetary union”; Article 3a(2) provides that the activities of the Member States and the Community are to include, in accordance with the timetable and procedures determined by the Treaty, “the irrevocable fixing of exchange rates leading to the introduction of a single currency, the ecu, and the definition and conduct of a single monetary policy and exchange-rate policy”; Article 4a establishes a European System of Central Banks and a European Central Bank in accordance with Treaty procedures; the implementation of the measures called for by Article 3a is governed by Title VI, entitled “Economic and Monetary Policy”, which is inserted into the Treaty establishing the European Community; Title VI consists of four chapters devoted to economic policy, monetary policy, institutional provisions and transitional provisions.

38. As soon as the Treaty on European Union enters into force, there is to be close coordination of the Member States’ economic policies, while Community law relating to the free movement of capital will remain applicable.

39. The date set for the beginning of the second stage of economic and monetary union is 1 January 1994; in the second stage, all restrictions on capital movements and payments will be prohibited not only between Member States but also between them and non-member countries, subject to Articles 73c to 73f; moreover, overdraft facilities to finance public deficits will be prohibited, as will all privileged access by public authorities and enterprises to credit from financial institutions, and procedures will be established to ensure that Member States avoid excessive public deficits; also at the second stage, each Member State is to launch the procedures needed to give its central bank full independence as provided by Articles 109e and 108, read together; and each Member State is required by Article 109m to treat its exchange-rate policy as a matter of common interest.

40. The third stage of economic and monetary union is to begin no later than 1 January 1999, as provided by Article 109j(4) and by Protocol No 10, subject to the provisions relating to the United Kingdom in Protocol No 11; for Member States who meet all the objective criteria and cannot therefore claim the benefit of a derogation, entry into the third stage involves the implementation of a single monetary policy and a single exchange-rate policy.

41. Regarding monetary policy, Article 107 lays down the principle that both the European Central Bank (ECB) and the national central banks, which together form the European System of Central Banks (ESCB), must be independent; it is for the ESCB, pursuant to Article 105(2), read with Article 3 of Protocol No 3, to “define and implement the monetary policy of the Community”; by Article 105a(1) the ECB has the “exclusive power to authorise the issue of banknotes in the Community”; Article 105a(2) allows Member States to issue coins, “subject to approval by the ECB of the volume of the issue”; by the second paragraph of Article 109g, “from the beginning of the third stage, the value of the ecu shall be irrevocably fixed in accordance with Article 109l (4); on the day of entry into force of the third stage, the Council of the European Union, acting by unanimous decision of the Member States not having a derogation, “shall adopt the conversion rates at which their currencies shall be irrevocably fixed and at which irrevocably fixed rate the ecu shall be substituted for these currencies”; by the same procedure the Council

“shall also take the other measures necessary for the rapid introduction of the ecu as the single currency” of the non-derogation Member States.

42. Regarding exchange-rate policy, Article 109(1) confers power on the Council of the European Union, acting by unanimous decision of the non-derogation Member States, to conclude “formal agreements on an exchange-rate system for the ecu in relation to non-Community currencies”; the Council may also, by a qualified majority of the non-derogation Member States, “adopt, adjust or abandon the central rates of the ecu within the exchange-rate system”; the same procedure applies under Article 109(2) to a Council decision setting general orientations for exchange policy in relation to non-Community currencies, in the absence of an exchange-rate system.

43. The effect of the provisions applicable from the beginning of the third stage of economic and monetary union is that the objective will be attained through the conduct of monetary and exchange-rate policies by procedures depriving the Member States of their own powers in a matter which is vital to the exercise of national sovereignty.

44. The Constitution as it stands precludes France from joining in the economic and monetary union provide for by the Treaty.

45. The following are unconstitutional:

- Article B of the Treaty on European Union, providing for the establishment of economic and monetary union leading ultimately to a single currency;
- Article G of the said Treaty, inserting Articles 3a(2), 105(2), 107, 109, 109g(2) and 109l(4) in the Treaty establishing the European Community;
- The other provisions of Chapters II, III and IV of Title Vi inserted in the Treaty establishing the European Community and Protocols Nos 3 and 10, since they are inseverable from the said Articles.

ON MEASURES RELATING TO THE ENTRY AND MOVEMENT OF PERSONS:

46. Article 3 of the Treaty establishing the European Community, as amended by Article G of the Treaty on European Union, provides, on the Treaty’s terms and at its rhythm, for “(d) measures relating to the entry and movement of persons in the internal market as provided for in Article 100c”.

47. By Article 100c(1) the Council of the European Union, “acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall determine the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States”; paragraph 2 goes on to provide that “in the event of a sudden state of emergency in a third country posing a threat of a sudden inflow of nationals of that country into the Community, the Council, acting by a qualified majority on a recommendation from the Commission, may introduce, for a period not exceeding six months, a visa requirement for nationals of that country visa”; this requirement may be extended in accordance with the procedure referred to in paragraph 1.

48. By Article 100c(3), from 1 January 1996 the Council “shall act by a qualified majority on the decisions referred to in paragraph 1” of the same Article; before that date the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, is to adopt measures for the establishment of a uniform format for visas; Article 100c(4) provides that, in the areas “referred to” in the Article, “the Commission shall examine any request made by a Member State that it submit a proposal to the Council”; by paragraph 5, “this Article shall be without prejudice to the exercise of responsibilities incumbent upon the Member States with regard to the maintenance of law and order and the safeguarding of internal security”.

49. The international agreements entered into by the authorities of the French Republic may not adversely affect the exercise by the State of the powers that are at the core of its national sovereignty; such provisions of Article 100c as relate to the determination of the non-member countries whose nationals are required to be in possession of a visa when crossing the external borders of the Member States in the period prior to 1 January 1996 do not run counter to this principle; the common policy on visas is decided on unanimously by the Council, subject only to protective measures founded on considerations of urgency and having effect only temporarily; on the other hand, the abandonment of the unanimity rule from 1 January 1996 as provided by Article 100c(3) could, in spite of Article 100c(4) and (5), generate a situation in which the exercise of national sovereignty was jeopardised.

50. This being so, Article 100c(3) inserted in the Treaty establishing the European Community by Article G of the international agreement referred to the Constitutional Council is unconstitutional.

ON THE INTERNATIONAL AGREEMENT REFERRED TO THE CONSTITUTIONAL COUNCIL, SEEN AS A WHOLE:

51. None of the other provisions of the international agreement referred to the Constitutional Council pursuant to Article 54 of the Constitution is contrary to the Constitution.

52. On the grounds set out above, the authorisation to ratify the Treaty on European Union requires revision of the Constitution.

Has decided as follows:

Article 1

Authorisation to ratify the Treaty on European Union may not be given without prior revision of the Constitution.

Article 2

The President of the Republic shall be notified of this Decision, which shall be published in the *Journal officiel de la République française*.

Deliberated by the Constitutional Council at its sittings of 7, 8 and 9 April 1992.