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The European Constitution and Economic and Monetary Union

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In my presentation, I will introduce the main elements of the European Constitution (Constitution). I will start with a few institutional issues and will then cover the EMU-provisions of the Constitution with a special emphasis on the three main elements of EMU: capital and payments, economic union and monetary union. Afterwards, I will turn to other EMU aspects of the Constitution. I will round up my presentation with concluding remarks.

First, let me give you my opinion on how the Constitution impacts the relations between the Union and the Member States. In the very first part of the Constitution Article I-5, numbered "I" for the part of the Constitution and "5" for the number of the provision, stresses that the Union is to respect the equality of Member States, the national identities and their essential state functions. The national identities are inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. The essential state functions are considered to include territorial integrity, maintaining law and order and safeguarding national security. For a Constitution, which is bound to bring us one step further in the European integration process, this is indeed strange language. In Article 4 of the current EU Treaty we find that the Treaty respects national identities of Member States. Article I-10 stresses the requirement of loyal corporation between the Union and the Member States. A new element in a text of primary law, such as the Constitution, is Article I-6, which states the primacy of Union law over the law of the Member States. Article I-11, which in its essence embodies the same approach as the current EU treaties, states that powers can only be exercised by the Union when they have been attributed to it. The wording used, in particular the principles of conferral, subsidiarity and proportionality, gives the impression that Member States are conferring competences to the Union, which they can always take back. Interestingly, non-conferred powers remain with the Member States.

In the area of EMU the coordination of economic policies is not listed as a so-called shared competence. Nevertheless, I consider the coordination of economic policies to be a shared competence. Care is taken to avoid anything that could be

explained as conferring on the Union itself a competence to coordinate the economic and employment policies of the Member States.

Let me briefly outline one important aspect of the voting system in the Council of Ministers as from the 1 November 2009, supposing the Constitution will be ratified by all Member States. When there is a proposal of the Commission or of the Union Minister of Foreign Affairs a qualified majority shall be defined as at least 55% of Council members comprising at least 15 of them and representing 65% of the population of the Union. A blocking minority must include at least 4 Council members. If the Council is not acting on a proposal by the Commission or the Union Minister for Foreign Affairs, qualified majority shall be defined as at least 72% of Council Members representing Member States comprising at least 65% of the population of the Union. This system is all for the future because, as the Constitution makes clear in Protocol No. 34, the double majority system will not take effect before 1 November 2009. As of 1 November 2004, a qualified majority vote, on the basis of a proposal from the Commission, requires at least 232 out of 321 votes representing a majority of the Member States. In cases where the decision is not based on a proposal by the Commission, the 232 votes must represent two thirds of the Member States, which in the EU of 25 would be 17. A member of either the European Council or the Council may request that it is established that the Member States comprising the qualified majority represent at least 62% of the population of the Union. As said, the improvement of the qualified majority voting system introduced will take effect only at a later stage.

Let me highlight a few aspects regarding the European Council which now finds itself in the constitutional part of this new text. We all know that the European Council consists of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The Union Minister for Foreign Affairs shall also take part in its work. The European Council's task is to provide the Union with the necessary impetus for its development and to define general political directions and priorities. The European Council shall not exercise legislative functions. This raises the question whether the legislative function, which I would have attributed to the European Council in the past, could be performed in the future. I am, of course, referring to the ERM-II resolution and the resolution on the Stability and Growth Pact. Article IV-38, third paragraph states that resolutions or positions by the European Council shall be preserved until they have been deleted or amended. Still, I would argue that under the Constitution there will be no more legal basis for the European Council to interfere in the sphere of EMU as there is under the current treaties.

The Commission continues as an institution where every Member State has its own Commissioner. Only after the inauguration of the first Commission under the new Constitution will we see a smaller-sized college, corresponding to 2/3 of the number of Member States. From my point of view it would have been important to elect the President of the Commission by the European Parliament on a proposal by

the European Council taken by qualified majority. Furthermore, the rules concerning the Commission do not provide for the assent for, or responsibility of, individual members of the college. The Constitution does not grant the European Parliament the right to reject individual members of the Commission.

But the role of the European Parliament has clearly been strengthened. Under the Constitution, co-decision is the ordinary legislative procedure. Furthermore, the European Parliament jointly exercises legislative and budgetary functions and also plays a crucial role in the political control and consultation process and in the election of the President of the Commission

In the area of EMU the ordinary legislative procedure may be introduced by a decision of the European Council; it can be blocked by any national parliament. The Constitution also stipulates that where Part III provides that the Council should act by unanimity, the European Council may adopt a European decision authorizing the Council to act by qualified majority. It is important to remember that the replacement of the excessive deficit protocol, one of the key-elements of the Stability and Growth Pact, requires the adoption of a European law. Such an amendment of the excessive deficit protocol could be subject to the ordinary legislative procedure. Moreover, a possible amendment to the provisions of the Statute of the European System of Central Banks (ESCB) could also be based on the normal legislative procedure. There are also areas of EMU which are subject to decision-making by the Council but do not lead to legislative acts, such as the adoption of positions in the field of external representation.

In the field of capital and payments the basic principle that restrictions both on the movement of capital and on payments between Member States and between Member States and third countries shall be prohibited, remains unchanged. Article III-158 newly states that, on a request from a Member State and in the event that the Commission does not act within three months, the Council may decide that restrictive tax measures vis-à-vis third countries are justified and compatible with the internal market. The current exceptions for tax purposes and prevention of law infringement as well as for statistical or administrative declarations of capital movements have been maintained which, in the context of EMU, I find rather peculiar. Within a single monetary area the provision to require administrative declarations of capital movements should not be necessary. The safeguard measures, which can now be adopted under Article 59 of the current treaty to ring-fence the Community in case of threat or serious difficulties for EMU, have been maintained and are still operative for the entire EU. Here, the distinction between the EU and the euro area has not been followed. The two-tiered decision-making regarding the interruption of economic and financial relations with third countries is also maintained. The Council acts on a joint proposal from the Union Minister of Foreign Affairs and the Commission and informs the European Parliament.

Let me now turn to the provisions regarding economic policy. From a general point of view, the picture seems rather unchanged. There are a few extra

competences for the Commission, some voting changes in the Council, the recognition of the Eurogroup, the introduction of a chairperson of the Eurogroup and a declaration on the Stability and Growth Pact. I would consider the EMU chapter in the Constitution a missed chance. The symmetry of the ways economic and monetary policy objectives are to be pursued under the Constitution presents a major challenge for the future work of EMU. It was not at all surprising that the British government expressed its satisfaction with the status quo and the lack of changes in economic governance. The Member States remain clearly in charge of economic policy coordination. A provision giving the Commission power to propose economic policies for Member States with an excessive deficit has been dropped.

With regards to the Broad Economic Policy Guidelines and multilateral surveillance, the position of the Commission has been slightly strengthened. In the future, it will not be the Council but the Commission that addresses a first warning to Member States in case of deviation from the guidelines. On the other hand, the recommendation the Council addresses to the Member State concerned is still based on a recommendation, and not a proposal, by the Commission. The Council, on a proposal from the Commission, may decide to make its recommendations public. In order to increase transparency, I think the recommendations should be made public immediately.

What is new is that the Member State concerned does not vote on any recommendation addressed to it. And special parts of the Broad Economic Policy Guidelines concerning the euro area can be adopted without the votes of the so called “outs”.

Let me now move from the so-called soft law to the hard law of the excessive deficit procedure. The Council will establish the existence of an excessive deficit on a Commission proposal instead of a recommendation. Under the Constitution the Member State concerned may present his case but will loose its right to vote. Another new element is that the Commission, and not the Council, can address an opinion to the Member State concerned. On the basis of a recommendation by the Commission, the Council adopts its recommendations, which are addressed to the Member State concerned “without undue delay”. In the light of past experience with the Stability and Growth Pact this new wording is indeed interesting. Again the recommendation will not be published unless expressly so provided. The individual steps of the excessive deficit procedure concerning the publication, the notice and the possible sanctions of a euro area Member State can be taken by Members of the currency union without the vote of the “outs”.

The Eurogroup is recognised in a special Protocol but has no formal decision-making powers. The President of the Eurogroup will be elected for 2½ years by a majority of euro area members.

The declaration on the Stability and Growth Pact states that raising growth potential and securing sound budgetary positions are the two pillars of the

economic and fiscal policy of the Union and the Member States. It confirms the commitment to the Stability and Growth Pact as the framework for coordinating budgetary policies and reaffirms the Lisbon Strategy. It also says that Member States should use periods of economic recovery actively to consolidate public finances and improve their budgetary positions. Finally, it welcomes any strengthening and clarifying implementation of the Stability and Growth Pact.

I will now turn to the provisions concerning the monetary union. In the current legal texts, the ECB is already a body of the Community. As stated by the European Court of Justice in the European Anti-Fraud Office (OLAF) case, "the ESCB falls squarely within the Community framework". Furthermore, the Court stresses that the recognition of the ECB's independence "does not have the consequence of separating it entirely from the (EC) and exempting it from every rule of Community law". In the Constitution the ECB and the NCBs are grouped together in Article I-30 which can be found under Title IV "The Union´s institutions and bodies" in Chapter II "The other Union Institutions and advisory bodies". Article I-30 explains, just as the current Treaty, that the ESCB is composed of the ECB and NCBs. It also introduces the Eurosystem, which, of course, consists of the ECB and the euro area NCBs. While the Constitution refers to the Eurosystem as the competent body to conduct the monetary policy of the Union, the Statute of the ESCB refers to the ESCB. Although in the case of the conduct of monetary policy, the expression "ESCB" refers to the ECB plus the central banks of the Member States whose currency is the euro, the wording can be quite misleading. The Constitution states that the ECB is an institution and has legal personality. It shall be independent in the exercise of its powers and in the management of its finances. This independence shall be respected by the Union institutions, bodies, offices and agencies and the governments of the Member States. Furthermore, Article I-30 explains that the ESCB is governed by the ECB´s decision-making bodies, its primary objective is price stability and its secondary objective is to support the general economic policies in the Union. Although the legal nature of the ESCB and the Eurosystem are not further qualified in the Constitution, I would regard them as bodies of the EU as well. Article III-382 provides that the Executive Board members will, in the future, be appointed by qualified majority of the members of the European Council on a recommendation of the Council and after consulting the European Parliament and the Governing Council of the ECB. In the European Council neither its full-time President nor the member of the Commission present will have the right to vote. It is interesting to note that while the President of the Ecofin Council and the responsible Commissioner have a standing invitation to the ECB Council meetings and the ECB President is invited to Ecofin Council meetings and participates actively in the monetary dialogue with the European Parliament the ECB does not participate in the Commission meetings when EMU matters are on the agenda.

In the context of regulatory powers I would like to mention that the Constitution distinguishes between legislative and non-legislative acts. European laws, former EC regulations, and European framework laws, former EC directives, may be adopted on a recommendation of the ECB if so specifically provided. The ECB will still be able to adopt its own legal acts, European regulations and decisions, but they will be so-called non-legislative acts.

It is clear that the single monetary policy is an exclusive Union competence, at least in respect of the euro Member States. I believe that the term "monetary policy" is to be defined in the broad sense of Part III, Title III Chapter II Section 2 rather than in the restricted wording of Article III-185 (2). The Constitution should not use the same term for two different concepts. More than just the definition and conduct of the Union's monetary policy the concept should include the conduct of foreign-exchange operations, the holding and management of official foreign reserves and the promotion of the smooth operation of payment systems. I also consider the oversight of payment systems to be part of the exclusive competences of the Union, at least for the euro area Member States.

The objective of sustainable and non-inflationary growth of Article 2 of the EC Treaty has been replaced by "sustainable development of Europe based on balanced economic growth and price stability" in Article I-3 (3). EMU as a means to achieve the objectives of the Communities is no longer in the task-setting provisions but in Article III-177. Nor the guiding principles of: stable prices, sound public finances and monetary conditions and a stable balance of payments neither the principle of an open market economy with free competition, favouring the efficient allocation of resources, have changed. One of the key competences is described in Article III-191, which states that the measures necessary for the use of the euro can be laid down by European laws or framework laws.

I would like to turn now to the topic of external representation of the Union. To a large degree Article 111 of the current Treaty can now be found in article III-326. Paragraph (4) of Article 111 is reframed and integrated into the new Article III-196, which refers to the euro's place in the international monetary system. The Council, on a proposal from the Commission, shall adopt common positions and measures to ensure unified representation within the international financial institutions and conferences. Decisions are taken by the qualified majority of the Member States whose currency is the euro. From my point of view, current Community law already binds the Council to adopt such measures with regard to exchange-rate matters and even when economic policy coordination is concerned.

Article I-26 says that the Commission is to represent the EU externally except in the area of Common Foreign and Security Policy (CSFP) "and (in) other cases provided for". This wording ("other cases") could also include EMU matters. The Union will also have a new Union Minister of Foreign Affairs, who is to conduct the Common Foreign and Security Policy and who presides over the Foreign Affairs Council whereas he "ensures consistency of the Union's external action".

Apart from the Foreign Affairs Council, Member States consult each other in the European Council "before undertaking any action on the international scene or any commitment which could affect the Union's interests". I would call all of this a hexagonal external representation of the Union, which consists of the President of the European Council, the President of the Commission, the Union Minister of Foreign Affairs, the President of the Council and, in the euro area, the President of the Eurogroup and the ECB President. In line with a proposal that was discussed in the Convention but was not adopted, I think the President of the Commission should have been simultaneously appointed as President of the European Council. Hence, his or her influence on the external representation of the Union could have been increased.

The review clauses of the Constitution do not seem fully appropriate. The *ordinary revision procedure* of the Constitution includes the Convention method and a deviation from it would require the consent of the European Parliament. The *simplified revision procedure* provides for movement from unanimity to qualified majority voting and from the special legislative procedures to the ordinary legislative procedure for areas covered by Part III on the basis of a unanimous decision of the European Council with the consent of the European Parliament. The *simplified revision procedure concerning internal Union policies and action* requires a unanimous decision by the European Council.

I think that the Constitution should not be subject to such strict amendments requirements. Nevertheless, I do add that, especially, with regards to the revision of internal Union policies the need of approval by all Member States can be seen as a shield for the competences in the area of monetary union.

I would also like to draw your attention to the exit clause of the Constitution. I think this clause, which is supposed to regulate the voluntary withdrawal of a Member State, is not only badly construed but I also consider it dangerous for the euro. Let me briefly explain what the clause says. A Member State wishing to exit would notify the European Council and negotiate with the Council its exit agreement. On the part of the Union this agreement would be concluded by the Council with qualified majority and have the consent of the European Parliament before becoming law. Yet the Constitution would cease to apply to an exiting Member State from the entry into force of the withdrawal agreement or two years after its notification unless the European Council, in agreement with the exiting State, unanimously extends this period. No details are given on how to exit from the monetary union. Frankly, I think that this clause is going to reinforce the utterance of exit threats from among eurosceptics.

I would like to conclude by saying that, in my opinion, the Constitution, especially in the area of the EMU, is too intergovernmental and, in some respects, represents a small retrograde step. The Constitution is a state-centered text that does not sufficiently strengthen the Commission. In EMU, the Council maintains its predominant position and the European Parliament still needs to develop its

channels of influence. Let me also remind you of the dual/triple and even six-fold external representation of the Union. I think we have not been able to figure out how we want to present ourselves on the international scene. Moreover, the Constitution is a very long and not really comprehensive document.

The text stipulates too many competences and too little power. Since Maastricht we have experienced a gradual extension of competences in areas such as energy, space or civil protection instead of focusing on the core elements of a federal government such as the internal market, EMU, external policy and freedom, security and justice. We are facing a wide variety of challenges and important decisions lie ahead of us. The threat of terrorism and the decision on Turkey's membership of the Union are cases in point. But these challenges might also be an opportunity to deepen our integration efforts. We should accept that this Constitution is not going to win a beauty price, but let us not forget that we are in a continuous constitutional process. We can be assured that this Constitution will not last for 50 years.

The constitutional discussion is a first step to ensure that the distance between the EU citizens and their Union can be bridged. I will vote in favour of this text; not only because it is in the interests of ourselves, but also in the interest of our children and grandchildren. Allow me to conclude by quoting from the introduction of a book I am reading (Jeremy Rifkin's, The European Dream – How Europe's Vision of the Future is Quietly Eclipsing the American Dream):

"The fledgling European Dream represents humanity's best aspirations for a better tomorrow. A new generation of Europeans carries the world's hopes with it. This places a very special responsibility on the European people, the kind our own founding fathers and mothers must have felt more than two hundred years ago, when the rest of the world looked to America as a beacon of hope. I hope our trust is not trifled away."