

## ARTICLES

# THE EUROPEAN CONSTITUTION AND THE ECB



*The Treaty establishing a Constitution for Europe (European Constitution) was agreed upon by the Heads of State or Government of the European Union (EU) during their meeting of 17-18 June 2004 in Brussels. The European Constitution marks a further milestone in the process of European integration. This article describes the process that led to its creation and reviews the principal measures introduced by it in order to render the EU more effective, transparent and democratic.<sup>1</sup> The article also focuses on the way in which the European Constitution deals with the institutional framework of Economic and Monetary Union (EMU). In particular, it assesses the aspects that are of direct relevance to the ECB and the ESCB and demonstrates that the European Constitution will not lead to substantive changes to the current “monetary constitution”. By improving the overall framework of the EU and by broadly confirming the current Treaty provisions in the realm of EMU, the European Constitution will contribute to the effective functioning of EMU.*

### INTRODUCTION

The agreement of the Heads of State or Government during the final meeting of the Intergovernmental Conference (IGC) in Brussels on 17-18 June 2004 on the Treaty establishing a Constitution for Europe marks an important step in the history of European integration. When the European Constitution enters into force after its ratification, it will introduce a single constitutional text that consolidates and simplifies the existing Treaties, reinforces past achievements and reforms the institutions of the EU.

The European Constitution is the result of a long process of political deliberation that was different from previous rounds of Treaty revisions. The process was formally initiated in December 2000 during the meeting of Heads of State or Government in Nice. In the context of the negotiation of the Treaty of Nice, Heads of State or Government adopted a declaration which called for a comprehensive debate on the future of the EU with a view to a further revision of the Treaties by a new IGC. The European Council adopted a second declaration in Laeken a year later, on 15 December 2001, which further specified the objectives and procedures of that debate. The Laeken declaration stated that the revision should improve the division and definition of competences within the EU, simplify the present Treaties and increase democratic legitimacy. In order to accomplish these

objectives, the declaration introduced the idea of a European Constitution and committed the EU to preparing for the IGC in a new, more transparent and broad-based way.

Following the Laeken declaration, the Convention on the Future of Europe was convened to examine the essential questions raised by the development of the EU and to present proposals that would be used as the starting point for the negotiations of the IGC. The Convention brought together the main players in the debate on the future of the EU. It included representatives of the governments of the then 15 Member States, 12 accession countries and 1 candidate country, together with representatives of their national parliaments, representatives of the European Parliament and the European Commission, 13 observers from the Committee of the Regions and the Economic and Social Committee, representatives of the European social partners and the European Ombudsman. The work of the Convention was organised by a Praesidium, headed by Chairman Mr Valéry Giscard d'Estaing and two Vice-Chairmen, Mr Giuliano Amato and Mr Jean-Luc Dehaene. The Convention started its work on 28 February 2002. After 15 months of debate in plenary sessions and working parties, the

<sup>1</sup> This article is based on the consolidated version of the European Constitution which the Irish Presidency presented shortly after the final IGC meeting in June 2004. Thus, it does not account for adjustments introduced subsequently by the Council's legal and linguistic experts, including the shift to continuous numbering of the text.

Convention agreed a draft Constitution, which was submitted to the Thessaloniki European Council on 20 June 2003 and finalised on 18 July 2003.

The draft produced by the Convention served as the basis for the work of the IGC, which started under the Italian Presidency on 4 October 2003. The failure to reach a final agreement at the meeting of Heads of State or Government in Brussels on 12-13 December 2003 brought the IGC to a halt. The IGC negotiations resumed at a meeting of 17-18 May 2004 under the Irish Presidency. The European Council meeting in Brussels on 17-18 June 2004 successfully concluded the IGC and brought about an agreement on the European Constitution. The European Constitution will need to be signed by Heads of State or Government and ratified by all EU Member States in accordance with their constitutional requirements before it can enter into force.

The ECB followed the debates within the Convention and the negotiations during the IGC closely, contributing to them at various stages. This was mainly motivated by the fact that the ECB and the ESCB, being part of the Community framework, have a natural interest in institutional and political developments within the EU, developments that determine the framework conditions under which they operate. Moreover, the Treaty on European Union requires that the ECB be consulted on any institutional changes in the monetary area. The ECB therefore considered it essential to monitor the debates at all stages so as to give its opinion whenever appropriate.

This article aims to analyse those aspects of the European Constitution which are of particular relevance to the ECB and the ESCB. To put these aspects into perspective, the first part of the article outlines the principal measures introduced by the European Constitution in order to render the EU more effective, transparent and democratic. The second part of this article briefly describes the minor adjustments to the economic policy framework

of EMU brought about by the European Constitution. The third part sets out the role played by the ECB in the debate on the European Constitution and examines in detail those provisions of the European Constitution that relate to the competences of the ECB and the ESCB.

## **I THE PRINCIPAL MEASURES INTRODUCED BY THE EUROPEAN CONSTITUTION**

The European Constitution is divided into four parts, dealing respectively with the constitutional architecture of the EU, the Union's Charter of Fundamental Rights, the policies and operation of the Union and, lastly, general and final provisions (see Box 1 for a further explanation of the structure of the European Constitution).

Each of these four parts contains new provisions. The principal new elements are detailed below, divided, for ease of analysis, into changes to the institutional framework of the EU, changes concerning the EU institutions and changes to legislative procedures and voting modalities.

### **CHANGES TO THE INSTITUTIONAL FRAMEWORK**

A driving force behind the changes introduced by the European Constitution was the desire to clarify and simplify the institutional framework so as to make the Union more transparent and accessible to its citizens.

In contrast to the current situation, where different legal entities and a number of legal texts coexist, the European Constitution creates a single legal personality for the Union and establishes a single text. Moreover, it abolishes the current three-pillar structure, namely the distinction between the pillars of the European Communities, the common foreign and security policy and justice and home affairs, and establishes a single institutional framework for the Union as a whole. Another important development is the Charter of

## Box I

**THE STRUCTURE OF THE EUROPEAN CONSTITUTION**

The European Constitution consists of the following four parts:

**Part I**

Part I of the European Constitution defines the Union and sets out its objectives, as well as containing provisions concerning fundamental rights and the citizenship of the Union. It also specifies the Union's institutions and competences, as well as including provisions relating to the democratic life of the Union, the Union's finances and immediate environment, and membership of the Union.

**Part II**

Part II contains the Charter of Fundamental Rights of the Union, with those rights detailed under the broad headings of dignity, freedoms, equality, solidarity, citizens' rights and justice. Part II also includes general provisions governing the interpretation and application of the Charter.

**Part III**

Part III deals with the policies and the functioning of the Union and consequently constitutes the largest part of the European Constitution. It not only includes provisions of general application, but also deals with non-discrimination and citizenship, internal policies and action, relations with overseas countries and territories, the Union's external action and the functioning of the Union, as well as laying down common provisions. Provisions relating to Economic and Monetary Union feature under the heading "Internal policies and action".

**Part IV**

Part IV consists of general and final provisions, which cover succession and legal continuity, the scope and duration of the European Constitution, and several other issues. It also sets out how the European Constitution is to enter into force and how it may be amended in the future.

Annexed to the European Constitution are various protocols and declarations, including, among others, the Protocol on the Euro Group and the Protocol on the Statute of the European System of Central Banks and of the European Central Bank (ESCB/ECB Statute).

Fundamental Rights, which, after being solemnly proclaimed at the Nice European Council in December 2000, will be incorporated in full in Part II of the European Constitution.

Another step forward is the simplification of the existing system of EU legal acts. The number of legal acts has been vastly reduced, from over 30 to just 6, namely laws, framework laws, regulations, decisions, recommendations and opinions. Similarly, in order to achieve

greater transparency, the division of powers between the EU and the Member States is further clarified. To this end, the European Constitution sets out the Union's competences and provides that any competence not explicitly designated as being at the European level must remain at the national level. On this basis, the competences of the Union are divided into: exclusive competences of the Union; areas of shared competence; the competence to promote and coordinate the economic and employment

policies of the Member States; the competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy; and the competence to carry out actions to support, coordinate or supplement the actions of the Member States in certain areas. Monetary policy is listed as one of the areas in which the Union has exclusive competence.

As a further means of ensuring the effective sharing of power between the EU and the Member States, the European Constitution strengthens the application of the two principles of subsidiarity and proportionality. It requires that the Commission explain the way in which it has taken the two principles into account when it makes a proposal and, for the first time, assigns an important role to national parliaments. Every national parliament will be able to issue a reasoned opinion in the event that it considers that the principle of subsidiarity has not been respected. If a certain number of national parliaments do so, the Commission can be forced to review its proposals.

The European Constitution also introduces two provisions that allow for partial changes to the allocation of competences between the Member States and the EU. A flexibility clause provides for an extension of EU powers within the objectives of the Union by unanimous decision of the Council of Ministers and with the consent of the European Parliament. Provisions governing enhanced cooperation make it possible, subject to certain conditions, for a group of at least one third of the Member States to pursue further integration.

For the first time since the start of European integration, Member States will be able to withdraw from the EU on the basis of a formalised procedure. The European Constitution provides that the institutional and political consequences of a voluntary withdrawal would be dealt with by an agreement between the exiting Member State and the Council, acting on behalf of the Union. The Council would in such circumstances act by

qualified majority, after obtaining the consent of the European Parliament. Although no specific reference is made to the role of the ECB in this procedure, it goes without saying that the ECB would be fully involved to the extent that such arrangements had implications for the monetary area. In this context, it is important to stress that the European Constitution does not provide for Member States withdrawing from the euro area without simultaneously leaving the EU.

#### **CHANGES CONCERNING THE EU INSTITUTIONS**

Under the European Constitution, the Council of Ministers, the European Commission, the European Parliament and the Court of Justice of the European Union remain the core institutions of the Union. The European Constitution also grants institutional status to the European Council. While the European Constitution broadly maintains the balance between the institutions, it also introduces important changes with regard to the organisation and operation of individual institutions. Most importantly, it strengthens the representation and management of several institutions through the introduction of elected chairpersons, thus making the policy-making process of the Union more visible and accountable.

The role of the European Parliament is reinforced through the extension of its power of co-decision to a significant number of areas, including certain aspects of judicial cooperation and agricultural policy. Moreover, the European Constitution raises the maximum number of members of the European Parliament to 750, from the ceiling of 732 agreed in Nice, with a minimum of 6 and a maximum of 96 seats per Member State.

As for the European Council and the Council of Ministers, the European Constitution replaces the current system of six-month rotating presidencies with a new model that provides for more continuity and visibility. An individual, rather than a Member State, will chair the European Council. The President of the

European Council will be elected by the European Council by a qualified majority for a two-and-a-half-year term, renewable once, and will not be allowed to hold any national mandate during this period. The President will be responsible for driving forward the work of the European Council, which, while not exercising legislative functions, will provide the Union with the necessary impetus and political direction. With regard to the sectoral formations of the Council of Ministers, the European Constitution introduces team presidencies consisting of representatives of several Member States. Under this system, which is laid down in a declaration annexed to the European Constitution, the Presidency of the Council, with the exception of the Foreign Affairs Council, will be held by pre-established groups of three Member States for an 18-month period. The three Member States, who will share the Presidency, will have to agree on a common programme. During the 18-month period, the Presidency of each Council formation will rotate between the three Member States and across the different sectoral Councils, so that, at the end of the 18-month period, each of the three Member States will have chaired each Council formation for six months.

The European Constitution provides for a reduction in the size of the Commission. From 2014 onwards the number of Commissioners will be lowered from the current 25 to two-thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this figure. The Commissioners will be chosen on the basis of equal rotation between the Member States. The role of the European Parliament in the selection of the President of the Commission will be strengthened. The European Council – after taking into account the results of European elections and after the appropriate consultation of the European Parliament – will select by qualified majority voting (QMV) a candidate for the Presidency of the Commission and will propose this candidate to the European Parliament. The candidate must then be elected by a majority of the members of the European

Parliament. The European Council, by common accord with the Commission President, will select the Commissioners. It will do so on the basis of lists of three candidates submitted by each Member State having the right to a Commissioner as determined by the rotation system.

The creation of the post of Union Minister for Foreign Affairs represents another innovation under the European Constitution. The Union Minister for Foreign Affairs will be responsible for the conduct of the Union's common foreign and security policy and for the consistency of the Union's external activities, chair the Foreign Affairs Council, take part in the work of the European Council and act as the Vice-President of the Commission. The post will combine the current responsibilities of the EU's High Representative for the Common Foreign and Security Policy and the Commissioner in charge of external relations. Correspondingly, the Union Minister for Foreign Affairs will be appointed by the European Council, acting by QMV, with the agreement of the Commission President.

#### CHANGES TO PROCEDURES AND VOTING MODALITIES

With a view to complementing the reform of the institutions and their operation, the European Constitution restructures the different legislative procedures of the Union and adjusts the thresholds for qualified majority voting. Under the European Constitution, the co-decision procedure will become the “ordinary” legislative procedure of the Union, with other legislative procedures (such as the assent procedure and the consultation procedure) becoming the exception. At the same time, the application of qualified majority voting in the Council will be extended to some 30 further provisions, for which unanimity is currently required. Moreover, a “passerelle clause” provides for movement from unanimity to QMV 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. However, the objection of one national parliament will be sufficient to block such a move. Finally, with a view to facilitating decision-making in an enlarged Union, the European Constitution introduces a new rule

governing decisions taken by qualified majority voting (see Box 2). This rule is based on the principle of a double majority, a majority in terms of both Member States and population. Thus, it reflects the idea that the EU's legitimacy has two sources: the Member States and the citizens of the Union.

## Box 2

### THE NEW RULE GOVERNING DECISIONS TAKEN BY QMV

#### Article I-24

1. A qualified majority shall be defined as at least 55% of the members of the Council, comprising at least 15 of them and representing Member States comprising at least 65% of the population of the Union.

A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained.

2. By derogation from paragraph 1, when the Council is not acting on a proposal from the Commission or from the Union Minister for Foreign Affairs, the qualified majority shall be defined as at least 72% of the members of the Council, representing Member States comprising at least 65% of the population of the Union.

[...]

## 2 ASPECTS RELATED TO THE ECONOMIC POLICY FRAMEWORK OF EMU

The European Constitution leaves the current Treaty provisions governing the economic policy framework of EMU fundamentally unchanged. It introduces only a small number of adjustments, which are reviewed below.

One of these adjustments pertains to the Euro Group, which, for the first time, is formally recognised by primary law. A brief protocol annexed to the European Constitution specifies that the finance ministers of the Member States whose currency is the euro meet to discuss "questions related to the specific responsibilities they share with regard to the single currency". The Commission takes part in the meetings, while the ECB is invited to do likewise. Moreover, the system of half-yearly

rotating presidencies for the Euro Group will be abolished. Instead, the Euro Group President will be elected by a majority of the members of the Euro Group for a period of two and a half years.

The European Constitution reinforces slightly the decision-making powers of the euro area Member States. It provides clarification that decisions on the non-compliance by a Member State of the euro area with the broad economic policy guidelines are to be taken only by euro area Member States. The same applies in the realm of the excessive deficit procedure, starting with the establishment of the existence of an excessive deficit. In this context, the European Constitution also provides that any decision on the existence of an excessive deficit is to be taken without taking into account the vote of the Member State concerned. The

European Constitution also allows euro area Member States to adopt measures designed to bring about the closer coordination of their national fiscal and economic policies. It also introduces a provision whereby the Council, when establishing which Member States with a derogation fulfil the necessary criteria for participating in the single currency, is to act upon a recommendation from the euro area Member States.

The European Constitution strengthens somewhat the role of the Commission in the excessive deficit procedure and multilateral surveillance. Decisions on whether an excessive deficit exists in a Member State will no longer be based on a recommendation by the Commission, but rather on a proposal, which the Council can amend only by unanimity. Where the existence of an excessive deficit is established, subsequent Council decisions, including the adoption of recommendations addressed to Member States running excessive deficits, will still be based on Commission recommendations which may be amended by QMV. Moreover, within the framework of multilateral surveillance, the European Constitution allows the Commission to address a “direct” warning to a Member State where its economic policies are inconsistent with the broad economic policy guidelines or risk jeopardising the proper functioning of EMU.

At the final meeting of the IGC on 17-18 June 2004 Heads of State or Government also adopted a declaration on the Stability and Growth Pact. That declaration is annexed to the European Constitution but is not legally binding. In it, the IGC reaffirms its commitment to the Stability and Growth Pact and calls on Member States to consolidate public finances and to improve their budgetary positions during economic upswings.

### 3 ASPECTS RELATED TO THE COMPETENCES OF THE ECB AND THE ESCB

The ECB followed the debates within the Convention and the negotiations during the IGC

closely, contributing to them at various stages. Although not directly involved in the Convention and the IGC, the ECB was able to make its views known through different channels (see Box 3 for an overview of the ECB’s participation in the debate). The ECB welcomed the efforts to simplify, streamline and clarify the legal and institutional framework of the EU as a way of furthering the construction of a united Europe capable of meeting its citizens’ expectations and equipped to assume international responsibilities commensurate with its size and importance. Such improvements would complement and further bolster the success of EMU. At the same time, the ECB made clear that the current rules and provisions governing EMU were sound in terms of both their objectives and the allocation of responsibilities. In particular, the ECB saw no need to adjust the monetary constitution that had proved so successful for the operation of the single currency.

As a result, the ECB considered it essential that price stability remain a stated objective of the EU, in addition to being the primary objective of the ECB and the ESCB. The ECB also deemed it indispensable to the successful performance of its tasks that the special institutional features of the ECB and the ESCB be preserved.

The section below assesses how these essential elements of the monetary framework are preserved in the European Constitution. This analysis also covers other issues addressed by the ECB in the context of the negotiations at the Convention and the IGC.

#### PRICE STABILITY

Price stability is, as an objective of the EU and the Member States, and as the primary objective of the ECB and the ESCB, a key component of the EU’s monetary constitution. Its importance to the creation of EMU cannot be overestimated, as it provided the foundations on which the EMU project was built. The founding fathers of EMU were convinced that only by making price stability an explicit priority could a sound and stable single currency be guaranteed.

**OVERVIEW OF THE ECB'S PARTICIPATION IN THE DEBATE**

Although not formally represented in the Convention or at the IGC, the ECB monitored the debate closely and intervened in the following ways:<sup>1</sup>

- The President of the ECB was invited to an expert hearing of the Convention's Working Group on Economic Governance on 13 September 2002.
- The President of the ECB communicated comments and drafting suggestions to the Chairman of the Convention on issues relating to the ECB and the ESCB in two letters of 8 May and 5 June 2003.
- The ECB issued an opinion on 19 September 2003 (CON/2003/20), at the request of the Council, on the Convention's draft Constitution. This was submitted, together with an accompanying letter, to the President of the Council.
- The ECB submitted a proposal for a revision of the ESCB/ECB Statute to the President of the European Council on 29 October 2003 (IGC document 40/03).
- The ECB President sent a letter to the President of the Council on 26 November 2003 regarding a proposed simplified procedure for amending the ESCB's basic constitutional rules (IGC document 58/03).
- The ECB President issued a letter to the President of the Council on 16 April 2004 regarding the negotiations on the draft Constitution.

<sup>1</sup> All documents referred to here are available on the ECB's website.

The European Constitution confirms the importance of price stability in all respects. It retains price stability as the primary objective of the ECB and the ESCB in Article I-29(2) and as an objective of the Union in Article I-3(3) (see Box 4 for selected legal provisions related to the ECB and the ESCB). In confirming the mandate of the ECB and the ESCB and the prominence assigned to price stability, the European Constitution acknowledges the success of the existing monetary constitution. That confirmation followed the assessment of two questions: first, whether supporting sustainable growth and high levels of employment should be added, on an equal footing, to the primary objective of the ECB and the ESCB; and, second, the extent to which price stability should be an objective not

only for the ECB and the ESCB, but also for the Member States and the Union as a whole.

While the widening of the primary objective was put forward by some Convention members, the vast majority rejected this suggestion. They were of the view that the current mandate to pursue price stability as a primary objective is based on a broad consensus among policy-makers and economists – as reflected in the Maastricht Treaty – that maintaining price stability is the best contribution monetary policy can make with regard to the achievement of other economic goals. Price stability ensures confidence in the long-term value of the euro and translates into low and stable long-term interest rates, which in turn create favourable conditions for a high level of investment and,

ultimately, growth and employment. Given the strength of this argument, the Convention agreed to confirm the status of price stability as the primary objective of the ECB and the ESCB. Likewise, it confirmed that the ECB and the ESCB should support the general economic policies in the Community, including the pursuit of high levels of economic growth and employment, only to the extent that this would not prejudice the pursuit of price stability.

Members of the Convention also touched upon the question of the extent to which price stability should be an objective not only for the ECB and the ESCB, but also for the Member States and the Union as a whole. Early on in the discussions it became clear that stable prices would remain a guiding principle for the Member States and the Union, as reflected in the Convention's draft and, subsequently, in Article III-69 of the European Constitution. However, in contrast to the current Treaty provisions, the Convention's draft did not list price stability as one of the Union's objectives. One of the arguments employed was that, given its status as a guiding principle in Article III-69, sufficient reference had already been made to price stability. Nonetheless, after the publication of the Convention's draft, a debate ensued on whether or not price stability should

continue to be listed among the overarching objectives of the Union. In its contribution to this debate, the ECB stressed that price stability had to retain its prominent place as a Union objective given the impact that Member States have on price stability via their responsibility for determining national fiscal policies and setting the overall framework conditions for the economy. Moreover, the ECB pointed out that price stability clearly benefited society and so merited a mention among the Union's objectives. The IGC ultimately agreed with this view and included price stability among the Union's objectives.

#### INSTITUTIONAL STATUS OF THE ECB AND THE ESCB

One of the key objectives of the Convention and the IGC was to clarify the current institutional framework. It was considered important to emphasise, in a prominent place, the role that the key institutional actors play in shaping the policies of the EU. A clear overview of the EU's institutional framework was regarded as being necessary in order to make EU decision-making more accessible to the citizens of the Union. In this context, the Convention debated the idea of granting the ECB the status of an EU institution. To establish the ECB as an EU

#### Box 4

#### SELECTED LEGAL PROVISIONS RELATED TO THE ECB AND THE ESCB

##### Objectives of the Union

###### *Article I-3(3)*

The Union shall work for 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 with a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

##### The European Central Bank

###### *Article I-29*

1. The European Central Bank, together with the national central banks, shall constitute the European System of Central Banks. The European Central Bank, together with the national

central banks of the Member States whose currency is the euro, which constitute the Eurosystem, shall conduct the monetary policy of the Union.

2. The European System of Central Banks shall be governed by the decision-making bodies of the European Central Bank. The primary objective of the European System of Central Banks shall be to maintain price stability. Without prejudice to that objective, it shall support general economic policies in the Union in order to contribute to the achievement of the Union's objectives. It shall conduct other Central Bank tasks in accordance with Part III and the Statute of the European System of Central Banks and the European Central Bank.
3. The European Central Bank is an Institution, which shall have legal personality. It alone may authorise the issue of the euro. It shall be independent in the exercise of its powers and in the management of its finances. Union Institutions, bodies, offices and agencies and the governments of the Member States shall respect that independence.
4. The European Central Bank shall adopt such measures as are necessary to carry out its tasks in accordance with Articles III-77 to III-83 and Article III-90, and with the conditions laid down in the Statutes of the European System of Central Banks and of the European Central Bank. In accordance with these same articles, those Member States whose currency is not the euro, and their central banks, shall retain their powers in monetary matters.
5. Within the areas falling within its responsibilities, the European Central Bank shall be consulted on all proposed Union acts, and all proposals for regulation at national level, and may give an opinion.
6. The decision-making organs of the European Central Bank, their composition and operating methods are set out in Articles III-84 to III-87, as well as in the Statute of the European System of Central Banks and of the European Central Bank.

### **Economic and monetary policy**

#### *Article III-69*

1. For the purposes set out in Article I-3, the activities of the Member States and the Union shall include, as provided in the Constitution, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.
2. Concurrently with the foregoing, and as provided in the Constitution and in accordance with the procedures set out therein, these activities shall include a single currency, the euro, and the definition and conduct of a single monetary policy and exchange-rate policy, the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support general economic policies in the Union, in accordance with the principle of an open market economy with free competition.
3. These activities of the Member States and the Union shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a stable balance of payments.

institution and make it part of the institutional framework would, however, modify the current Treaty provisions which separate the ECB and the ESCB from the Community institutions.

The ECB contributed to this debate by emphasising that such a change to the existing Treaty provisions should not impact on the operation and effective functioning of the ECB and the ESCB. In this respect, the ECB stressed that it was not so much the place of the ECB in the institutional framework but rather its special features that were of importance to the ECB and the ESCB. The three key special features – namely the independence of the ECB and the ESCB, the legal personality of the ECB and the ECB’s regulatory powers – are necessary for the ECB and the ESCB to fulfil the tasks laid down in the EC Treaty. They also provide the basis for the *sui generis* status of the ECB, which sets it apart from the Community institutions listed in Article 7 of the EC Treaty. It was therefore essential to the ECB that these special features remain untouched. The Convention fully concurred with this point of view. It introduced the ECB in the first part of its draft Constitution as an institution of the Union that, owing to its special features, continues to enjoy a *sui generis* status. The IGC confirmed the Convention’s draft in this respect.

The independence of the ECB was never in question. Article I-29(3) fully confirms the political independence of the ECB. Moreover, it explicitly recognises the financial independence of the ECB and thus reinforces this aspect of the ECB’s independence as compared with the current Treaty provisions. The European Constitution also maintains the ECB’s right to set its own operational rules, including, for example, the determination of employment conditions for ECB staff.

Similarly, the Convention and the IGC recognised the relevance of the legal personality which the ECB has under the current Treaty provisions. This is a key difference between the ECB and the other institutions of the Union, which do not have legal personality and can

represent the Union only by acting on its behalf and in its name. The ECB’s legal personality has both an internal and external dimension. This relates to the ECB’s ability to act internally, for example when operating in financial markets, or externally in the international arena, for example when managing foreign reserves or when the Community is involved in international agreements on monetary and foreign exchange regime matters. The European Constitution fully confirms the current provisions and provides in Article I-29(3) that the ECB “shall have legal personality”.

Finally, the regulatory powers of the ECB were confirmed. Under the current Treaty provisions, the ECB has regulatory powers, namely the right to issue legally binding acts for the fulfilment of its tasks. The European Constitution does not alter the ECB’s regulatory powers and confirms the involvement of the ECB in the legislative processes of the Union, requiring that the ECB be consulted on any proposed Union act in its field of competence.

Overall, it is clear that the special features of the ECB and the ESCB are preserved by the European Constitution. As regards the financial independence and legal personality of the ECB, the explicit recognition in Article I-29(3) even adds clarity to current provisions. The ESCB/ECB Statute, which is annexed to the Constitution and forms an integral part of it, likewise ensures that the special features of the ECB and the ESCB are retained. Thus, the European Constitution fully confirms and further clarifies the *sui generis* status of the ECB, which sets the ECB apart from the core EU institutions. That special status is further underlined by the classification of the ECB as one of the “other Institutions and bodies” of the Union and the ECB’s separation from the Union institutions listed in Article I-18, namely the European Parliament, the European Council, the Council of Ministers, the European Commission and the Court of Justice of the European Union.

The European Constitution also retains the current Treaty provisions concerning the status of the ESCB. The ESCB is explicitly mentioned in Article I-29(1) and dealt with in detail in Part III. The explicit reference in Part I and the detailed provisions in Part III ensure the full recognition of the functions and tasks that the ESCB fulfils. In this context, the ECB had suggested that Article I-29 also make reference to the independence of the national central banks, complementing Article III-80. This was not taken up by the IGC. However, the independence of the national central banks is still fully anchored in the European Constitution through the provisions of Part III.

In addition to the explicit reference to the ESCB, Article I-29 also introduces the term “Eurosystème”. This was suggested by the ECB, which has been using the term for several years. The term helps to clarify the differences between the two meanings of the acronym ESCB as used in the EC Treaty and the European Constitution. On the one hand, ESCB refers to the ECB and the national central banks of all the EU Member States. On the other hand, however, ESCB can also refer to the ECB and the national central banks of the Member States that have adopted the euro. The term “Eurosystème” refers to the latter, that is to say the ECB and the national central banks of the euro area.

The procedure for the appointment of members of the ECB’s Executive Board was also reviewed by the IGC. In accordance with the broad principle of seeking to bring the ECB more into line with certain aspects of the other EU institutions, the IGC decided that members of the ECB’s Executive Board should no longer be selected by “common accord” of the national governments and should instead be appointed by a qualified majority vote in the European Council. As far as the voting requirements in the European Council are concerned, the appointment procedure for Executive Board members was thus aligned with those in place for other prominent positions in the Union, such as the President of the Commission, the

Union Minister for Foreign Affairs and the President of the European Council. From the point of view of the ECB, the switch to QMV has no impact on the actual operation and effective functioning of the ECB and the ESCB. Hence, the ECB did not contribute to the discussion.

#### **OTHER RELEVANT PROVISIONS**

In addition to the substantial points detailed above, the Constitution also introduces other minor changes.

In order to provide for some flexibility in the revision of the European Constitution, the IGC introduced a simplified revision procedure (Article IV-7b). The procedure allows for amendments to the provisions in Part III concerning the Union’s internal policies, including the provisions relating to monetary policy. Revisions are to be adopted by a unanimous decision of the European Council without convening an IGC. Ratification by all Member States is still required. The European Parliament and the Commission must be consulted. Given that ratification by the Member States remains a prerequisite for revision, the legitimacy of revisions will be unaffected, while amendments can, in principle, be implemented more rapidly. As the ECB was already to be consulted in the event of institutional changes in the monetary area under the ordinary revision procedure, it requested – and was granted – an analogous right in respect of the simplified revision procedure.

One of the recurrent themes in the debates on the future of the EU was the need to strengthen the external dimension of the Union. This is reflected in several new provisions introduced by the European Constitution. Article III-90, for instance, provides for tools aimed at securing the euro’s place in the international monetary system. More specifically, it provides that euro area Member States in the Council may adopt decisions that establish common positions and ensure unified representation within international financial institutions and

conferences. In this context, the exclusive competence of the ECB for the monetary policy of the euro area and thus its right to determine the euro area's position on monetary policy remains clearly anchored in other provisions of the European Constitution.

The European Constitution introduces a minor change to the current simplified amendment procedure for selected provisions of the ESCB/ECB Statute and for the adoption of complementary legislation. In line with current Treaty provisions, Article III-79 provides that the Council may adopt European regulations or decisions concerning, for example, the collection of statistical information or an increase in the ECB's capital. Such complementary legislation or amendments to the ESCB/ECB Statute are to be initiated either by a proposal from the Commission or by a recommendation from the ECB. The European Constitution has, however, established in Article I-24(2) that, as a general rule, where the Council is not acting on a proposal from the Commission or from the Union Minister for Foreign Affairs, the voting requirements to be applied differ from those applicable to a Commission proposal. Consequently, an initiative that is based on a recommendation by the ECB requires a qualified majority of 72% of the members of the Council, representing at least 65% of the population of the Union. In contrast, an amendment under the simplified amendment procedure or a piece of complementary legislation initiated by means of a Commission proposal requires only the normal qualified majority of 55% of the members of the Council, representing 65% of the population of the Union (see Box 2 above). Although the ECB had suggested excluding Article III-79 from the scope of Article I-24(2), it accepted that Article I-24(2) is a reflection of an overarching principle of the European Constitution, namely that the Commission's right of initiative should be strengthened, in particular in policy areas that have traditionally been part of the intergovernmental realm. Notwithstanding those different voting requirements, the ECB's right to initiate

complementary legislation and amendments to the ESCB/ECB Statute remains intact under the European Constitution.

The discussion of the aspects of particular relevance to the ECB and the ESCB therefore demonstrates that no substantive changes have been made to the monetary framework of the EU. The European Constitution provides continuity by leaving intact the framework that has been so successful to date. That discussion also shows that, although some of the ECB's suggestions for clarifications have not been followed, the ECB successfully contributed to the negotiations on the European Constitution.

#### 4 CONCLUSION

The European Constitution represents a further milestone in the process of European integration. Although it introduces no drastic changes to the existing allocation of powers across the different levels of governance, it sets out the institutional framework of the EU in a more transparent way and increases the efficiency of the decision-making procedures. It also includes provisions that strengthen the democratic legitimacy of the EU. At the same time, where Economic and Monetary Union is concerned, the European Constitution confirms the status quo and introduces no changes to the substance of the current Treaty provisions. Monetary policy is recognised as an exclusive competence of the Union to be conducted by the Eurosystem. The prominent position of price stability in the mandate of the ECB and the ESCB and as an objective of the Union is preserved. The special institutional features of the ECB and the ESCB, namely the independence of the ECB and the national central banks, the legal personality of the ECB and its regulatory powers, are retained in full.

Both aspects of the European Constitution, the improvements in the overall framework and the decision-making on the one hand and the confirmation of the current Treaty provisions concerning EMU on the other, contribute to the

effective functioning of EMU. A strong and efficient Union that meets the demands of European citizens provides an important anchor for a successful EMU. At the same time, the current Treaty provisions already provide the EU with a suitable institutional framework for the conduct of monetary policy. Those provisions are therefore not altered by the European Constitution. The fact that the Convention and the IGC confirmed the existing institutional structure of the ECB and the ESCB after such close assessment is a clear recognition of the success of the existing monetary constitution and a sign that the present institutional structure of the ECB and the ESCB has become normal and stable.

The European Constitution tries to strike a balance between two potentially incompatible objectives. On the one hand, it seeks by its very nature to introduce a durable institutional framework that will provide stability for years to come. On the other hand, it seeks to avoid becoming an obstacle in the event that Member States wish to proceed further with the process of integration. Hence, the European Constitution includes a number of provisions which allow for partial changes without a full-scale revision of the European Constitution, such as the flexibility clause, the passerelle clause and enhanced cooperation. These provisions take into account the dynamic nature of the process of integration and thus offer flexibility within the overall stability provided by the European Constitution. European integration remains a gradual process, within which the European Constitution is an important stepping stone, albeit not the final destination. Further changes and developments are likely to occur in the future.

The European Constitution will enter into force once all 25 Member States have ratified it in accordance with their national procedures. In some countries this will involve a referendum. Given the debates that it has sparked, the ratification process will be the first major challenge that the European Constitution has to face. Its authors will have to convince

the European citizens that the European Constitution is in the interests of all of them.