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Decision no. 2012–653 DC of 9 AUGUST 2012

Treaty on Stability, Coordination and Governance in the Economic and Monetary Union

The Constitutional Council was seized by the President of the Republic on 13 July 2012 pursuant to Article 54 of the Constitution with the question as to whether authority to ratify the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, signed in Brussels on 2 March 2012, may only be granted after the Constitution has been amended;

THE CONSTITUTIONAL COUNCIL,

Having regard to the Constitution of 4 October 1958, and in particular Article 88–1 thereof;

Having regard to Ordinance no. 58–1067 of 7 November 1958 as amended, concerning the basic law on the Constitutional Council;

Having regard to the Treaty on European Union;

Having regard to the Treaty on the Functioning of the European Union;

Having regard to Council Regulation (EC) no. 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies;

Having regard to Council Regulation (EC) no. 1055/2005 of 27 June 2005 amending the aforementioned Regulation (EC) no. 1466/97 of 7 July 1997;

Having regard to Regulation (EU) no. 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending the aforementioned Regulation (EC) no. 1466/97 of 7 July 1997;

Having heard the Rapporteur;

1. Considering that the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union was signed on 2 March 2012 in Brussels by the plenipotentiaries of twenty five Member States of the European Union; that the Constitutional Council has been requested to consider whether this Treaty includes any provision which is unconstitutional;

2. Considering that, according to Article 1, the purpose of the Treaty is "to strengthen the economic pillar of the economic and monetary union"; that it applies in full to the Contracting Parties which use the euro as their currency; that the provisions of Title III, including Articles 3 to 8, lay down a range of rules intended to promote budgetary discipline through a "fiscal compact"; that the provisions of Title IV, including Articles 9 to 11, are intended to reinforce the coordination of economic and convergence policies; that the provisions of Title V, including Articles 12 and 13, are intended to "improve the governance of the euro area";

3. Considering that Article 2 provides that this Treaty "shall be applied and interpreted by the Contracting Parties in conformity with the Treaties on which the European Union is founded" and that it "shall apply insofar as it is compatible with the Treaties... and with European Union law"; that pursuant to Article 16, the States undertake to



incorporate the substance of the Treaty into the legal framework of the European Union within five years at most of its entry into force;

– THE REFERENCE LEGISLATION:

4. Considering that, according to the Preamble to the 1958 Constitution, "the French people solemnly proclaim their 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";

5. Considering that Article 3 of the 1789 Declaration of the Rights of Man and the Citizen provides that "the principle of all sovereignty resides essentially in the nation"; that the first paragraph of Article 3 of the 1958 Constitution provides that "national sovereignty shall vest in the people, who shall exercise it through their representatives and by means of referendum";

6. Considering that the fourteenth recital of the Preamble to the 1946 Constitution states that "the French Republic, faithful to its traditions, shall respect the rules of public international law", whilst the fifteenth recital states that "subject to reciprocity, France shall consent to the limitations upon its sovereignty necessary to the organisation and preservation of peace";

7. Considering that Article 53 of the 1958 Constitution enshrines the existence of "treaties or agreements relating to international organization"; that these treaties or agreements may only be ratified by the President of the Republic pursuant to law;

8. Considering that the French Republic participates in the European Union under the conditions set forth in Title XV of the Constitution; that pursuant to Article 88–1 of the Constitution: "The Republic shall participate in the European Union, constituted by States which have freely chosen to exercise some of their powers in common, by virtue of the treaties on the European Union and on the Functioning of the European Union, as derived from the Treaty signed in Lisbon on 13 December 2007"; that the constituent authority thereby enshrined the existence of a European Union legal system incorporated into the national legal order which is distinct from international law;

9. Considering that, whilst confirming the place of the Constitution at the pinnacle of the national legal order, these constitutional provisions enable France to participate in the creation and development of a permanent European organisation vested with legal personality and endowed with decision making powers as a result of the transfer of competence consented to by the Member States;

10. Considering however that where the commitments signed to this effect or which are closely related to this goal contain a clause which is unconstitutional, call into question the rights and freedoms guaranteed by the Constitution or run contrary to the essential conditions for the exercise of national sovereignty, authorisation to ratify them may only be granted after the Constitution has been amended;

11. Considering that it is having regard to these principles that the Constitutional Council is to examine the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union which, whilst "building upon the Treaties on which the European Union is founded", is not itself one of these treaties; that however those provisions of the Treaty which restate commitments previously made by France are not subject to constitutional review;

– THE PROVISIONS ON THE "FISCAL COMPACT":

12. Considering that, on the one hand, the first subparagraph of Article 20 of the Constitution provides: "The Government shall determine and conduct the policy of the Nation"; that the first subparagraph of Article 39 provides that "both the Prime Minister and Members of Parliament shall have the right to initiate legislation";

13. Considering on the other hand that Article 14 of the 1789 Declaration states that "All the citizens have a right to decide, either personally or by their representatives, as to the necessity of public contribution; to grant this freely; to know to what uses it is put; and to fix the proportion, the mode of assessment and of collection and the duration of the taxes"; that pursuant to Articles 14 and 15 of the 1789 Declaration, the State's revenue and expenditure must be presented in a sincere manner; that the first subparagraph of Article 24 of the Constitution provides that: "Parliament shall pass statutes. It shall monitor the action of the Government. It shall assess public policies"; that the first subparagraphs of Articles 47 and 47-1 provide that Parliament shall pass finance bills and social security financing bills in the manner provided for by an institutional act; that pursuant to subparagraphs eighteen, nineteen, twenty one and twenty two of Article 34: "Finance acts shall determine the revenue and expenditure of the State in the conditions and with the reservations provided for by an institutional act.

"Social security financing acts shall lay down the general conditions for the financial equilibrium thereof, and taking into account forecasted revenue, shall determine expenditure targets in the conditions and with the reservations provided for by an institutional act.

"The multiannual guidelines for public finances shall be established by Programming Acts. They shall contribute to achieving the objective of balanced accounts for public administrations.

"The provisions of this Article may be further specified and completed by an institutional act";

As regards the rules on balanced public finances:

14. Considering that paragraph 1 of Article 3 of the Treaty reinforces the rules of fiscal discipline for the contracting States by making provision that, in addition to their obligations under European Union law, the States undertake to ensure that the the budgetary position of their public administration is balanced or in surplus; that letter b) of paragraph 1 defines this position as one in which the "annual structural balance of the general government is at its country-specific medium-term objective, as defined in the revised Stability and Growth Pact, with a lower limit of a structural deficit of 0,5 % of the gross domestic product at market prices"; that it provides that the parties shall ensure rapid convergence towards this objective according to a time-frame which "will be proposed by the European Commission"; that letters c) and d) of paragraph 1 stipulate the situations and circumstances under which the requirement of convergence on this objective may be relaxed, either temporarily in cases involving "exceptional circumstances" or, subject to a structural deficit limit of 1 % at most, "where the ratio of the general government debt to gross domestic product at market prices is significantly below 60 %" and where "risks in terms of long-term sustainability of public finances are low"; that subparagraph e) provides for "a correction mechanism" in the event of significant deviations "from the medium-term objective or the adjustment path towards it", which requires the contracting State to "implement measures to correct the deviations over a defined period of time";

15. Considering that France is already required to comply with the requirements resulting from Article 126 of the Treaty on the Functioning of the European Union on fighting excessive government deficits as well as protocol no. 12, appended to the Treaties on the European Union, on the excessive deficit procedure; that these requirements include a reference value set at 3 % as the maximum ratio between the expected or actual public deficit and the gross domestic product at market prices;

16. Considering that the aforementioned Regulation of 7 July 1997, as amended by the aforementioned Regulations of 27 June 2005 and of 16 November 2011, sets at - 1 % of gross domestic product the medium-term structural debt objective; that the provisions of paragraph 1 of Article 3 of the treaty reassert the provisions set forth under these regulations and also lower this medium-term objective from - 1 % to - 0.5 % of gross domestic product; that accordingly these provisions reassert those implementing the commitment of the Member States of the European Union to coordinate their economic policies in accordance with Articles 120 to 126 of the Treaty on the Functioning of the European Union; that they do not result in the transfer of any powers over economic or fiscal policy and do not authorise any such transfers; that the commitment to comply with these new rules does not infringe upon the essential



conditions for the exercise of national sovereignty any more than the earlier commitments of budget discipline;

As regards the application within national law of the rules on balanced public finances:

17. Considering that pursuant to paragraph 2 of Article 3 of the Treaty: "The rules set out in paragraph 1 shall take effect in the national law of the Contracting Parties at the latest one year after the entry into force of this Treaty through provisions of binding force and permanent character, preferably constitutional, or otherwise guaranteed to be fully respected and adhered to throughout the national budgetary processes. The Contracting Parties shall put in place at national level the correction mechanism referred to in paragraph 1 (letter e), on the basis of common principles to be proposed by the European Commission, concerning in particular the nature, size and time-frame of the corrective action to be undertaken, also in the case of exceptional circumstances, and the role and independence of the institutions responsible at national level for monitoring compliance with the rules set out in paragraph 1. Such correction mechanism shall fully respect the prerogatives of national Parliaments";

18. Considering that, as soon as France has ratified the Treaty and it has entered into force, the rules laid down in paragraph 1 of Article 3 will apply to it; that according to the "pacta sunt servanda" rule, France will be bound by these provisions which it will be required to apply in good faith; that the fiscal situation of general government will be required to be balanced or in surplus under the conditions laid down by the Treaty; that pursuant to Article 55 of the Constitution, it will be hierarchically superior to legislation; that it will be for the different organs of State to monitor the application of this Treaty, within the scope of their respective competences; that Parliament will be in particular required to comply with its provisions when enacting finance laws and social security financing laws; that paragraph 2 of Article 3 moreover requires that national legislation be adopted in order to ensure that the rules set forth in paragraph 1 of that Article take effect;

19. Considering that the provisions of paragraph 2 of Article 3 stipulate an alternative whereby the contracting States undertake to ensure that the rules laid down in paragraph 1 of Article 3 take effect under national law either "through provisions of binding force and permanent character, preferably constitutional" or through provisions "otherwise guaranteed to be fully respected and adhered to throughout the national budgetary processes";

20. Considering that under the former alternative, the rules on balanced public finances must take effect through "provisions of binding force and permanent character"; that this option requires the direct introduction of such rules into the national legal order in order for them to apply through the latter to finance laws and social security financing laws;

21. Considering that the Constitution lays down the prerogatives of the Government and Parliament in the elaboration and enactment of finance laws and social security financing laws; that the principle that finance laws are to be enacted annually results from Articles 34 and 47 of the Constitution and applies with respect to the calendar year; that the direct introduction of provisions of binding force and permanent character mandating compliance with rules on balanced public finances requires that these constitutional provisions be amended; that consequently, if France chooses to give effect to the rules laid down in paragraph 1 of Article 3 through provisions of binding force and permanent character, authorisation to ratify the Treaty may only be granted after the Constitution has been amended;

22. Considering that, under the second alternative, the aforementioned provisions leave the States with the freedom to determine the provisions the full respect for and adherence to which "otherwise" guarantees that the rules on balanced public finances will take effect under national law; that in this case, adherence to the rules laid down in paragraph 1 of Article 3 will not be guaranteed by provisions "of binding force"; that on the one hand, it is for the Member States to determine, for the purpose of ensuring that their commitment is respected, the provisions having the effect required under paragraph 2; that on the other hand, the Treaty stipulates that adherence to the rules laid down in paragraph 1 of Article 3 will not be guaranteed under national law by a provision that is hierarchically superior to legislation;

23. Considering that this second alternative implies that the provisions adopted in order to ensure that the terms of paragraph 1 of Article 3 will take effect apply "throughout the budgetary processes"; that they must therefore be of a permanent character; that they must moreover apply to all "government services";

24. Considering that the twenty second subparagraph of Article 34 of the Constitution enables an institutional act to be enacted in order to specify the framework of policy laws on multiannual guidelines for public finances; that on this basis and on the basis of subparagraphs eighteen and nineteen of Article 34 of the Constitution with regard to finance laws and social security financing laws, the institutional act may adopt provisions applicable to these relative laws in order to ensure that the rules laid down in paragraph 1 of Article 3 of the Treaty take effect subject to the conditions provided for under this second alternative, in particular with the medium-term objective as well as the adjustment path for the fiscal situation of general government, the corrective mechanism for the latter and the independent institutions throughout the budgetary process;

25. Considering that the "correction mechanism" provided for under letter e) of paragraph 1 which the States undertake to put in place must be "triggered automatically" in the event of significant observed deviations from the medium-term objective or the adjustment path towards it" and must include "the obligation of the Contracting Party concerned to implement measures to correct the deviations over a defined period of time"; that the provisions of the Treaty imply that the implementation of this correction mechanism will lead to measures regarding all public administrations, especially the State, local government and social security bodies; that these provisions do not define either the procedures according to which this mechanism must be triggered or the measures which must be implemented as a result; that they therefore leave the States free to determine these procedures and measures in accordance with their constitutional law; that according to the last phrase of paragraph 2, this correction mechanism cannot breach the prerogatives of the national parliaments; that it does not breach either the principle of freedom in the administration of local government bodies or the constitutional requirements referred to above;

26. Considering that the independent institutions provided for under the Treaty must monitor compliance with all of the rules set forth in paragraph 1 of Article 3; that they will state their opinion on adherence to the balanced budget rules and, as the case may be, on the correction mechanism which is "triggered automatically"; that no constitutional requirement precludes one or more independent institutions being charged on national level with monitoring adherence to the rules set forth in paragraph 1 of Article 3 of the Treaty;

27. Considering that the Constitutional Council is charged with reviewing the constitutionality of policy laws on multiannual guidelines for public finances, finance laws and social security financing laws; that, when seized pursuant to Article 61 of the Constitution, it must in particular ensure that these laws have genuinely been enacted for this purpose; that it must conduct this review taking account of the opinions of independent institutions established in advance;

28. Considering that according to the above, if in order to comply with the commitment stated in paragraph 1 of Article 3, France chooses to adopt an institutional act having the effect required under paragraph 2, in line with the second alternative stated in the first phrase of paragraph 2 of Article 3, authorisation to ratify the treaty may only be granted after the Constitution has been amended;

As regards Article 8:

29. Considering that Article 8 stipulates the conditions under which, following the presentation of a report by the European Commission which concludes that one of the parties has not complied with paragraph 2 of Article 3, the Court of Justice of the European Union may be seized by one or more parties to the Treaty; that the last sentence of paragraph 1 of Article 8 provides that "the judgment of the Court of Justice shall be binding on the parties to the proceedings, which shall implement the necessary measures to comply with the judgment within a period to be decided by the Court of Justice"; that in the event that the Court's ruling is not complied with, it may once again be seized by one of the parties to the Treaty with a view to imposing financial penalties on that State;



30. Considering that paragraph 2 of Article 3 does not require that the Constitution be amended in advance, the provisions of Article 8 do not have the effect of enabling the Court of Justice of the European Union to assess within this framework whether the provisions of the Constitution are compatible with the terms of this Treaty; that accordingly, if France decides to give effect to the rules laid down in paragraph 1 of Article 3 of the Treaty in accordance with the procedures stated in the second alternative in the first sentence of paragraph 2 of Article 3, Article 8 will not infringe the essential conditions for the exercise of national sovereignty;

As regards the other Articles of Title III:

31. Considering that Article 4 concerns excessive deficits resulting from the failure to comply with the debt criteria; that it does not include any clause which is unconstitutional;

32. Considering that Article 5 imposes a duty for any party that is subject to an excessive deficit procedure to put in place a budgetary and economic partnership programme which shall be submitted to the Council of the European Union and to the European Commission for endorsement; that the existence of such a programme does not have any binding consequences under national law;

33. Considering that Article 6 provides that the parties shall report ex-ante on their public debt issuance plans to the Council of the European Union and to the European Commission; that this only establishes a duty to provide information;

34. Considering that Article 7 stipulates that the parties commit to supporting the proposals or recommendations submitted by the European Commission where it considers that a State is in breach of the deficit criterion, unless a qualified majority of the States is opposed to the decision proposed or recommended; that it entails a simple commitment to apply a majority rule with greater binding force than that provided for under European Union law within the ambit of the commitment relating to the excessive deficit procedure; that this change to the applicable decision making rules does not replace the rule of unanimity;

– THE OTHER PROVISIONS OF THE TREATY:

35. Considering that the provisions of Title IV on economic policy coordination and convergence entail commitments relating to measures applying the treaties on which the European Union is founded; that the provisions of Title V on the governance of the euro area in the same way entail commitments regarding this governance; that none of these provisions contain any new binding clause in addition to the clauses contained in the treaties relating to the European Union, which would hence be unconstitutional;

– THE TREATY AS A WHOLE:

36. Considering that, for the reasons set out above, subject to the conditions specified in recitals 21, 28 and 30, the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union does not contain any unconstitutional provisions.

HELD :

Article 1. – Subject to the conditions specified in recitals 21, 28 and 30, the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, signed on 2 March 2012, does not contain any unconstitutional provisions.

Article 2. – This decision shall be served on the President of the Republic and published in the *Journal officiel* of the French Republic.



Deliberated by the Constitutional Council in its session of 9 August 2012, sat on by: Mr Jean Louis DEBRÉ, President, Mr Jacques BARROT, Mrs Claire BAZY MALAURIE, Mr Guy CANIVET, Mr Michel CHARASSE, Mr Renaud DENOIX de SAINT MARC, Mr Valéry GISCARD d'ESTAING, Mrs Jacqueline de GUILLENCHMIDT, Mr Hubert HAENEL and Mr Pierre STEINMETZ.