

DECISION 92-312 DC OF 2 SEPTEMBER 1992
Treaty on European Union

On 14 August 1992 the Constitutional Council received a referral from Mr Charles PASQUA, Mr Jean CHAMANT, Mr Maurice COUVE de MURVILLE, Mr Michel PONIATOWSKI, Mr Maurice SCHUMAN, Mr Bernard BARBIER, Mr Philippe de GAULLE, Mr Christian de LA MALÈNE, Mr Bernard SELLEIR, Mr Christian PONCELET, Mr Henri de RAINCOURT, Mr Yves GUÉNA, Ms Hélène MISSOFFE, Mr Michel ALLONCLE, Mr Hubert d'ANDIGNE, Mr Honoré BAILET, Mr Jacques BÉRARD, Mr Roger BESSE, Mr Amédée BOUQUEREL, Mr Jacques BRACONNIER, Ms Paulette BRISEPIERRE, Mr Michel CALDAGUÈS, Mr Robert CALMEJANE, Mr Jean-Pierre CAMOIN, Mr Auguste CAZALET, Mr Gérard CÉSAR, Mr Michel CHAUTY, Mr Henri COLLETTE, Mr Charles de CUTTOLI, Mr Michel DOUBLET, Mr Franz DUBOSQ, Mr Alain DUFAUT, Mr Pierre DUMAS, Mr Michel FORTIER, Mr Philippe FRANÇOIS, Mr François GERBAUD, Mr Charles GINESY, Ms Marie-Fanny GOURNAY, Mr Georges GRUILLOT, Ms Nicole de HAUTECLOQUE, Mr Emmanuel HAMEL, Mr Bernard HUGO, Mr Roger HUSSON, Mr André JARROT, Mr Gérard LARCHER, Mr René-Georges LAURIN, Mr Marc LAURIOL, Mr Jean-François LE GRAND, Mr Maurice LOMBARD, Mr Michel MAURICE-BOKANOWSKI, Mr Jacques de MENOUE, Mr Lucien NEUWIRTH, Mr Geoffroy de MONTALEMBERT, Mr Arthur MOULIN, Mr Jean NATALI, Mr Paul d'ORNANO, Mr Joseph OSTERMANN, Mr Jacques OUDIN, Mr Soséfo Makapé PAPILIO, Mr Alain PLUCHET, Mr Claude PROUVOYEUR, Mr Roger RIGAUDIÈRE, Mr Jean-Jacques ROBERT, Ms Nelly RODI, Mr Jean SIMONIN, Mr Jacques SOURDILLE, Mr Martial TAUGOURDEAU, Mr Jacques VALADE, Mr Serge VINÇON and Mr André-Georges VOISIN, Senators, pursuant to Article 54 of the Constitution as amended by Article 2 of Constitutional Act No 92-554 of 25 June 1992, asking it to rule on the “conformity of the Maastricht Treaty” with the Constitution.

THE CONSTITUTIONAL COUNCIL,

Having regard to the Constitution of 4 October 1958,
Having regard to the Preamble to the Constitution of 27 October 1946,
Having regard to Ordinance 58-1067 of 7 November 1958 enacting the Institutional Act on the Constitutional Council, and in particular Articles 18(2), 19 and 20 thereof,
Having regard to the Treaty on European Union signed at Maastricht on 7 February 1992,
Having regard to Decision 92-308 DC of 9 April 1992,
Having regard Constitutional Act 92-554 of 25 June 1992 inserting a new Title entitled “The European Communities and the European Union” in the Constitution, and in particular Articles 2 and 5 thereof,
Having heard the rapporteur,

On the following grounds:

1. The Treaty on European Union was signed at Maastricht on 7 February 1992 by the Plenipotentiaries of twelve States; the representatives of the French Republic appended their signatures thereto; a set of Protocols and Declarations was also adopted.
2. On 11 March 1992 the President of the Republic, pursuant to Article 54 of the Constitution, referred to the Constitutional Council the question whether, in view of the agreements entered into by France and the terms of their entry into force, authorisation to ratify the Treaty on

European Union, signed at Maastricht on 7 February 1992, must be preceded by revision of the Constitution.

3. By reasoned Decision given on 9 April 1992 the Constitutional Council held that authorisation by statute to ratify the Treaty on European Union could be given only after revision of the Constitution.

4. By Article 62 of the Constitution, “decisions of the Constitutional Council ... shall be binding on public authorities and on all administrative authorities and all courts”; the authority enjoyed by a decision attaches not only to the operative part but also to the grounds given as the basis for it.

5. When the Constitutional Council, on a referral pursuant to Article 54 of the Constitution, has decided that statutory authorisation to ratify an international agreement requires prior revision of the Constitution, the procedure for constitutional review of that agreement established by Article 54 cannot be initiated afresh without casting doubt on the authority of the Constitutional Council’s decision in accordance with Article 62, save in two circumstances – first, where it is found that conflict subsists between the Constitution as amended and the treaty, and – second, where new provisions are inserted in the Constitution which have the effect of generating fresh incompatibility with one or more provisions of the material treaty.

6. The Constitutional Council should undertake its review of arguments presented by the authors of the referral in the light of these principles.

ON THE ARGUMENT THAT THE TREATY IS NOT RATIFIABLE:

7. The authors of the referral argue that by Article R of the Treaty on European Union the Treaty cannot enter into force unless ratified by all Contracting Parties; given the results of the referendum held in one of the signatory States on 2 June 1992, they argue that the Treaty signed on 7 February 1992 is not capable of being ratified as it stands; they ask the Constitutional Council to seek the advice of international experts and the Community institutions on the legal consequences of this situation; they ask the Constitutional Council to rule on the conditions in which “the Treaty once ratified could enter into force”; in their final observations the authors of the referral deduce from the fact that one of the Member States has failed to ratify the Treaty on European Union that the Treaty cannot be ratified by France without violation of paragraph 14 of the Preamble to the Constitution of 1946, which requires it to comply with the rules of public international law.

8. By the first paragraph of Article 52 of the Constitution, “the President of the Republic shall negotiate and ratify treaties”; the second paragraph requires him to be informed of all negotiations for international agreements not requiring ratification; the treaties specified in the first paragraph of Article 53 of the Constitution “may be ratified or approved only by virtue of an Act of Parliament”; the second paragraph of Article 53 specifies that the international agreements mentioned in the first paragraph “shall not take effect until they have been ratified or approved”.

9. Article 54 of the Constitution, as amended by Constitutional Act 92-554 of 25 June 1992, reads: “If the Constitutional Council, on a referral from the President of the Republic, from the Prime Minister, from the President of one or the other assembly, or from sixty deputies or sixty senators, has declared that an international commitment contains a clause contrary to the Constitution, authorisation to ratify or approve the international commitment in question may be given only after revision of the Constitution.”

10. It follows that an international agreement may be referred to the Constitutional Council on the basis of Article 54 of the Constitution as soon as it has been signed on behalf of the French Republic and before the domestic legal instrument authorising its ratification or

approval has been enacted; the admissibility of a referral on the basis of Article 54 is in no way dependent on the process of ratification of the international agreement in other signatory States; nor does admissibility depend on realisation of the conditions for international entry into force.

11. It is common ground that the Treaty on European Union was signed on behalf of the French Republic on 7 February 1992; at the time of the present decision the statute authorising its ratification has not yet been enacted; the authors of the referral are accordingly entitled to refer this international agreement to the Constitutional Council on the basis of Article 54 of the Constitution.

12. The arguments raised by them as to the state of the ratification process in other countries and the conditions for entry into force have no impact on the very existence of the international agreement that they are referring; it is accordingly in order for the Constitutional Council to exercise its review, subject to the *res judicata* status of its decision of 9 April 1992, on the question whether or not authorisation to ratify the Treaty on European Union must be preceded by revision of the national Constitution; the Constitutional Council's exercise of that review, which is intended to have effect in the domestic legal order, in no way contravenes public international law.

13. The plea that the Treaty on European Union is not in a state to be ratified must, therefore, be dismissed, without it being necessary for the Constitutional Council to order the supplementary investigation requested in the referral.

ON THE TREATY'S PROVISIONS AS TO THE RIGHT TO VOTE AND STAND AS CANDIDATE AT MUNICIPAL ELECTIONS:

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

15. In its decision of 9 April 1992 the Constitutional Council held that the fourth paragraph of Article 3 of the Constitution, read with the third paragraph of the same Article and Articles 24 and 72, implied that only "French nationals" were entitled to vote and stand as candidates at elections of local decision-making bodies, and notably of municipal councils and members of the Council of Paris. As it stood, Article 8b(1) inserted in the Treaty establishing the European Community was unconstitutional.

16. Section 5 of the Constitutional Act of 25 June 1992 inserted in the Constitution a new Article 88-3 worded as follows: "Subject to reciprocity and in accordance with the terms of the Treaty on European Union signed on 7 February 1992, the right to vote and stand as a candidate in municipal elections shall be granted only to citizens of the Union residing in France. Such citizens shall neither exercise the office of mayor or deputy mayor nor participate in the designation of Senate electors or in the election of senators. An institutional Act passed in identical terms by the two houses shall determine the manner of implementation of this Article".

17. The authors of the referral argue that despite the insertion of Article 88-3 in the Constitution, the Treaty on European Union remains unconstitutional since the constituent power has not amended Article 3 of the Constitution or paragraph 3 of the Declaration of

Human and Civic Rights, which assert the principle of national sovereignty and the exclusive right of French nationals to vote and stand for election by way of expression of national sovereignty; they also argue that the Treaty is contrary to Article 24 of the Constitution (representation of local authorities in the Senate) and that Article 8b of the Treaty is incompatible with Article 88-3 of the Constitution since the latter provides for an optional right to vote and stand for election for Community nationals.

Regarding the argument that paragraph 3 of the Declaration of 1789 is infringed:

18. In its decision of 9 April 1992 the Constitutional Council held that there was no constitutional conflict between Article 8b(1) and paragraph 3 of the Declaration of 1789; the argument raised by the authors of the referral is consequently defeated by the *res judicata* status of the Constitutional Council's decision.

Regarding the argument that the Treaty is contrary to Article 3 of the Constitution:

19. Subject to the provisions governing the periods in which the Constitution cannot be revised (Articles 7 and 16 and the fourth paragraph of Article 89) and to compliance with the fifth paragraph of Article 89 ("The republican form of government shall not be the object of an amendment"), the constituent authority is sovereign; it has the power to repeal, amend or amplify constitutional provisions in such manner as it sees fit; there is accordingly no objection to insertion in the Constitution of new provisions which derogate from a constitutional rule or principle; the derogation may be express or implied.

20. By the first sentence of Article 88-3 of the Constitution, "Subject to reciprocity and in accordance with the terms of the Treaty on European Union signed on 7 February 1992, the right to vote and stand as a candidate in municipal elections shall be granted only to citizens of the Union residing in France"; it cannot therefore be validly argued that Article 8b(1) inserted in the Treaty establishing the European Community by Article G of the Treaty on European Union is contrary to Article 3 of the Constitution.

Regarding the argument that the Treaty is contrary to Article 24 of the Constitution:

21. The authors of the referral argue that, since the designation of municipal councillors has an impact on the election of senators, the recognition of the right of non-nationals to vote and stand as candidates at municipal elections requires prior amendment of Article 24 of the Constitution; it is true that by the second sentence of Article 88-3, nationals of other Member States of the European Union "shall neither exercise the office of mayor or deputy mayor nor participate in the designation of Senate electors or in the election of senators", but they can elect municipal councillors; their participation in such elections has an impact on the election of senators through the designation of senatorial delegates.

22. There is no doubt that the combined effect of Articles 3, 24 and 72 of the Constitution is that the Senate, elected by indirect universal suffrage, represents the territorial subdivisions of the Republic, whose decision-making bodies are themselves elected by universal suffrage; the designation of the decision-making body of a territorial subdivision is thus liable to have an impact on the election of senators via the multi-stage indirect suffrage system.

23. But, as has been seen, the first sentence of Article 88-3 of the Constitution provides for recognition of the right to vote and the conditions of eligibility in local elections of those citizens of the European Union who are resident in France but do not have French nationality, on the terms laid down by the Treaty on European Union; this necessarily entails a derogation from Articles 3, 24 and 72 of the Constitution, with which Article 8b(1) was in conflict; the

second sentence of Article 88-3, whereby nationals of other Member States of the European Union “may not participate either in the nomination of those to elect senators or directly in the election of senators”, implies that Union nationals other than French nationals cannot as municipal councillors take part in subsequent stages of the process of electing senators within the meaning of Article 59 of the Constitution.

24. It follows that Article 8b(1) is in no way contrary to Article 24 of the Constitution.

Regarding the argument that Article 88-3 provide for the optional right of Community nationals to vote and stand as candidates at election:

25. The authors of the referral argue that in the course of the debates preceding the enactment of the Constitutional Act of 25 June 1992 Article 88-3 was regarded by the government as contrary to Article 8b inserted in the Treaty establishing the European Community since the right of Community nationals to vote and stand as candidates was optional and not compulsory; they ask the Constitutional Council to consider ex officio the question of the incompatibility of Article 8b and Article 88-3 of the Constitution.

26. The first sentence of Article 88-3 of the Constitution, whereby on condition of reciprocity and according to the terms and conditions laid down in the Treaty on European Union the right to vote and run in local elections “may be granted” to those citizens of the European Union who are resident in France serves to remove the constitutional barrier to general recognition of the relevant right; with the reference to “the terms and conditions laid down in the Treaty on European Union” the constituent authority took account of the fact that by Article 8b(1) inserted in the Treaty establishing the European Community the right of Community nationals to vote and stand as candidates at elections in the Member State where they reside is to be exercised “subject to detailed arrangements to be adopted by the Council prior to 31 December 1994, consisting of a ministerial representative of each Member State, acting unanimously on a proposal from the Commission and after consultation of the European Parliament”.

27. It is true that the third sentence of Article 88-3 provides that “An institutional statute passed in identical terms by the two Houses of Parliament shall lay down the conditions for application of this Article”.

28. The reference to an institutional act for the purposes of determining the conditions for implementing Article 88-3 implies that the act shall itself be in accordance with the rules governing rights of non-French Community nationals to vote and stand for election “provided for by the Treaty on European Union”; the institutional act will have to be in accordance with the rules issued by the European Community for the exercise of the right conferred by Article 8b(1).

29. It follows that the objection of unconstitutionality against the provisions of the Treaty governing the right of non-French community nationals to vote and stand as candidate at municipal elections must be dismissed.

ON THE ARGUMENT THAT THE TREATY DEPRIVES PARLIAMENT OF CERTAIN POWERS, CONTRARY TO ARTICLES 3 AND 34 OF THE CONSTITUTION:

30. According to the authors of the referral, several provisions of the Treaty are calculated to deprive Parliament of certain of its powers; this jeopardises the prerogatives of the representatives of the people; accordingly Articles 3 and 34 of the Constitution should have been amended to ensure that the Constitution and the Treaty were in line with each other.

31. This analysis is applied not only to the attainment of the third stage of economic and monetary union but also to series of other provisions of the Treaty; the authors particularly mention the provisions relating to security, Article 104c inserted in the Treaty establishing the European Community and the new Article 171 of that Treaty, whereby the European Court of Justice is empowered to penalise a Member State which fails to comply with its obligations pursuant to the Treaty.

Regarding the third stage of economic and monetary union:

32. In its decision of 9 April 1992 the Constitutional Council concluded from the provisions applicable from the beginning of the third stage of economic and monetary union that the achievement of such union would entail the establishment of a single monetary and exchange-rate policy on terms that would deprive each individual Member State of the essential conditions for the exercise of its national sovereignty; it accordingly held that as they stood the provisions of the Constitution precluded France from taking part in the economic and monetary union provided for by the Treaty.

33. Article 88-2 inserted in the Constitution by the Constitutional Act of 25 June 1992 reads: “Subject to reciprocity and in accordance with the terms of the Treaty on European Union signed on 7 February 1992, France agrees to the transfer of powers necessary for the establishment of European economic and monetary union”.

34. The constituent power is sovereign, save only for the exceptions indicated above; it has power to repeal, amend and amplify constitutional provisions in such manner as it sees fit.

35. The effect of Article 88-2 is to remove the constitutional obstacles to integration of France into the economic and monetary union established by the Treaty; it is within the constituent authority’s discretionary power to decide whether to insert a new provision in the Constitution rather than amending or amplifying Articles 3 and 24 on the powers of the representatives of the people; the argument that those Articles are violated is thus devoid of substance.

Regarding the other provisions of the Treaty alleged to be contrary to Articles 3 and 24 of the Constitution:

36. In its decision of 9 April 1992 the Constitutional Council, after indicating which provisions of the Treaty referred to it were as matters stood contrary to the Constitution, held that this was not the case of other provisions of the international agreement referred to it; the authority of *res judicata* enjoyed by decisions of the Constitutional Council is such that the provisions of the Treaty relating to “security”, nor Article 104c inserted in the Treaty establishing the European Community nor the new form of Article 171 can validly be impugned.

ON THE TREATY’S PROVISIONS RELATING TO THE ENTRY AND MOVEMENT OF PERSONS:

37. The argument that Articles 3 and 34 of the Constitution have not undergone the requisite amendment, analogous to the preceding argument, is presented in the referral as regards the Treaty’s provisions relating to the entry and movement of persons; it is further argued that Article 100c inserted in the Treaty establishing the European Community is unconstitutional, as regards not only paragraph 3 but also paragraphs 1, 4 and 5.

Regarding the absence of express amendment of Articles 3 and 34 of the Constitution:

38. In its decision of 9 April 1992 the Constitutional Council inferred from the measures relating to the entry and movement of persons in the internal market, applicable from 1 January 1996, that the exercise by the State of essential powers inherent in its sovereignty would be affected; it held that paragraph 3 of Article 100c inserted in the Treaty establishing the European Community by Article G of the Treaty on European Union was unconstitutional.

39. By Article 88-2 inserted in the Constitution by the Constitutional Act of 25 June 1992, “On condition of reciprocity and according to the terms and conditions laid down in the Treaty on European Union signed on 7 February 1992, France agrees to the transfer of such powers as are necessary for the ... making of rules governing the crossing of the external borders of the Member States of the European Community”.

40. The purpose of this Article is to remove constitutional barriers identified by the Constitutional Council in its decision of 9 April 1992 in the particular field to which it relates; the constituent power is sovereign, save only for the exceptions indicated above; it has power to repeal, amend and amplify constitutional provisions in such manner as it sees fit; the argument by the authors of the referral that the constitution and the Treaty are incompatible is thus devoid of substance.

Regarding paragraphs 1, 4 and 5 of Article 100c:

41. In its decision of 9 April 1992 the Constitutional Council, after analysing the content of paragraphs 1, 4 and 5 of Article 100c inserted in the Treaty establishing the European Community, concluded that they were in no way unconstitutional; the observations made by the authors of the referral on these three paragraphs, which question the status of *res judicata* of earlier Constitutional Council decisions, are accordingly devoid of all substance.

ON THE ARGUMENT THAT ARTICLE 20 OF THE CONSTITUTION IS VIOLATED:

42. By the first paragraph of Article 20 of the Constitution, “the Government shall determine and conduct the policy of the nation”; the authors of the referral maintain that the Article should have been amended by the constituent authority to take account of the Treaty’s provisions concerning economic and monetary policy, the common foreign and security policy and cooperation in the field of police and home affairs.

43. For reasons similar to those set out earlier in relation to the absence of express amendment of Articles 3 and 34 of the Constitution, the argument that Article 20 is violated cannot be entertained; this argument casts doubt on the sovereign power of the constituent authority in respect of the third stage of economic and monetary union; moreover, it is defeated by the *res judicata* status of the Constitutional Council’s decision.

ON THE ARGUMENT RELATING TO THE LIMITS TO THE POWER TO ADAPT THE CONSTITUTION TO EUROPEAN INTEGRATION:

44. The authors of the referral proceed from the concept that the French constitutional order is constructed around the central notion of national sovereignty to ask the Constitutional Council how far it is possible to go with revisions of the Constitution to effect successive inroads into “the essential conditions for the exercise of sovereignty”.

45. Article 54 of the Constitution as originally drafted and as amended by Article 2 of the Constitutional Act of 25 June 1992 confers jurisdiction on the Constitutional Council solely to ascertain whether a given international agreement referred to does or does contain clauses

contrary to the Constitution; the question put by the authors of the referral is not whether the Treaty on European Union contains clauses contrary to the Constitution; the argument must accordingly be disregarded.

ON THE TREATY AS A WHOLE:

46. The Treaty on European Union does not contain clauses contrary to the Constitution; authorisation to ratify it may accordingly be given by statute.

Has decided as follows:

Article 1

The Treaty on European Union signed at Maastricht on 7 February 1992 is not contrary to the Constitution.

Article 2

This Decision shall be published in the *Journal officiel de la République française*.

Deliberated by the Constitutional Council at its sitting of 2 September 1992.