

NOTE 2

Chapter IX
SIMPLIFIED AMENDMENT PROCEDURE

1. The Statute will be included in a Protocol amending the EEC-Treaty. It will form an integral part of the Treaty (see art. 239). Its revision will follow the procedure provided by Article 236 for the revision of the Treaty.

This procedure of revision lacks of flexibility. It requires the unanimous consent of every Member State and its Parliament for the revision of every single provision of the Statute.

The necessity of a simplified procedure for at least a significant number of these provisions has been generally admitted.

2. The procedure has to satisfy two basic requirements : efficiency and legitimacy.

The importance of the attribution of powers to the Community and to the ESCB resulting from the creation of a monetary union makes necessary the adoption of a legislative procedure which respects the requirement of direct democratic legitimacy.

In many official documents, the necessity to strengthen the democratic legitimacy of the Community and, consequently to increase the power of the European Parliament, has been stressed. Let us refer, for ex., to the Belgian Memorandum of March 1990, the "document of reflexion" adopted by the Foreign Affairs Ministers for the meeting of the European Council at Dublin of 25-26 June 1990, the letter of 13 July 1990 of the Italian Presidency concerning the revision of the EEC-Treaty, the resolution of July 11, 1990 of the European Parliament (Martin report), etc.

This matter which will be at the center of the discussion during the intergovernmental Conference on Political Union (the so-called second Conference) has a particular relevance for the realization and functioning of the EMU.

In every Member State, indeed, it pertains to the (democratic) legislative power to define and modify the organic rules of the Central Bank.

It is the reason why it could seem inappropriate to propose, at this stage, a procedure which would possibly not be in line with the orientation of the second Conference as far as the legislative power of the Community institutions is concerned.

3. Having these considerations in mind, what are the possible procedures of simplified revision under European Community law (EEC Treaty) as it is (a) and as it could possibly be changed (b) ?

a. One has to distinguish between "legislative" procedures (1°) and specific procedures of revision (2°).

1° - "Normal" procedure under the EEC-Treaty : proposal by the Commission, opinion of the Parliament, decision by the Council by unanimous vote (as in Article 235) or on qualified majority.

The initiative is, as a matter of principle, a prerogative for the Commission.

- The Single European Act (SEA) as added a new type of procedure, known as the "cooperation procedure", for a number of decisions. It is based on a double-reading system and gives more possibility for the Parliament to influence the decision, although the Council has the last say in the process.

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- For association agreements under Article 238 and accession agreements under Article 237, the Parliament has been given by the SEA a right of consent. It can block the adoption of the agreement. It is a form of "co-decision".

2° Specific procedures of revision are provided by some Articles, for ex., art. 166 : the number of the judges and advocates general of the Court of Justice, can be modified by the Council acting unanimously, upon request of the Court (for the number of members of the Commission, see art. 10, Merger Treaty); art. 126 : the Council acting unanimously, with the advice of the Commission and after consultation of the Economic and Social Council can determine new missions for the European Social Fund.

b. One cannot predict the result of the second Conference. It can adopt a modification of the cooperation procedure, as the Belgian government has suggested or a new procedure which could substitute or complement the existing ones.

It is in any case, evident that a modification of the Treaty, if it is achieved on this point, would increase the power of the Parliament.

4. Some further observations could be made, should the Committee of Governors decide to prefer proposing a procedure of revision.

The ECB will be consulted on the draft legislation as provided in Article 4.

Considering the arguments mentioned above, it would not be conform to the requirements of political accountability and democratic legitimacy to give to the ECB a right of initiative for the modification of its Statute.

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For the sake of efficiency, a qualified majority in the Council should be preferred to unanimity. One has to put in balance the advantage of giving to the decision the great weight of a consent of all the Central Banks and the necessity to reach an agreement, which is easier if majority rule is applied.

A less stringent procedure can be adopted where the Statute refers to the necessity of Community legislation.

5. The concrete proposal would be

- a) For the revision procedure, to insert a provision during the inter-governmental conference of EMU which would be in line with the orientations of the second conference.

- b) For the complementas to the Statute, to refer to a classical Community act of legislation (regulation, directive of the Council) which would be adopted by a possibly new procedure applicable for ordinary legislation which would include less stringent requirements than the revision procedure.

Annex to the note 2Proposal of amendmentChapter IX - Amendment and complementary provisions.Article ... - Simplified procedure of amendment.

[For the amendment of provisions of the present Statute other than articles 1, 2, 7, 10, 14, 20, ..., for which the amendment procedure as laid down in article 236 of the Treaty shall be applicable, a (legislative act) shall be required adopted according to the procedure laid down in article [...] of the Treaty.]

Comment :

This article refers to a new procedure to be included in the chapter of the treaty dealing with the economic and monetary union.

According to the basis requirements of efficiency and legitimacy, as well to the already made proposals in view of the intergovernmental conferences, the procedure shall imply a qualified majority in the Council of the European Community and a majority in the European Parliament.

According to article 4 of the Statute, the System shall be consulted on the draft amendments.

Article ... - Amendment procedure in an emergency situation.

[to be drafted.]

Comment :

For the articles in Chapter IV.

Article ... - Complementary legislation.

[For the adoption of acts of Community legislation required or made possible by the present Statute, the procedure shall be [the normal procedure to adopt regulations or directives of the Council of the Commission] [the procedure of cooperation as laid down in article 149 of the treaty] [the new procedure of co-decision as referred in the EMU chapter of the treaty].]

Comment :

Specific reference to either the basic procedure or the simplified one, the normal procedure shall be applied. It doesn't require other specification, but we need to wait for results of the conferences.