

Simplified amendment procedures

Issues for discussion

There appears to be broad agreement in the Committee of Governors, as well as among the Legal Experts, that the draft Statute shall contain a simplified amendment procedure which allows to revise certain Articles of a more technical nature and to confer new tasks upon the System.

When drafting an appropriate amendment procedure, it might be useful to consider the following questions and issues.

1. The scope of the amendment provisions:

- (a) Is it sufficient to have one general simplified amendment procedure or is it advisable to introduce two or several procedures with different degrees of stringency? The latter approach would allow to differentiate between the amendment requirements, for instance, by imposing severe conditions for "important" Articles and less severe requirements for "less important" provisions.
- (b) Irrespective of whether there shall be one or several amendment procedures, should the Statute contain a separate amendment procedure to be applied in emergency situations? Should the use of this procedure be restricted to a few operational provisions (such as those contained in Chapter IV)? Would it, however, not be necessary to suspend in an emergency situation Article 2.3? How would the existence of an emergency be defined?
- (c) If there is only one amendment procedure to be applied "in normal circumstances" would this also be the procedure to be used where the Statute refers to the necessity for Community legislation

(e.g. Articles 5, 8, 13, 15 and 18)? Which procedure should be used if there are different amendment provisions?

- (d) If there is only one amendment procedure, shall it be applied to specific Articles (i.e. a positive list of more easily amendable Articles) or to all Articles except the fundamental ones (i.e. those stated in a negative list)?

2. Limitations to establishing a specific amendment procedure for the Statute of the ESCB and the ECB

- (a) Will the procedure for amendment have to follow strictly the general legislative procedures used in the Community or is there (some) possibility of designing the System's own procedures?
- (b) If democratic legitimacy rules out a "tailor-made" amendment provision for the System, should the present draft Statute leave open the future amendment procedure, given the expectation that the role of Community institutions in the legislative process is likely to be changed by the Intergovernmental Conference on Political Union?
- (c) Even if the legislative procedure of the Community has to be followed when amending provisions of the System, is there scope for specifying who can initiate, who needs to be consulted and which majorities should be required?

In order to facilitate our discussions on the amendment procedures, the following section attempts to set out some elements to be put into Chapter IX, the idea being that the draft Statute as transmitted by the Governors to the Italian Presidency should be as concrete as possible.

Chapter IX: Amendment and complementary provisions*

Article 7: Simplified procedure of amendment

Two alternative approaches could be considered:

Version A With the exception of Articles 1, 2, 7, 10, 14, 20, ... of this Statute, for which the amendment procedures as laid down in Article 236 of the Treaty shall be applicable, a (legislative act) shall be adopted according to the procedure defined in Article [?] of this Treaty.

Comment This version of a draft proposal for the (provisional) content of this Article would simply link the amendment procedure to a new Article in the EMU Chapter of the Treaty. This Treaty Article (on which in accordance with Article 4 of the draft Statute, the System should be consulted) would reflect the general legislative procedure of the Community, following the institutional changes adopted by the Intergovernmental Conference. It could, however, possibly specify certain majority requirements for the approval by the Council and the European Parliament (could it?).

Version B This version would simply state the elements to be contained in the prospective provisions for simplified amendment:

Element 1 "Upon a proposal made by [qualified majority] by the Council, after consulting [the Commission/Monetary Committee/Economic and Social Committee] ..."

or "Upon proposal by the Commission after consulting the Council [and after having heard the Monetary Committee/Economic and Social Committee] ..."

Element 2 The Council of the European Communities, acting by [qualified majority], and the European Parliament, acting by [simple majority] ...

* This section has been heavily inspired by proposals made by M. Louis and M. de Lhoneux, whose contributions are gratefully acknowledged.

Element 3 may amend the following provisions of this Statute:
Articles ... or may amend the provisions of this Statute, except those under Articles 1, 2, 7, 10, 19, 20, ... for which the amendment procedures as laid down in Article 236 of the Treaty shall be applicable.

Comment This approach would only spell out in some more detail the important elements to be considered in a simplified amendment procedure and point specifically to the open issues relating to the right of initiative and the choice of majority requirements.

Article 7: Amendment procedure in an emergency situation

The following elements may be considered:

- In the event of an emergency the Council of the European Communities may, upon a proposal made [by qualified majority] by the Council and acting [by qualified majority] amend the provisions of Articles ... of this Statute.
- The amendment provision shall enter into effect with the decision of the Council of the European Communities.
- Within a period of [x] working days, the decision of the Council of the European Communities shall be considered by the European Parliament. Following consultations with the Commission and the Council, the European Parliament shall act [by qualified majority].
- If the European Parliament rules that the amendment is warranted, the amended provisions shall remain in force for a period of [x] months. Before the end of that period the need for the amended provision shall be reviewed by the European Parliament. If the European Parliament does not rule that the amendment is warranted, the amended provision shall be invalid as from the time of the decision by the European Parliament.
- The existence of an emergency shall be ascertained [by unanimous vote/by qualified majority] by the Council of the European Communities, acting upon a request by the Council.

Comment The need for such an emergency provision may be justified in a situation of war, but perhaps also in the event of extreme turmoil in foreign exchange markets or the threat of a collapse of the financial system. As pointed out in the questions above, the need for action by the System would in all likelihood mean that effective measures would be at variance with the provision of Article 2.3.

Article 7: 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 European Communities] [the procedure of co-operation as laid down in Article 149 of the Treaty] [the new procedure of co-decision as referred to in the EMU Chapter of the Treaty].]

Comment This Article could be added if there is to be a difference between the simplified amendment procedure outlined in the first Article of this Chapter and the procedure to be followed where Articles of the draft Statute call for Community legislation. At the present time it does not require any further specification which would be made only after the Intergovernmental Conference has come to a decision on institutional features of the Community.