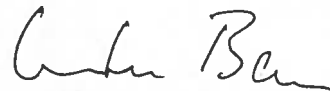


2nd April 1991

TO THE MEMBERS OF THE COMMITTEE OF ALTERNATES

As indicated in my telefax of 27th March 1991, please find attached two notes dealing with issues relating to the completion of Chapters VII and IX of the draft Statute. These notes have been drafted by the Secretariat in preparation of the special meeting of the Committee of Alternates on Sunday, 7th April 1991, starting at 3.00 p.m.

With kind regards,



Gunter D. Baer

Secretariat

SIMPLIFIED PROCEDURE FOR AMENDING THE STATUTE OF THE ESCB
AND COMPLEMENTARY COMMUNITY LEGISLATION

This working paper has been prepared on the basis of the replies by the Alternates to the Secretariat's note dated 6th March 1991 dealing with questions relating to the simplified amendment as well as complementary Community legislation in the Statute of the ESCB. It sets out the issues which need to be discussed further by the Alternates at their forthcoming April meeting.

1. Simplified amendment of the Statute
- 1.1. Procedural issues
- 1.1.1. Right of initiative and consultation

Almost all Alternates indicated that it would in principle be desirable to give the ECB the exclusive right of initiative in the amendment procedure since the procedure applied to provisions of a technical nature. However, most Alternates would also be prepared to accept that the Commission (possibly after consultation of the ECB) and/or the Member States would have a competing right of initiative. An alternative mentioned by the French Alternate was to enable the ECB to make recommendations to the Commission for changes in the Statute; upon receipt of this recommendation, the Commission would be obliged to start the necessary procedure in conformity with the legal requirements for amendment, either under Article 236 of the Treaty or in accordance with the simplified amendment procedure.

In case the ECB were not given the exclusive right of initiative (but only a competing right of initiative or only the right to be consulted), some Alternates thought that the ECB's opinion should have a

special status: the right to veto any discussion of this matter in the Council of Ministers (German Alternate) or stricter majority requirements in the Council of Ministers if the latter did not decide in conformity with the opinion or wishes of the ECB (see below).

With regard to the consultation of other bodies, some Alternates felt that the European Parliament should be consulted provided that its opinion was not binding. Only the Greek Alternate was clearly against such a consultation.

1.1.2. Conditions for decision taking

With the exception of the Belgian Alternate, most of the Alternates considered that the Council of Ministers alone should take the decision. The Belgian Alternate preferred decision taking in co-operation (or co-decision) with the European Parliament but stressed that this was a political question and depended on the powers the IGC on Political Union was prepared to confer upon the European Parliament.

According to most Alternates decisions by the Council of Ministers should be taken by a qualified majority; some of them held the view that unanimity was required if the Council did not decide in conformity with the request or opinion of the ECB. The Greek Alternate considered that in any case unanimity was required in the Council when it decided to amend Articles 3, 20 and 28.

The German Alternate stressed the point that the question of majority requirements was closely linked to who would have the right of initiative.

1.1.3. Location of the simplified amendment procedure

Given the equal legal standing of the Treaty and the Statute (if annexed to the Treaty in the form of a protocol) the decision on where to locate the simplified amendment procedure has no legal implications. However, presentational considerations might be important. Two Alternates were in favour of laying down the procedure in the Statute, two other Alternates preferred the Treaty. Other Alternates were indifferent.

1.2. List of provisions subject to the simplified amendment procedure

There was general agreement about the idea that only technical provisions should be subject to the simplified amendment procedure and most Alternates broadly agreed with the list proposed by the Secretariat in accordance with this principle. However, the German Alternate considered the list as being too long since most of the proposed provisions were formulated in such general terms that there would be no need for simplified amendment. Moreover, a long list might give the false impression that the Committee expected substantial changes in the monetary conditions of the Community. In contrast, the Belgian Alternate proposed a large number of additions and the Spanish Alternate preferred a "negative" list quoting the Articles which should not be subject to simplified amendment.

The following Articles were suggested to be mentioned in the simplified amendment procedure:

- Article 3: It was proposed by the Secretariat since the possibility of conferring additional tasks upon the System by the simplified amendment procedure had been acknowledged (see commentary on Article 3). Broad agreement except the German Alternate. According to the Greek Alternate, amendment should be subject to unanimous decision.
- Article 4: Proposed by the Belgian Alternate.
- Article 5: Proposed by the Belgian and German Alternates.
- Article 6: Proposed by the Belgian Alternate.
- Article 10.4: Proposed by the Secretariat as well as by the Italian Alternate but other Alternates expressed reservations since they considered that the principle of confidentiality should not be subject to the simplified amendment procedure.
- Article 10.5: Proposed by the Italian Alternate.
- Article 15.4: There was broad agreement on the inclusion of these provisions but the Irish Alternate raised the question whether the words "free of charge" could not be deleted with the result that this Article would not need to be subject to the simplified amendment procedure.
- Article 15.5: Broad agreement but the Irish Alternate wondered whether the frequency of consolidated statements would not be more appropriately located in the Rules of Procedure.

- Article 16: Proposed by the Belgian Alternate.
- Articles 17, 18 and 19: Broad agreement except the German Alternate.
- Article 20: There were doubts whether to include this Article since any possible amendment could only concern the majority requirement in the Council of the ECB or the scope of the Article.
- Articles 21 (except paragraph 1¹) to 24: Broadly endorsed except by the German and Irish Alternates who do not see any need.
- Article 25: Proposed by the Belgian Alternate.
- Article 26: Article 26.1 was proposed by the Secretariat and accepted by all Alternates. The Belgian and Italian Alternates proposed to include the whole Article.
- Article 28: Accepted by all except the German Alternate. According to the Greek Alternate, amendment should be subject to unanimous decisions.
- Article 29: Proposed by the Belgian and German Alternates; the German Alternates quoted as reason pending issues regarding participation and EC membership.
- Article 30: Proposed by the Belgian Alternate.
- Article 32: Some Alternates considered it desirable to include this Article in order to provide some flexibility but the issue needs to be reviewed in the light of the final wording of Article 32.
- Articles 33 to 36 and Article 38: Proposed by the Belgian Alternate.

2. Complementary Community legislation

Only some Alternates reacted to the question, raised by the Secretariat, of whether the procedure for enacting complementary Community legislation should be the same as that for simplified amendment of the Statute or whether it should be different. The Belgian and the Greek

1 The note from the Secretariat erroneously also quoted an Article 21.6 which, as many Alternates noted, did not exist.

Alternates as well as the Commission representatives declared themselves in favour of the normal legislative procedure, i.e.

- initiative of the Commission,
- consultation of the ECB,
- involvement of the European Parliament,
- decision of the Council with qualified majority.

In contrast, the Spanish and British Alternates preferred that complementary Community legislation be enacted in the same way as amendments according to the simplified procedure. The French Alternate felt that a single procedure could be envisaged if the simplified amendment procedure were to be sufficiently flexible.

Complementary Community legislation is foreseen in Articles 4.1, 5.3, 16.2, 25.2, and 30.4. The question of whether the application of Article 34 also requires complementary Community legislation is still open. Furthermore, in the Intergovernmental Conference, a number of Community countries stressed that Article 19 would not be applicable without complementary Community legislation.

3. Proposed Chapter IX of the Statute

All Alternates preferred to convey the Committee of Governors' opinion to the IGC in the form of draft Articles. The Secretariat's proposals hereafter reflect the prevailing drift rather than the position of each Alternate. Furthermore, the terminology "Council" (for the Council of the ECB) and "Council of the European Communities" (for the Council) is in line with the other parts of the Statute.²

Article 40 - Simplified amendment procedure

40.1. [By way of derogation to Article 236] [In accordance with Article ..] of the EEC Treaty and subject to Article 40.2, Articles [.....] may be amended by the Council of the European

2 This terminology will eventually have to be changed in order to make the Statute consistent with the Treaty.

Communities, at the request of [any Member State, the Commission or] the ECB, after consulting the European Parliament and [,where appropriate] the Commission [and the ECB].

The Council of the European Communities shall act by a qualified majority if [the amendment was requested by the ECB] [the requested amendment has the approval of the ECB]. Otherwise it shall act unanimously.

40.2. Article 3 shall be amended by the Council of the European Communities in accordance with the procedure referred to in Article 40.1 only to the extent necessary to confer upon the System additional tasks which are not at variance with the System's objectives stated in Article 2 and do not impinge on the System's basis tasks defined in Article 3.

[40.3. No amendment shall be made in accordance with the procedure referred to in Article 40.1 which might in any way affect the scope of other provisions of the Statute.]

* * *

Comments

Article 40.1 is drafted on the assumption of an exclusive right of initiative of the ECB. In this case, both the European Parliament and the Commission would be consulted. The sentences between brackets refer to the case of a competing right of initiative.

Article 40.2 is a *lex specialis* to Article 40.1; it implies that the possibility of amending Article 3 in accordance with the simplified procedure only refers to additional tasks (and not the basic tasks as currently defined in Article 3) and that these additional tasks have to be compatible with the objectives defined in Article 2 and the present basic tasks in Article 3.

Article 40.3 is designed to protect the Statute against any attempt to erode the substance of the Statute "through the back door". Some Alternates were in favour of such a provision.

Article 41 - Complementary legislation

The Council of the European Communities, acting by a qualified majority on a proposal from the Commission and after consulting the ECB and the European Parliament, shall enact the legislation necessary for the application of Articles 4.1, 5.3, 16.2, 25.2, 30.4 [and 34].

* * *

Comment

Article 41 is drafted on the basis of the assumption that complementary legislation should not be enacted in the same manner as foreseen for simplified amendment, but instead in accordance with the "normal" legislative procedure (i.e. the procedure for secondary Community legislation).