

Central Bank of Ireland

Comments on Simplified Amendment Procedure

Our views on the Secretariat's note on a simplified procedure for amending the Statute of the ESCB are set out below:-

1. Procedure
 - (a) Right of Initiative: It is important that the ECB should have the right to initiate amendments to technical areas of the Statute; this right could be shared with other Community institutions and with member states.
 - (b) Consultation: We would propose that, if the ECB were not to have exclusive right of initiative, it would have to be consulted on proposed amendments; if the proposed amendment were acceptable to the ECB, the Council would act by qualified majority, otherwise unanimity would be required.
 - (c) Conditions for decision-taking: While other Community institutions (e.g. the European Parliament and the Commission) could have a right to be consulted about amendments, we feel that, in line with existing practice, the decision thereon should rest with the Council alone.
 - (d) Place of Procedure: The decision on where to locate the simplified amendment procedure has no legal implications, given the equal legal standing of the Treaty and the Statute were the latter to be annexed to the Treaty in the form of a protocol. There may, however, be grounds for placing the relevant article in the Treaty proper where it would have greater prominence.

2. Provisions subject to Simplified Amendment Procedure

The approach proposed, namely that the simplified amendment procedure be reserved for technical, as opposed to fundamental, elements seems appropriate. In some cases the two are easily distinguished; thus, for example the independence of the System is clearly of fundamental importance. In other instances, the distinction is less clear-cut. In such cases the choice of articles for inclusion in the simplified amendment procedure would not be independent of the role accorded by the procedure to the ECB. Thus, for example, the requirement of adequate consultation would seem to have considerable importance in the case of Articles 17, 18, 19, 22 and 23, particularly so as far as Articles 18 and 23 are concerned, where in our view, Council unanimity in the absence of the ECB's agreement would be essential.

The list of articles which the Secretariat suggests could be subject to the simplified amendment procedure, appears to be generally uncontentious. In some instances, however, the original text of the articles may need re-examination. An example is the inclusion in Article 15.4 of the words 'free of charge'; perhaps it would be better simply to delete those words from the article. Similarly, the frequency of consolidated statements referred to in Article 15.5 might be more appropriately located in the Rules of Procedure of the ECB. As Articles 20 and 24 are formulated in general terms, it is questionable whether they need to be made subject to a simplified amendment procedure; if Article 20 were subject to such a procedure, the ECB would need to be adequately consulted about any change to the method of voting referred to therein. While Article 32 is not included in the list, it is referred to in the text as probably appropriate for the simplified amendment procedure; while an issue of fundamental importance, there may be merit in including Article 32 in the simplified amendment procedure, given the desirability of maintaining some flexibility in order to permit income allocation measures to be adapted to the changed circumstances which might apply when the article is implemented. It

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may, nevertheless, be prudent to await the completion of Article 32 before taking a final decision on the matter. Finally, where Article 21.6 is referred to, presumably Article 21.5 is meant, as the former does not exist.

While it should be clear that no amendment introduced under the simplified amendment procedure should affect the scope of the non-amendable provisions, an explicit reference to this effect would probably be desirable. On the question of how to convey the Committee of Governor's opinion to the IGC, we would favour the elaboration of a draft Article or Articles, on the basis that this would enhance the likelihood of full account being taken of the Governors' concerns.

Comments on General Provisions

Article 33.2 The proposed deletion, which does not rule out the possibility of deferred participation in the EMU, would be acceptable to us. The deletion may also have the merit of obviating similar references to non-participation in other articles.

Article 35.6 We favour the inclusion of this section.

Article 36 The draft should not preclude the possibility of employing permanent staff. Articles 38 and 40 should also be consistent with this possibility.

Article 39 We would not favour the German amendment, since it limits the President's power under Article 13.