

Working Group IX

Working document 12

## **Working Group IX "Simplification"**

Members of Working Group IX "Simplification" will find attached an issues paper on procedures.

## **Codecision procedure**

The Working Group heard the views of Mr Dimitrakopoulos, Vice-President of the European Parliament, and of Mr Jacqué, Director in the Council, on how the codecision procedure works in practice. The conclusion emerging both from the statements by the experts and from the discussions within the Group was that codecision generally worked well and that it was therefore not necessary to amend the provisions of Article 251 of the TEC.

Some proposals, particularly with regard to contacts between the institutions, were nonetheless put forward and did not receive sufficient support. This was the case in particular for the establishment of binding deadlines for the first reading, which was rejected by a majority on the grounds that this stage was of great importance for bringing positions closer together. Setting deadlines could cause many procedures to fail prematurely. The Group felt that the informal contact mechanisms between the institutions (known as trialogues) should not be enshrined in the Treaty either.

Their effectiveness was to a large extent due to their informal nature.

However, two proposed recommendations can be submitted for the attention of the Group:

### 1. The composition of the Conciliation Committee

Some pointed out that the current composition of the Committee could turn out to be inadequate in the context of enlargement since, with 25 Member States, the Committee would have 50 members. The current composition is imposed by Article 251(4) which states that "the Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament...". It would be conceivable to amend this provision so as to enable the Council and Parliament to review the composition of the Committee via their rules of procedure while maintaining the principle of parity in the number of delegates from two institutions.

### 2. Legal bases providing for codecision with unanimous voting in the Council

Under the codecision procedure, the Council acts by a qualified majority except in four exceptional cases. It is generally accepted that in these four cases unanimous voting in the Council should be replaced by qualified-majority voting. This relates to the following legal bases:

- provisions with a view to facilitating the exercise of citizens' right to move and reside freely within the territory of the Member States: Article 18(2) (This will be subject to qualified-majority voting upon the entry into force of the Treaty of Nice).

- social security measures for Community migrant workers: Article 42.
- coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons. Coordination of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons: Article 47.
- measures of encouragement in the field of culture: Article 151.

The Group could also examine other questions, namely:

- should the term "codecision procedure", commonly used in practice to refer to the procedure under Article 251 of the TEC, be enshrined in the Treaty? Should it be given a different name (e.g. legislative procedure)?
- which provisions relating to the codecision procedure should be covered by the Constitutional Treaty? Which should be left for the rules of procedure of each institution taking part in the procedure?

### **Cooperation procedure (Article 252 TEC)**

Discussions in the Convention plenary and within the Working Group have shown a broad consensus in favour of abolishing this procedure. That being so, there is a need to decide what procedure(s) should replace it.

Following the Treaty of Amsterdam, the cooperation procedure has survived in four legal bases in the context of monetary union:

- multilateral surveillance: Article 99(5)

According to Article 99(3), "in order to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States, the Council shall, on the basis of reports submitted by the Commission, monitor economic developments in each of the Member States and in the Community as well as the consistency of economic policies with the broad guidelines referred to in paragraph 2, and regularly carry out an overall assessment". Under paragraph 4 of this same provision, the Council may, in the context of this multilateral surveillance, make the necessary recommendations to a Member State and even decide to make its recommendations public.

Pursuant to paragraph 5, the detailed rules for the multilateral surveillance procedure are adopted under the cooperation procedure (Article 252).

- application of the prohibition of privileged access: Article 102(2)

According to Article 102(1) and (2):

"1. Any measure, not based on prudential considerations, establishing privileged access by Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States to financial institutions, shall be prohibited.

2. The Council, acting in accordance with the procedure referred to in Article 252, shall, before 1 January 1994, specify definitions for the application of the prohibition referred to in paragraph 1."

- application of the prohibition on assuming commitments and granting overdraft facilities: Article 103(2)

According to paragraphs 1 and 2 of Article 103:

"1. The Community shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.

2. If necessary, the Council, acting in accordance with the procedure referred to in Article 252, may specify definitions for the application of the prohibition referred to in Article 101 and in this Article."

- measures to harmonise the denominations and technical specifications of coins. Article 106(2)

Article 106 (1) and (2) state that:

"1. The ECB shall have the exclusive right to authorise the issue of banknotes within the Community. The ECB and the national central banks may issue such notes. The banknotes issued by the ECB and the national central banks shall be the only such notes to have the status of legal tender within the Community.

2. Member States may issue coins subject to approval by the ECB of the volume of the issue. The Council may, acting in accordance with the procedure referred to in Article 252 and after consulting the ECB, adopt measures to harmonise the denominations and technical specifications of all coins intended for circulation to the extent necessary to permit their smooth circulation within the Community."

QUESTIONS: What procedure should replace the cooperation procedure(s) referred to in Article 99(5) of the TEC? and in Article 102(2)? and in Article 103(2)? and in Article 106(2)?

### **Assent procedure**

In contrast with the codecision and cooperation procedures, the Treaty does not specify how to apply this procedure but merely requires the assent of the European Parliament in certain cases. Since specific majorities are not laid down, the Parliament gives its assent in accordance with the general rule, acting by an absolute majority of votes cast (Article 198 of the TEC). There is only one exception to this rule: the decision on the uniform electoral procedure, which requires a majority of the Members of the Parliament.

At the meeting on 12 and 13 September, a good number of members of the Convention felt that the assent procedure should be reserved solely for the ratification of certain international agreements. If this approach were to be confirmed by the Working Group, the question would then arise as to what would be the appropriate procedure for the other cases currently subject to the assent procedure, which are as follows:

- amendment of certain Articles of the protocol on the Statutes of the ESCB and the ECB. Article 107(5)

Article 107(5) states that:

"Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a) and 36 of the Statute of the ESCB may be amended by the Council, acting either by a qualified majority on a recommendation from the ECB and after consulting the Commission or unanimously on a proposal from the Commission and after consulting the ECB. In either case, the assent of the European Parliament shall be required."

- specific tasks of the ECB. Article 105(6)

Article 105(6) states that:

"The Council may, acting unanimously on a proposal from the Commission and after consulting the ECB and after receiving the assent of the European Parliament, confer upon the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings."

- Uniform electoral procedure by a majority of its component members. Article 190(4)

Article 190(4) states that:

"4. The European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

The Council shall, acting unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its component members, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements."

- Rules for the Structural Funds and Cohesion Fund. Article 161

Article 161 states that:

"The Council, acting unanimously on a proposal from the Commission and after obtaining the assent of the European Parliament and consulting the Economic and Social Committee and the Committee of the Regions, shall define the tasks, priority objectives and the organisation of the Structural Funds, which may involve grouping the Funds. The Council, acting by the same procedure, shall also define the general rules applicable to them and the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing financial instruments.

A Cohesion Fund set up by the Council in accordance with the same procedure shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure."

QUESTIONS: Does the Working Group confirm the approach emerging from the meeting of the Convention on 12 and 13 September, namely to reserve the assent procedure solely for the conclusion of international agreements (see Article 300(3) of the TEC)? If so, what procedure(s) should replace it?

## **Budgetary procedure**

The Working Group has not yet begun to discuss the simplification of the budgetary procedure. Following the presentations by Mr Wynn and Mr Romero at the meeting on 2 October, a questionnaire has been forwarded to members (CONV 341/02) as set out below, with the aim of providing a better structure for the discussion.

The statements made by guest speakers and members of the Working Group have highlighted a series of avenues to be explored.

If a decision is taken to simplify the budgetary procedure, several approaches can be envisaged:

- The procedure can be simplified merely by updating the Treaty and including the features developed in practice (negotiating instruments and procedures). What specific adaptations can be envisaged?
- If the classification of expenditure is abolished, what procedure should be established for the budget as a whole, the compulsory expenditure procedure (with the Council having the last word) or the non-compulsory expenditure procedure (with the Parliament having the last word)? Should a new procedure be envisaged? Based on simplified codecision? What special rules would there be?
- A parallel is often drawn between the incorporation of the financial perspective into the Treaties and the modification of the annual budgetary procedure: some feel that it would be possible to let the Parliament have the last word on the annual budget if its action were circumscribed by a legally binding financial perspective. Would the incorporation of the financial perspective into the Treaties have a part to play in simplifying the annual budgetary procedure?
- A number of proposals (not exhaustive) have been put forward concerning the annual budgetary procedure, on the basis of codecision which is simplified and adapted to guarantee that a decision is taken at the end of the procedure:
  - on the basis of a Commission proposal, a first reading by the Parliament followed by the Council's opinion and a second reading by the Parliament, which would have the last word;
  - on the basis of a Commission proposal, the Council's opinion followed by a decision by the Parliament, which would have the last word;

- negative codecision: if no agreement is reached between the Parliament and the Council, the Commission proposal would have to be deemed adopted;
  - simplified codecision with binding deadlines in order to guarantee adoption of the budget at the end of the year.
- It has been proposed that the Council should have the last word in the annual budgetary procedure on setting the annual amount of revenue and the Parliament should have the last word on expenditure. Should such a procedure be envisaged for revenue?

With regard to the link between legislation and the budget, should the principles contained in the 1999 Interinstitutional Agreement be enshrined in the Treaty?

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