



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMISSION OPINION

**ECB recommendation ECB/2003/1 of 3 February 2003
for a Council Decision
on an amendment to Article 10.2 of the Statute of the ESCB/ECB
(based on Article 10.6 of the Statute)**

EXPLANATORY MEMORANDUM

A. General

The European Council in Helsinki (10 and 11 December 1999) decided to convene an Intergovernmental Conference (IGC) in order to resolve the institutional issues left open in Amsterdam and which needed to be settled prior to enlargement. The IGC started its proceedings in February 2000 and was concluded in Nice in December 2000.

As far as the European Central Bank (ECB) is concerned, the IGC concluded in Nice inserted an “enabling clause”, in the form of a new Article 10.6, into the Statute of the ESCB/ECB (hereinafter referred to as 'the Statute'), allowing the Council, in the composition of the Heads of State or Government, to amend Article 10.2 of the Statute by unanimity. This Article defines the voting rules applying within the Governing Council. The IGC moreover indicated (cf. Declaration No 19) that it expected a Recommendation within the meaning of Article 10.6 to be presented as soon as possible. The Nice Treaty entered into force on 1 February 2003 and, on 3 February 2003, the ECB tabled a formal Recommendation for a Council Decision based on Article 10.6 of the Statute. This Article provides that both the European Parliament and the Commission should provide an Opinion on the Recommendation.

The reform of the ECB’s governance, and of the voting rules in the Governing Council in particular, is of crucial importance in the light of enlargement, both for the future of the ECB and for the euro area in general. The Governing Council is composed of the 6 members of the Executive Board, together with the governors of the national central banks of the Member States belonging to the euro area (12 governors at present). In the absence of reform, each successive enlargement of the euro area would result in an increase of the number of members of the Governing Council with a voting right, accompanied by a gradual but eventual significant weakening of the efficiency of decision-making within the ECB’s highest ruling organ.

B. The enabling clause (Art. 10.6 ECB): characteristics and limitations

As a general rule, and in accordance with Article 10.2 of the Statute, the Governing Council takes its decisions by simple majority. Each member attending the meeting is allowed to vote (“one member, one vote”) and the President has a casting vote in the event of a tie. Article 10.3 ECB describes the procedure for decisions taken on the basis of weighted votes, which mostly relate to shareholding issues.

Article 10.6 of the Statute enables the Council only to amend the voting procedure described in Article 10.2 of the Statute, while Art. 10.3 remains outside the scope of the enabling clause. Similarly, the composition of the Governing Council and of the Executive Board, which are defined in Article 10.1 and 11.1 respectively, cannot be amended on this basis. Neither can the responsibilities of both decision-making bodies be modified or redistributed, since these are defined in Article 12 of the Statute.

The procedural requirements imposed by the enabling clause are stringent. A unanimous decision by the Council, meeting in the composition of the Heads of State or Government, is required. When based on a recommendation from the ECB, prior unanimous approval by the ECB’s Governing Council is mandatory. Once a decision has been reached at Council level, the text is sent to all Member States for ratification before it can enter into force.

C. Presentation of the Commission's Opinion

C.1. Requirements for good governance

In preparing its Opinion, the Commission has been guided by a number of key principles for a successful reform of the ECB's internal governance:

- decisions should continue to be taken in a swift and efficient manner;
- the decision-making bodies should act with the interests of the whole euro area in mind;
- the system must be considered as neutral and unbiased by both existing and future Member States;
- the markets and the general public should be able to understand the logic and the functioning of the new voting system.

C.2. Possible enhancements to the proposed 3-group model

At the present stage, the total number of voting rights in the Governing Council amounts to 18 (6 + 12). The proposed 3-group rotation model introduces a ceiling on the total number of voting rights which corresponds to 21 (6 + 15), possibly increasing to 24 (6 + 18) during a transitional period. In view of the objectives of the model, it might be useful to consider a lower figure, as this could contribute to the speed and efficiency of decision-making within the ECB and hence further strengthen the model.

In the recommended rotation model, the allocation of governors to groups will be based on a new indicator with two components: the share in the aggregate gross domestic product at market prices of the Member States without a derogation and the share in the total aggregated balance sheet of the monetary financial institutions of the Member States without a derogation. The selection of the first component is uncontested. In the context of an enlarged European Union covering a large variety of countries, "population" could have been a second component. The Commission recommended the "population" criterion as particularly relevant for reforming the voting rules in other institutions (notably the Council) in its opinion COM(2000)34¹ which it issued on 26 January 2000, in accordance with Article 48 EC, convening an IGC for the preparation of the Treaty of Nice. As such, the ECB's key for capital subscription as defined in Article 29.1 of the Statute could be used. The latter is based on a GDP component and a population component, each having an equal 50% weight, and ensures a representative allocation of the euro area Member States to the different groups.

Furthermore, on a number of points, the drafting of the new Article 10.2 of the Statute could be further clarified and be made more explicit:

¹ "Adapting the Institutions to make a success of enlargement" - Commission opinion in accordance with Article 48 of the Treaty on the European Union on the calling of a Conference of Representatives of the Governments of the Member States to amend the Treaties (COM(2000)34 final).

- *rotation frequency*: Whilst the recommendation indicates that within each group, the governors will have their voting rights for equal amounts of time, the duration is not explicitly specified. In addition, it is not ensured that the rotation frequency will be identical for each of the three groups.
- *allocation of voting rights to governors within each group*: Given that each group will have less voting rights than governors, the voting sequence within each group will need to be decided. It would be inappropriate to settle every detail in the new Article 10.2 of the Statute; a certain degree of discretion should be left to the Governing Council. However, certain principles could be formalised for transparency reasons. For instance, voting priority could be given within each group to governors who have not voted for the longest amount of time or to the countries with the highest rank.
- *clarity and transparency vis-à-vis markets and the general public*: Full and timely information on the identity of the decision-makers at different moments in time will be important for many outside parties, notably financial market operators and the media. In view of the relative complexity of the 3-group model, it will be important that decisions on rotation are taken and announced well in advance and in a transparent manner.
- *effective start of the rotation system*: At the present stage, it is not yet fully clear when rotation will effectively start. While the number of governors with a voting right is in principle limited to 15, it appears that this limit will not necessarily apply as soon as the number of governors exceeds 15, since the start of the rotation system might be delayed until there are more than 18 governors. The clarity of the model would definitely improve if the effective start of rotation and/or the existence of a possible transitional regime would be defined in an explicit manner, rather than postponed and left to the discretion of the Governing Council.

D. Further considerations on ECB governance

The Nice Treaty aimed at preparing the Community for enlargement, notably by anticipating the institutional consequences of the accession of 12 new Member States. As far as the ECB is concerned, the IGC preferred to introduce an “enabling clause”, rather than to agree on detailed arrangements during the Conference. This has allowed for more time to prepare the ECB’s governance reform. Conversely, it has reduced the scope for possible modifications.

The 3-group rotation model recommended by the ECB fully responds to the mandate received in Nice. It prepares the ECB for a substantially enlarged euro area. Despite the limitations imposed by the enabling clause, both in terms of procedure and of substance, the ECB has come up with a model which effectively reduces the total number of voting rights exercised within the Governing Council. This model has been judged acceptable by all the members of the Governing Council.

The Nice Treaty, and the preceding Amsterdam Treaty, are steps in a wider process leading to the preparation of the European Union, and of its Institutions, for the future. Already in Nice (see Declaration No 23), the Heads of State or Government declared that “... a deeper and wider debate was necessary ...”, and announced a new IGC in 2004. The European Council in Brussels (14-15 December 2001) decided to establish a Convention on the Future of Europe (Laeken Declaration). As far as the ECB is concerned, this opens the possibility for further

reflection on the voting modalities in the Governing Council and possible changes going beyond Article 10.2 of the Statute. More generally, the model proposed by the ECB should not be seen as a possible precedent for the future composition and decision-making process of other Community institutions.

In particular, the Commission considers that further attention should usefully be paid to decision-making on monetary policy. In this context, thought could usefully be given to the creation of a “monetary policy board”. It would operate under the overall guidance of the Governing Council but no longer would all the members of the Governing Council have the right to be present during the meetings of the “monetary policy board”. The Executive Board, possibly enlarged, would be assigned a core responsibility in the monetary policy decisions. It would furthermore be appropriate to modify the current rules for appointment of the Executive Board (Article 112 (2)(b) EC) and to replace unanimity by qualified majority. In both cases, the necessary amendments to the Treaty can only be implemented through an IGC.

COMMISSION OPINION

on ECB recommendation ECB/2003/1 of 3 February 2003 for a Council Decision on an amendment to Article 10.2 of the Statute of the ESCB/ECB (based on Article 10.6 of the Statute)

The European Central Bank (ECB) adopted a Recommendation for a Council Decision on an amendment to Article 10.2 of the Statute of the ESCB and the ECB (hereinafter referred to as 'the Statute') on 3 February 2003, based on Article 10.6 of the Statute. In a letter dated 11 February 2003, the Council requested the Opinion of the Commission on this Recommendation. The Commission has adopted the following opinion.

1. The Commission notes that the Recommendation is aimed at allowing the ECB's decision-making structures to cope with a future significant enlargement of the euro area. In this respect, the Commission considers that the following conditions need to be met in order to provide for a successful reform of the ECB's governance structure:
 - decisions should continue to be taken in a swift and efficient manner;
 - the decision-making bodies should act with the interests of the whole euro area in mind;
 - the system must be considered as neutral and unbiased by both existing and future Member States;
 - the markets and the media should be able to understand the logic and the functioning of the new voting system.
2. The proposed 3-group rotation model is intended to ensure that the Governing Council, which constitutes the ECB's highest ruling organ, can continue to take its decisions swiftly and efficiently, in the perspective of a significant expansion of the euro area in the years to come. As from the moment on which the number of governors from the different national central banks of the euro area exceeds a certain number, the number of voting rights in the Governing Council will no longer be allowed to rise but will be limited to a maximum number (21 voting rights, and possibly 24 during a transitional period). In this respect, the Commission considers that it might be advisable to reduce the maximum number of voting rights in order to further strengthen the speed and efficiency of decision-making.
3. The Commission notes that in the recommended rotation model the allocation of governors to groups will be based on a new indicator with two components: the share in the aggregate gross domestic product at market prices of the Member States without a derogation and the share in the total aggregated balance sheet of the monetary financial institutions of the Member States without a derogation. Whilst the selection of the first component is justified, the Commission remarks that it has

recommended² to the Intergovernmental Conference leading to the Treaty of Nice, the population criterion as particularly relevant for reforming the voting rules in other Institutions (notably the Council). As such, the ECB's key for capital subscription as defined in Article 29.1 of the Statute could be used. The latter is based on a GDP component and a population component, each having an equal 50% weight. In the Commission's view, this indicator would lead to an allocation of Member States to the different groups more in line with the third criterion presented in paragraph 1.

4. The Recommendation concerning Article 10.2 of the Statute should be further clarified on some key points. This concerns in particular the frequency of rotation and the sequence to be followed for assigning voting rights to governors within a group. Furthermore, given that these amendments still provide for a certain degree of discretion for the Governing Council, it will be important that its decisions on rotation are taken and announced well in advance and in a transparent manner. Similarly, the starting time of the rotation system should be explicitly mentioned in the text. The Commission considers that these additions would help to clarify the operational content of the model.
5. The Commission notes that the "enabling clause" Article 10.6 of the Statute exclusively allows for the amendment of Article 10.2 and requires unanimous approval by the Council, which constitutes an important limitation to the reform of the ECB's governing structures. This prevents the consideration of broader changes going beyond Article 10.2 at this stage.
6. The model presented by the ECB constitutes an important step in the adjustment of its decision-making capacity in view of enlargement even though it does not fully meet the different criteria laid down in paragraph 1. At the same time, it should be recognised that more comprehensive adaptations, for example as regards decision-making in the area of monetary policy, and the role of the Executive Board in this respect, cannot be undertaken on the basis of the enabling clause, but can only be realised in the wider framework of the Convention and the IGC.

² "Adapting the Institutions to make a success of enlargement" - Commission opinion in accordance with Article 48 of the Treaty on the European Union on the calling of a Conference of Representatives of the Governments of the Member States to amend the Treaties (COM(2000)34 final).