

PROVISIONS OF THE TREATY OF AMSTERDAM WHICH AMENDED THE ARTICLES OF THE EC, ECSC, AND EAEC TREATIES REGARDING THE EUROPEAN PARLIAMENT

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Introduction

The Intergovernmental Conference which was convened in 1996 continued its debates in 1997 and, consequently, the European Union Treaty of Amsterdam was signed on October 2, 1997. The Amsterdam Treaty consists of a main text composed of 15 Articles, an annex, 13 protocols, 51 declarations adopted by the Conference and 8 declarations of which the Conference took note.

The preamble to the Treaty of Amsterdam is unusually short in comparison with the founding Treaties and the Treaties which amend them. It consists of the following paragraph :

“His Majesty the King of the Belgians, her Majesty the Queen of Denmark, the President of the Hellenic Republic, his Majesty the King of Spain, the President of the French Republic, The President of Ireland, The President of the Italian Republic, his Royal Highness the Grand Duke of Luxembourg, her Majesty the Queen of the Netherlands, the Federal President of the Republic of Austria, the President of the Portuguese Republic, the President of the Republic of Finland, his Majesty the King of Sweden, her Majesty the Queen of the United Kingdom of Great Britain and Northern Ireland,”

“have resolved to amend the Treaty on European Union, the Treaties establishing the European Communities and certain related acts.”

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It is clear that the Amsterdam Treaty serves no purpose but amending the Treaty on European Union and Treaties establishing the European Communities, etc. It would be logical to deduce from the preamble that this Treaty is based entirely on the structure established by the aforesaid Treaties and that its provisions are not comparable in significance to those existing in them.

It is also clear that the objectives determined by the founding Treaties retain their validity and significance in their entirety.

Nevertheless, significant amendments have been introduced by means of the Treaty of Amsterdam and they pertain to quite different topics. Among these amendments, some concern the composition, electoral procedure, members, documents and powers of the European Parliament. These amendments are going to constitute the subject matter of our article.

I. The Amendments Related to the Composition and Electoral Procedure of European Parliament and the Duties of its Members

The Treaty of Amsterdam has amended Art. 137 and 138 of the EC Treaty; Art. 20 and 21 of the ECSC Treaty; and Art. 107 and 108 of the EAEC Treaty all of which are related to the composition and electoral procedure of the European Parliament and the performance of the duties of its Members.

Paragraph 37 of Art. 2 of the Amsterdam Treaty provides that the following paragraph shall be added to Art. 137 of The EC Treaty :

“The number of Members of the European Parliament shall not exceed seven hundred.”

Paragraph 3 of Art. 3 and paragraph 1 of Art. 4 of Amsterdam Treaty provide for the addition of the same paragraph to Art. 20 of the ECSC Treaty and Art. 107 of the EAEC Treaty, respectively.

The aforesaid paragraph that has been added to the aforementioned articles of the founding Treaties introduces an upper limit to the number of Members of the European Parliament. This amendment is due to concerns that the number of the Members of European Parliament already amounts to a huge body and that future accessions shall cause this body to enlarge further up to a gigantic size. The size of the European Parliament shall be kept within reasonable limits by this amendment. In other words, an upper limit to the number of the Members of Parliament has been laid down for practical purposes.

If this development is evaluated only under practical and –maybe– economic considerations, it may be found highly acceptable.

However, the European Parliament shares legislative functions and powers with the Council of the European Union and the size of a legislature must be directly related (Yörüng, 1994; Hartley, 1994, s. 38-39) to its function of representation. The current number of Members of Parliament is 626 and this body represents app. 350 million people at the time being. In other words, a single member of the European Parliament represents app. 560000 people. This ratio is smaller for larger Member States and larger for smaller Member States. At any rate, each parliamentarian is under a very heavy burden when compared with a national parliamentarian. (For example, UK has 630 elected parliamentarians who represent 57 million people, and Turkey has 550 parliamentarians who represent 62 million people.)

The amendment above, introduced by the Treaty of Amsterdam tends to increase this burden even further. The European Union has already declared 11 countries as candidates for Membership. Unless Art. 137 of the EC Treaty; Art. 20 of the ECSC Treaty and Art. 107 of the EAEC Treaty are amended in the future, the total number of the Members of Parliament can be increased by 74 only and the number of people represented by a single parliamentarian shall increase substantially.

This development may have serious effects on the function of representation of the European Parliament in a trend in which it enhances its powers and the restriction mentioned above contradicts with this trend dramatically.

The following paragraphs (par. 38 (a) of Art. 2; par. 4 (a) of Art. 3 and par. 2 (a) of Art. 4) of the Treaty of Amsterdam have amended Art. 138 of the EC Treaty; Art. 21 of the ECSC Treaty and Art. 108 of the EAEC Treaty. According to the aforesaid paragraphs, the first subparagraphs of the aforesaid articles shall be replaced by the following;

“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.”

This subparagraph is repeating word-by-word the text of the subparagraph replaced by it, but, at the same time, adding a new phrase which is the following :

“ ... or in accordance with principles common to all Member States.”

Before the signature of the Treaty of Amsterdam, elections to the European Parliament were supposed to be held according to a uniform procedure in all the Member states. However, this principle could not be complied with during the 40 years that passed since the Communities were established. Having regard to such insistent non-compliance by the Member States, the Treaty of Amsterdam provides them with a supplementary option: The elections can be held according to principles common to all Member States instead of a uniform procedure in all Member States. Thus, the Member States may enjoy the possibility of holding the EP elections in

view of the similarities between their systems and that may constitute a step taken towards a uniform electoral procedure. Such an action may diminish the present discrepancies between the procedures according to which the elections are being held now.

The following paragraph has been added by paragraph 38 (b) of Article 2, paragraph 4 (b) of Article 3 and paragraph 2 (b) of Article 4 of the Amsterdam Treaty to Article 138 of the EC Treaty, Article 21 of the ECSC Treaty and Article 108 of the EAEC Treaty, respectively :

“The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting unanimously, lay down the regulations and general conditions governing the performance of duties of its Members.”

According to this paragraph which has been added to the aforesaid articles of the founding Treaties, the regulations and general conditions governing the performance of the duties of MEPs shall be laid down by the European Parliament. However, the European Parliament is obliged to seek an opinion from the Commission and obtain the unanimous approval of the Council before doing so.

II. The amendments Related to the Appointment of the Commission of the European Communities

Paragraph 40 of Art. 2, paragraph 1 of Art. 3 and paragraph 4 of Art. 4 of the Amsterdam Treaty have amended Art. 158 (2) of the EC Treaty, Art. 10 (2) of the ECSC Treaty and Article 127 of the EAEC Treaty. According to the aforementioned paragraphs of the Amsterdam Treaty, the first subparagraphs of the aforesaid articles of the founding Treaties shall be replaced by the following :

“The governments of the Member States shall nominate by common accord the person they intend to appoint as President of the Commission; the nomination shall be approved by the Parliament.”

The text of the subparagraph has replaced the obligation of the governments of the Member States to consult the European Parliament with the obligation to obtain its approval.

In other words, the governments of the Member States are entitled to nominate the person they intend to appoint as President of the Commission **after consulting the European Parliament**. The amendment mentioned above obligates them to obtain the Parliament's approval instead of just consulting it.

Certainly, there is a great difference between the right to be consulted and the right to approve of an appointment. The Parliament's power is advisory now, but it

will enjoy a power of veto in the process of appointment of the President of the Commission after the Amsterdam Treaty enters into force.

The obligation to consult the Parliament before nominating the President of the Commission was introduced by the Treaty on European Union in 1993. However, this is not a completely new practice. In the Stuttgart Declaration of 1983, it was decided by the Member States that the Enlarged Bureau should be consulted on the matter. (Corbett / Jacobs / Shackleton, s. 248).

This practice continued until the entry into force of the Treaty on European Union which provided that the whole Parliament should be consulted. After the entry into force of the Amsterdam Treaty, this obligation shall be replaced by the obligation to obtain approval from the European Parliament. Thus, the European Parliament shall gain a power of veto as far as the appointment of the president of the Commission is concerned.

This is an important step taken towards the goal of filling the democratic gap existing in the institutional structure of the European Communities.

The same paragraphs of the Amsterdam Treaty have replaced the second subparagraphs of the same articles of the founding Treaties by the following :

“The governments of the Member States shall, by common accord with the nominee for President, nominate the other persons whom they intend to appoint as Members of Commission.”

The text of the subparagraph above is the same as the texts of the subparagraphs replaced by it except for the fact that the phrase “by common accord with...” has replaced the phrase “in consultation with...”. This amendment implies an increase in the president’s status and powers vis-à-vis the Member States, which is natural, because the President shall start the negotiations in concern after having gained the confidence of the European Parliament and this shall strengthen his (or her) position vis-à-vis the Member States.

III. The Amendments Concerning Article 189B of the EC Treaty

Paragraph 44 of Art. 2 of the Amsterdam Treaty provides that the following shall replace Art. 189b. of the EC Treaty :

“1. Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.”

“2. The Commission shall submit a proposal to the European Parliament and the Council.”

“The Council acting by a qualified majority after obtaining the opinion of the European Parliament,”

“– if it approves all the amendments contained in the European Parliament’s opinion, may adopt the proposed act thus amended;”

“– if the European Parliament does not propose any amendments, may adopt the proposed act;”

“– shall otherwise adopt a common position and communicate it to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position.”

“If, within three months of such communication, the European Parliament :”

“(a) approves the common position or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position;”

“(b) rejects, by an absolute majority of its component members, the common position, the proposed act shall be deemed not to have been adopted;”

“(c) proposed amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.”

“3. If within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, the act in question shall be deemed to have been adopted in the form of the common position thus amended; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.”

“4. 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, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee’s proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the

Council. In fulfilling this task, the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament.”

“5. If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.”

“6. Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted.”

“7. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.”

The new article introduced by the Amsterdam Treaty is based mainly on the article replaced by it. However, there are some significant differences which are aiming at simplifying the co-decision procedure.

The first paragraph of the new article is exactly the same as the corresponding paragraph of the article, which has been replaced. So is the first subparagraph of the second paragraph. However, the second subparagraph of the second paragraph has been amended.

This amendment creates two possibilities to terminate the procedure at the end of the first reading by enacting the proposal in concern :

1. If the European Parliament does not propose any amendments, the Council may adopt the proposed act.
2. If the Council approves all the amendments contained in the European Parliament's opinion, it may adopt the proposed act thus amended.

These possibilities do not exist in the present form of Article 189b. In other words; the second reading is initiated even if the Parliament and the Council reach a compromise in the first reading. It is not logical to extend the procedure to the second reading unless a difference of attitude exists between the two Institutions. Consequently, the amendment in concern rightly simplifies the co-decision procedure, which is criticized by many authors for being too complicated.

According to the following subparagraph, the European Parliament, having received the common position adopted by the Council, may do one of the following; within three months :

- (a) approves the common position, or has not taken a decision, or
- (b) rejects it by an absolute majority of its component members, or
- (c) proposed amendments to the common position by an absolute majority of its component members.

Let us see what happens when the first option is taken by the Parliament: "If the Parliament approves the common position or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position."

It has been clearly stated that the enactment of the legislation will be automatic when the Parliament adopts the common position explicitly or implicitly. The present situation is different; If the Parliament approves the common position or has not taken a decision, the Council shall adopt the act in question in accordance with common position. Consequently, at the time being, the Council takes the final decision to enact the common position in case of explicit or implicit approval by the Parliament.

The amendment introduces a change, which has a practical and a symbolic meaning. Practically, the procedure has been simplified, because the Council will not have to reemphasize its attitude after the amendment enters into force. The amendment also causes a symbolic change in the status of the Parliament vis-à-vis the Council. When the Parliament approves the common position explicitly or implicitly, it will have said the final word on the act in question.

What happens in case of rejection? According to the amendment introduced by the Amsterdam Treaty; "If the Parliament rejects the common position, the proposed act shall be deemed not to have been adopted."

The amended form of the Article does not provide for further action with a view to reaching a compromise in case the Parliament rejects the common position as a whole. The present form of the Article allows such action in the following way :

"(If ... the European Parliament) indicates, by an absolute majority of its component members, that it intends to reject the common position, it shall immediately inform the Council. The Council may convene a meeting of the Conciliation Committee referred to in paragraph 4 to explain further its position. The European Parliament shall thereafter either confirm, by an absolute majority of its component members, its rejection of the common position, in which event the proposed act shall be deemed not to have been adopted, or propose amendments in accordance with subparagraph (d) of this paragraph."

As is seen, the Parliament does not have the right to reject a proposal in a direct way now, without giving the Council an opportunity to seek possibilities of reaching a compromise. After the Council convenes a meeting of the Conciliation Com-

mittee or prefers not to do so, the European Parliament may either confirm its rejection of the common position or propose amendments. In the first case, the act shall be deemed not to have been adopted. In the second case, the following subparagraph shall apply.

The following subparagraphs of the present and the amended Articles are exactly the same: "(If the European Parliament) proposes amendments to the common position by an absolute majority of its members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments."

The following paragraph of the amended Article is similar to the corresponding paragraph of the present Article, but not exactly the same. If the Council approves all the amendments proposed by the European Parliament, the amended form of the common position shall be enacted. The amendments supported by the Commission must be approved by the Council by qualified majority. The Council must approve those which have been opposed by the Commission, by unanimity.

The amended and present forms of the paragraph are similar so far. According to the rest of the paragraphs, in case the Council disagrees with the European Parliament, the President of the Council, in agreement with the President of the Parliament, shall convene a meeting of the Conciliation Committee. According to the present paragraph, the President of the Council shall forth with do so. According to the amended paragraph, the President of the Council shall have six weeks to do so.

The following (fourth) paragraphs of the present and amended Articles are similar. Only a last sentence has been added to the paragraph: "In fulfilling this task, the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament." This sentence determines the borders of the room for manoeuvre possessed by the Conciliation Committee.

The fifth paragraphs of the amended and present Articles are almost the same and there is not a significant difference between them.

According to the sixth paragraphs of the present and the amended Articles, the proposed act shall not have been adopted if the conciliation committee does not approve a joint text. The amended form retains this principle but eliminates the following expression which exists in the present Article :

" ... unless the Council, acting by a qualified majority within six weeks of expiry of the period granted to the Conciliation Committee, confirms the common position to which it agreed before the conciliation procedure was initiated, possibly with amendments proposed by the European Parliament. In this case, the act in question shall be finally adopted unless the European Parliament, within six weeks of the date of

confirmation by the Council, rejects the text by an absolute majority of its component members, in which case the proposed act shall be deemed not to have been adopted.”

As can be seen, the present paragraph confers upon the Council an additional possibility. The Council can use this opportunity as a last resort in case the Conciliation Committee can not be successful in preparing a joint text. The amendment in concern deletes this possibility.

This amendment has practical and symbolic implications: practically, the procedure, which is highly criticized for being too complicated, has been simplified. Secondly, the Parliament has gained, on account of this amendment, the possibility of being the Institution, which has said the last word before the Conciliation Committee is convened.

The following (seventh) paragraph of the present Article, which governs the extension of the periods of three months and six weeks referred to in the Article, has been amended, too. First of all, the extension takes place, at the time being, by common accord of the Parliament and the Council. After the entry into force of the amendment, the initiative of one of the Institutions will be sufficient for the extension. Secondly, the present Article, in its seventh paragraph, provides for automatic extension of the period of three months referred to in paragraph 2 by two months where paragraph 2 (c) applies. The amended form of the paragraph does not include this exceptional case.

The eighth (last) paragraph of the present Article lays down the procedure according to which the scope of the procedure has been widened in 1996. The aims of this paragraph have already been attained and the paragraph has been excluded in the amended text.

IV. The Amendments Concerning Access to European Parliament, Council and Commission Documents

Paragraph 45 of Article 2 of the Amsterdam treaty provides that the following Article shall be inserted after Article 191 of the EC Treaty :

“Article 191a”

“1. Any citizen of the Union, and any natural or legal person residing or having the registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.”

"2. General principles and limits on grounds of public or private interest governing the right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 189b within two years of the entry into force of the Treaty of Amsterdam."

"3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents."

This Article whose appearance in the EC Treaty is completely new, introduces a right of access to European Parliament, Council and Commission documents. When the Amsterdam Treaty enters into force, any citizen of the Union and any natural or legal person residing or having their registered office in a Member State" will enjoy this right. It does not concern documents of the European Parliament only, but also Commission and Council documents.

The right provided by this Article is supplementary to the right to petition the Parliament (see Article 138d of the EC Treaty). It gives the persons who have the right to address a petition to the Parliament the opportunity to examine the documents of the aforesaid Institution and to benefit from the right to petition after gaining more information. This right is closely related to the concepts of transparency and legitimacy of the operations of the said Institution.

The Article also provides (in its second paragraph) that the Council, pursuant to co-decision procedure, shall determine the general principles and limits governing the right of access to documents in two years after the entry into force of the Amsterdam Treaty.

The second paragraph of the Article raises the question whether the Article in concern has direct effect. In other words, is it unconditional and sufficiently precise (Weatheri II / Beaumont, 1995, p. 337; furthermore, see Karakaş, 1993, pp. 107-120; Lasok / Lasok, 1994, pp. 294-300; Hartley, 1994, pp. 195-233) so that it creates an individual right which national courts must protect? It seems that this provision is conditional and insufficiently precise and shall lack direct effect for some time after the entry into force of the Amsterdam Treaty, until the Council fulfills its task in accordance with the second paragraph of the Article.

According to the third paragraph of the Article, the three institutions, including the European Parliament, shall elaborate specific provisions in their Rules of Procedure with regard to the right introduced by this Article. This is another condition, which must be met before the provision gains direct effect.

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