Chapter 6: Amendments to the BasicTreaties

Introduction

6-1 By far the most substantial part of the Treaty on European Union comprised amendments to the basic Treaties; and of these the great majority were amendments to the Treaty establishing the European Community. The scheme of amendments is as follows:

- amendments to the Treaty establishing the European [Economic] Community[1],
- amendments to the Treaty establishing the European Coal and Steel Community[2] and
- amendments to the Treaty establishing the European Atomic Energy Community.[3]

The European Community

6-2 Amendments to the Treaty establishing the European Community fell into the following groups:

- nomenclature, renumbering and the like,
- principles,
- institutions of the Community and other bodies,
- citizenship,
- Community policies (other than economic and monetary policy),
- economic and monetary policy and
- general provisions

Nomenclature and renumbering

6-3 Most of the amendments relating to nomenclature reflected, rather than created, constitutional changes. For example, the change in the name of the European Community, from European Economic Community, reflected the addition of various provisions of a political and social character, going beyond the mainly economic objectives of the original Community.[4] Again, the numbering of the Parts of the Treaty was changed to allow for Citizenship of the European Union to constitute a complete and separate Part[5] and, for example, to fill spaces created by the switching of provisions to another location.[6] The processes of renaming and renumbering were taken a stage further by the Treaty amending the Treaty on European Union.[7]

Principles

6-4 Part One of the amended Treaty ("Principles") contained new provisions:

- re-defining the tasks of the Community,[8]
- re-defining the activities of the Community,[9]
- restricting the powers of the Community[10] and
- defining "subsidiarity".[11]

It also contained provisions on the institutions and other bodies.[12] The provisions of Part One dealing with the tasks, activities, powers, institutions and other bodies, of the Community were spelt out in greater detail later in the Treaty. So, too, was the subject of subsidiarity.[13]

Institutions and other bodies

6-5 References to the Institutions in the Treaties are inconsistent: several texts appear to include what are described here as "other bodies". There should be no confusion: an amendment introduced by the Treaty on European Union makes it quite clear that there are five Institutions (the European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors).[14] However, Part Five of the revised Treaty establishing the European Community, entitled "Institutions of the Community", includes references to the Committee of the Regions[15], the Economic and Social Committee[16] and the European Investment Bank[17], though not to the European System of Central Banks and the European Central Bank.[18] Detailed provisions on the Institutions, their powers, duties and composition, are contained in the Treaty establishing the European Community and are discussed later in this book.[19] The same applies to the "other bodies" forming part of the administrative structure.[20]

6-6 Under the Treaty on European Union, one existing body, the Court of Auditors, was promoted to being an Institution[21]; and several new bodies were created, including the Committee of the Regions[22], the European System of Central Banks and the European Central Bank.[23] Committees with responsibilities in the fields of economic and monetary union, the common foreign and security policy and police and judicial cooperation were also established.[24]

Citizenship of the European Union

6-7 New provisions were added by the Treaty on European Union, providing for citizenship of the Union.[25] The constitutional significance of citizenship of the Union is discussed later in this book.

Community policies (other than economic and monetary policy)

6-8 Miscellaneous amendments were made by the Treaty on European Union to the earlier provisions on Community policies, namely:

- freedom of movement for workers[26],
- right of establishment[27],
- capital and payments[28],
- transport[29],
- state aids[30],
- harmonisation of national laws and regulations[31],
- the common commercial policy[32],
- social policy, education, vocational training and youth[33],
- culture[34],
- public health[35],
- consumer protection[36],
- trans-European networks[37],
- industry[38],

- economic and social cohesion[39],
- research and technological development[40],
- the environment[41] and
- development cooperation.[42]

Economic and Monetary Policy

6-9 Of all the amendments to the earlier Treaties, indeed of all the provisions of the Treaty on European Union, the one which was the most substantial and had the most constitutional, political and economic importance, swept away the old and somewhat ineffective Articles in the Treaty establishing the European Economic Community dealing with cooperation in economic and monetary policy[43], "conjunctural" policy[44] and balance of payments[45], and introduced or replaced 27 Articles[46] forming a new Title on Economic and Monetary Policy.[47] The constitutional aspects of these provisions are discussed in a later chapter.[48]

General Provisions

6-10 There were nine amendments, of varying importance, to the General and Final Provisions of the Treaty establishing the European Community:
- contractual liability of the Community[49],
- territorial application of the Treaty[50],
- negotiation and conclusion of international agreements[51],
- urgent measures consequent on the negotiation and conclusion of international agreements[52],
- relations with the Organisation for European Economic Cooperation[53],
- amendment of the Treaty and applications to join the Communities[54],
- association agreements[55] and
- minor amendments to -
    - the list of invisible transactions referred to in provisions on capital movements[56] and
    - the Statute of the European Investment Bank.[57]

The European Coal and Steel Community

6-11 Amendments to the Treaty establishing the European Coal and Steel Community were designed mainly to bring the institutional arrangements into line with those envisaged in the revised Treaty establishing the European Community; and most of these provisions are expressed in terms which are similar *mutatis mutandis* to those used in the Treaty establishing the European Community.[58]

European Atomic Energy Community

6-12 Amendments to the Treaty establishing the European Atomic Energy Community had the same general aims as those applying to the Treaty establishing the European Coal and Steel Community.[59]

1. Article 8(1) to (84) (formerly G(1) to (84)), EU Treaty.

2. Article 9(1) to (21) (formerly H(1) to (21)), EU Treaty.

3. Article 10(1) to (29) (formerly I(1) to (29)), EU Treaty.

4. Article 8(1) (formerly G(1)), EU Treaty.

5. Article 8(9) (formerly G(9)), EU Treaty.

6. Article 8(8) (formerly G(8)), EU Treaty, deleted the original Article 6, EEC Treaty, which was subsumed in Articles 98 and 99(1) (formerly 102a and 103(1)), EC Treaty.

7. Article 12(1), Treaty amending the EU Treaty.

8. Article 8(2) (formerly G(2)), EU Treaty, replacing Article 2, EC Treaty, with a new text.

9. Article 8(3) (formerly G(3)), EU Treaty, replacing Article 3, EC Treaty, with a new text; and Article 8(4) (formerly G(4)), EU Treaty, inserting a new Article 4 (formerly 3a), EC Treaty.

10. Article 8(5) (formerly G(5)), EU Treaty, inserting a new Article 5 (formerly 3b), EC Treaty, the first and third paragraphs of which relate to vires.

11. Ibid, second paragraph.

12. Article 8(6) to (8) (formerly G(6) to (8)), EU Treaty, amending Article 7 (formerly 4), EC Treaty, and inserting new Articles 8 and 9 (formerly 4a and 4b), EC Treaty.

13. This goes beyond the provision referred to in note 11 above and is the subject of a Protocol (that is, Protocol 30 on the application of the principles of subsidiarity and proportionality).

14. Article 8(6) (formerly G(6)), EU Treaty, amending Article7(1) (formerly 4(1)), EC Treaty.

15. Article 8(67) (formerly G(67)), EU Treaty, inserting new Articles 263 to 265 (formerly 198a to 198c), EC Treaty; and see the amended Article 7(2) (formerly 4(2)), EC Treaty - which does not, however, refer to “Institutions”.

16. Article 257 (formerly 193), EC Treaty (which was not amended by the EU Treaty); and see note 15 above..

17. Article 8(68) (formerly G(68)), EU Treaty, inserting new Articles 266 and 267 (formerly 198d and 198e), EC Treaty; and see the amended Article 9 (formerly 4b), EC Treaty.

18. These two bodies are referred to in Article 8 (formerly 4a), EC Treaty, inserted by Article 8(7) (formerly G(7)), EU Treaty.

19. Articles 189 to 248 (formerly 137 to 188c), EC Treaty. See Chapters 15 to 20 infra.

20. Articles 257 to 267 (formerly 193 to 198e), EC Treaty. See Chapter 22 infra.

21. Article 8(6) (formerly G(6)), EU Treaty, amending Article 7(1) (formerly 4(1)), EC Treaty.

22. Article 8(6) (formerly G(6)), EU Treaty, amending Article 7(2) (formerly 4(2)), EC Treaty.

23. Article 8(7), EU Treaty, inserting a new Article 8 (formerly 4a), EC Treaty.

24. Described in Chapter 22.

25. Article 8(9) (formerly G(9)), EU Treaty, inserting new Articles 17 to 22 (formerly 8 to 8e), EC Treaty. See Chapter 14.

26. Article 8(10) (formerly G(10)), EU Treaty, amending Article 40 (formerly 49), EC Treaty.

27. Articles 8(11) to 8(13) (formerly G(11) to G(13)), EU Treaty, amending Articles 44(2), 46(2) and 47 (formerly 54(2), 56(2) and 57), EC Treaty.

28. Articles 8(14) and (15) (formerly G(14) and (15)), EU Treaty, inserting Articles 56 to 60 (formerly 73a to 73h), EC Treaty.

29. Article 8(16) (formerly G(16)), EU Treaty, amending Article 71 (formerly 75), EC Treaty.

30. Articles 8(17) to (19) (formerly G(17) to G(19)), EU Treaty, amending Articles 87(3) and 89 (formerly 92(3) and 94), EC Treaty.

31. Articles 8(20 to 8(24) (formerly G(20) to G(24)), EU Treaty, amending Articles 93, 94 and 95(1) (formerly 99, 100 and 100a(1)), EC Treaty.

32. Articles 8(26 to 8(31) (formerly G(26) to G(31)), EU Treaty, repealing Articles 111, 114 and 116, and replacing Articles 133 and 134 (formerly 113 and 115), EC Treaty.

33. Articles 8(32) to 8(36) (formerly G(32) to G(36)), EU Treaty, replacing Articles 138(2), first paragraph, 146, 148, 149, 150 and 151 (formerly 118a(2), first paragraph, 123, 125, 126, 127 and 128), EC Treaty. For the new Article 151 (formerly 128), see the next endnote.

34. Article 8(37) (formerly G(37)), EU Treaty, inserting a new Article 151 (formerly 128), EC Treaty.

35. Article 8(38) (formerly G(38)), EU Treaty, replacing Article 152 (formerly 129), EC Treaty.

36. Article 8(38) (formerly G(38)), EU Treaty, replacing Article 153 (formerly 129a), EC Treaty.

37. Article 8(38) (formerly G(38)), EU Treaty, replacing Articles 154 to 156 (formerly 129b, 129c and 129d), EC Treaty.

38. Article 8(38) (formerly G(38)), EU Treaty, replacing Article 157 (formerly 130), EC Treaty.

39. Article 8(38) (formerly G(38)), EU Treaty, replacing Articles 158 to 162 (formerly 130a to 130e), EC Treaty.

40. Article 8(38 (formerly G(38)), EU Treaty, replacing Articles 163 to 173 (formerly 130f to 130p), EC Treaty.

41. Article 8(38) (formerly G(38)), EU Treaty, replacing Articles 174 to 176 (formerly 130r to 130t), EC Treaty.

42. Article 8(38) (formerly G(38)), EU Treaty, replacing Articles 177 to 181 (formerly 130u to 130y), EC Treaty.

43. Old Article 102a, EEC Treaty.

44. Old Article 103, EEC Treaty. "Conjunctural" is an odd word to find in the English language version of a Treaty, since it does not appear in any respectable English dictionary.

45. Old Articles 104 to 109, EEC Treaty.

46. Articles 98 to 124 (formerly 102a to 109m), EC Treaty.

47. Article 8(25) (formerly G(25)), EU Treaty.

48. Chapter 23.

49. Article 8(78) (formerly G(78)), EU Treaty, amending Article 288 (formerly 215), EC Treaty.

50. Article 8(79) (formerly G(79)), EU Treaty, amending Article 299 (formerly 227), EC Treaty.

51. Article 8(80) (formerly G(80)), EU Treaty, amending Article 300 (formerly 228), EC Treaty.

52. Article 8(81) (formerly G(81)), EU Treaty, amending Article 301 (formerly 228a), EC Treaty.

53. Article 8(82) (formerly G(82)), EU Treaty, amending Article 304 (formerly 231), EC Treaty. The amendment substituted the Organisation for Economic Cooperation and Development (OECD), which replaced OEEC.

54. Article 8(83) (formerly G(83)), EU Treaty, repealing old Articles 236 and 237, EC Treaty. The provisions of the EC Treaty are superseded by Articles N and O of the EU Treaty. This is because amendment of the EC Treaty and accession to the European Communities are subsumed in amendments to the Treaty on European Union and accessions to the European Union.

55. Article 8(84) (formerly G(84)), EU Treaty, amending Article 310 (formerly 238), EC Treaty.

56. Article 8(85) (formerly G(85)), EU Treaty, amending the original Annex III to the EC Treaty.

57. Article 8(86) (formerly G(86)), EU Treaty, amending what is now Protocol 10 to the EC Treaty.

58. Article 9 (formerly H), EU Treaty; and Articles 3, 7 and 12(4), Treaty amending the EU Treaty.

59. Article 10 (formerly I), EU Treaty, and Articles 4, 8 and 12(4), Treaty amending the EU Treaty.