

Update on the revision of the Rules of Procedure

BFUG, Brussels, 11-12 April 2024

Changes in the text since the last BFUG

At the previous BFUG (19-20 February, Brussels), the TF presented the Rules of Procedure, accompanied by an explanatory note.

The comments received have been considered and also the ones received afterwards in writing, by Belgium Flanders, France, Germany.

The TF also considered advice provided by three colleagues with a law background: Melanie Rosenbaum (Holy See, BFUG), Horia Onita (ESU, BFUG), Ramon Torrent (Prof. Emeritus University Barcelona, Former Director for International Economic Relations in the Legal Service of the EU Council).

The BFUG has now received a revised version of the Rules of Procedures, and also a track-changes version, which shows all changes made since the BFUG meeting in February.

However, there is still one pending issue, which the BFUG is invited to discuss and decide, as below.

After the last issues have been solved and an agreement on the text has been achieved, hopefully at the BFUG in Brussels, the text would be subject to proof reading and editing.

Pending issue: Exemption from certain issues from a vote

The BFUG has discussed on several occasions voting and voting procedures. The present version of the Rules of Procedure states very clearly that decisions shall as far as possible be taken by consensus, and that voting is to be conducted only in the – presumably very few – cases where it proves impossible to reach consensus in spite of all efforts. In this spirit, it makes the point that the inability to reach consensus may, but does not have to, result in a vote. Instead, the Ministerial Conference, respectively the BFUG, may decide to drop the issue.

But the issue that is still open for decision is:

- 1. Should certain decisions be exempted from voting?**
- 2. If so, what would these issues be?**

So far, there has been a proposal to exclude the following:

- Adoption of the priorities of the European Higher Education Area
- Adoption of communiqués, standards, guidelines and binding policy instruments and goals

3. How to exclude or at least mitigate potentially negative consequences of such a limitation?

The TF strongly advises against any exemption from voting, for the following reasons:

1. It is important that the Ministerial Conference (respectively the BFUG) is in position to take a decision on any issue, when it has to, and be it by vote.
2. The categorical exemption of any issue from voting, could impede the Ministerial Conference (respectively the BFUG) from taking a decision.
3. This might occur even in cases where there is an overwhelming majority in favour of such a decision.
4. In an extreme, but not unlikely, case, this could grant an individual member a veto to block a decision, either to prevent the actual decision, or simply to exercise power in pursuance of other goals. This challenge is well-known from other policy making contexts (EU, CoE, UN Security Council).
5. To illustrate this for the Bologna Process context:
 - If the Communiqué would be exempted from voting, any party could veto it, for example because it wants to exclude a particular issue (revision of the ESG, fundamental values, mentioning of climate change, support for Ukraine), or to include a particular issue or wording that no other delegation would normally support, to negotiate another unrelated issue or just to block the process. Would there be any means to prevent this? Therefore, while a vote on the adoption of a Communiqué would be indeed very unusual, should be avoided, it should not be excluded in principle. N.B. a unanimous decision is, implicitly, also a vote.
6. All this in consideration that in its two decades of history, the BFUG has always strived for consensus and has resorted to a vote in only a very few cases, elections excepted. The sheer existence of a voting option can be expected to enhance the ability to reach consensus without voting. In addition, if a vote has to take place, the requirement for a 2/3 majority would ensure that diversity of opinion is protected, and that a decision (as for example the Communiqué) cannot be adopted by a narrow majority.