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TESTING THE NEW PROCEDURES: THE EUROPEAN PARLIAMENT'S FIRST EXPERIENCES WITH THE SINGLE ACT

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Résumé en Français

PREMIERES EXPERIENCES DU PARLEMENT EUROPEEN AVEC L'ACTE UNIQUE

L'Acte Unique a introduit deux nouvelles procédures pour associer le Parlement européen à l'adoption d'actes communautaires : la procédure de l'avis conforme et la procédure de coopération. En outre, il a provoqué d'autres développements dans les procédures parlementaires.

1. Procédure de l'avis conforme

Au cours des 12 premiers mois de l'Acte Unique, le Parlement a traité 26 procédures d'avis conforme sur des accords d'association avec des pays tiers. Ce nombre est plus élevé que certains (gouvernements ?) ne le prévoyaient, car non seulement les accords de base mais également les protocoles qui en découlent sont soumis à cette procédure. Le Parlement a déjà démontré que cette nouvelle procédure peut être utilisée à des fins politiques. Il a délibérément retardé sa considération du protocole avec la Turquie, suite à l'arrestation de certains opposants au régime qui rentraient à Ankara accompagnés de députés européens. Le Parlement a également rejeté trois protocoles avec Israel. Puis, suite à une concession israélienne sur les exportations de produits palestiniens, il a accepté de réinscrire ces trois protocoles à son ordre du jour.

2. Procédure de coopération

a) Avant même de commencer à considérer des propositions législatives communautaires, le Parlement doit d'abord vérifier leur base juridique, qui détermine si une proposition tombe sous la procédure de coopération ou pas. Dans certains cas, il y a eu conflit entre le Parlement et la Commission, par exemple sur les normes d'émission de polluants (question environnementale ne tombant pas sous la procédure de coopération ou harmonisation nécessaire au marché intérieur qui tombe bien sous cette procédure ?). Plusieurs autres exemples sont cités.

b) Des deux lectures, il est clair que la première reste la plus importante. En proposant des amendements à ce stade, le Parlement peut influencer les textes avant que leur contenu ne soit déjà trop définitif. S'il n'est pas satisfait, il peut toujours menacer de retarder la conclusion de cette première lecture, ce qu'il ne peut pas faire au moment de la deuxième lecture. La tactique de retarder son avis a été développée suite à l'arrêt "Isoglucose" de la Cour de Justice en 1980, mais a maintenant été renforcée par la révision du Règlement intérieur du Parlement.

La deuxième lecture permet au Parlement d'approuver, de rejeter ou d'amender la position commune du Conseil dans un délai de trois mois, à la majorité de ses membres. Or, le rejet n'est pas une option attrayante et peut d'ailleurs être outrepassé par le

Conseil agissant à l'unanimité. Amender le texte à nouveau n'a pas beaucoup de sens non plus, car il est difficile d'imaginer comment des amendements du Parlement qui n'ont pas passé en première lecture auraient plus de chance lors de la deuxième. Néanmoins, si le Parlement et la Commission disposent d'au moins un allié parmi les Etats Membres sur une question donnée, ils peuvent faire pression sur le Conseil qui doit alors choisir entre accepter un texte modifié par le Parlement et soutenu par la Commission ou le voir devenir caduc après trois mois.

Les premières expériences ont été intéressantes mais il est encore trop tôt pour tirer des conclusions générales. Le Parlement a obtenu un certain succès dans la reprise de ses amendments par la Commission et, dans une moindre mesure, par le Conseil, en tous cas en première lecture (voir tableau pour les chiffres les plus importants).

c) Lorsque le Conseil adopte une position commune qui contient des nouveautés qui n'ont pas pu être considérées par le Parlement en première lecture, il devrait reconsulter le Parlement. Une deuxième lecture ne permettrait pas au Parlement d'exercer ses pleins droits, donc une seconde première lecture est nécessaire. Or, cette nécessité a déjà fait l'objet de différentes interprétations et le Parlement lui-même hésite à exiger la reconsultation pour ne pas retarder des dossiers urgents.

d) Le Conseil et la Commission doivent maintenant justifier la position commune devant le Parlement européen avant que celui-ci n'aborde sa deuxième lecture. Les deux institutions fournissent maintenant des justifications écrites sur chaque position commune qui, au début, n'étaient pas très explicites. Il y a eu une amélioration et elles contiennent maintenant des explications sur chaque aspect principal des textes en question. Le Président Plumb a demandé que le Conseil fournisse une réaction motivée sur chaque amendement proposé par le Parlement. Les justifications ne comportent pas d'indications sur les votes au sein du Conseil.

e) L'augmentation de ses pouvoirs renforce la position du Parlement dans les contacts et les discussions avec les autres institutions. La seule procédure formelle qui existe est la procédure de concertation sur la législation ayant des conséquences budgétaires, dont l'extension et le renforcement est toujours en discussion devant le Conseil.
Le Parlement explore également de nouvelles formes de dialogue telles que des réunions régulières des Présidents en exercice avec les Présidents/ rapporteurs des commissions concernées, la présence des Présidents de commission dans les réunions du Conseil (par exemple Poniatowski au Conseil Recherche) et les contacts au niveau des fonctionnaires.

Ce problème doit être vu dans un contexte plus large. Comme l'a dit le porte-parole de la Commission : "Seul un rapprochement géographique des deux branches du pouvoir législatif (Conseil et

Parlement) et de l'exécutif (Commission) permettra de contribuer de manière décisive à une amélioration des relations inter-institutionnelles."[1]

f) Dans son nouveau Règlement, le Parlement a prévu que son Bureau élargi et la Commission se mettent d'accord sur un programme législatif annuel. La Commission a accepté de participer à cet exercice et le premier programme a été adopté en mars 1988. Bien que cette première expérience n'ait abouti qu'à un listing des textes prévus, elle ouvre la voie à un partage du droit d'initiative de la Commission.

3. Autres développements de la procédure parlementaire

a) Le développement du rôle exécutif de la Commission a amené le Parlement à s'occuper du contrôle de ses pouvoirs, et ceci de deux façons. Tout d'abord, il se soucie de défendre l'autonomie de la Commission vis-à-vis des fonctionnaires nationaux qui siègent dans les centaines de différents comités dont l'accord est souvent nécessaire pour que la Commission puisse prendre une décision (système dit de "comitologie"). Ensuite, il s'est mis d'accord avec la Commission sur une procédure d'information permettant à ses propres comités d'être informés de toute proposition soumise à de tels comités afin de chercher une éventuelle concertation avec le Commissaire concerné en cas de désaccord sur les questions importantes.

b) L'Acte Unique a introduit la coopération politique dans le cadre des traités, mais aucun changement significatif n'est intervenu quant aux procédures associant le Parlement à la coopération politique, si ce n'est la présence régulière du nouveau secrétariat aux réunions de la commission politique du Parlement.

c) Bien que l'Acte Unique n'ait pas modifié les provisions budgétaires des traités, le développement des politiques envisagées demandait une augmentation des ressources, notamment des dépenses non obligatoires, où le Parlement a, dans certaines limites, le dernier mot. Parlement et Conseil ont signé un accord inter-institutionnel fixant les montants des différents secteurs jusqu'en 1992, ce qui permet d'espérer une diminution des conflits entre les deux branches de l'autorité budgétaire.

Richard CORBETT
Octobre 1988

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1 C.D. EHLERMANN, le Parlement face à la Commission dans "Le Parlement dans l'évolution institutionnelle", Université Libre de Bruxelles, 1988

TESTING THE NEW PROCEDURES : THE EUROPEAN PARLIAMENT'S FIRST EXPERIENCES WITH THE SINGLE ACT

Richard CORBETT (1)

The Single European Act introduced two new procedures for involving the European Parliament in the adoption of Community legislation : the assent procedure and the cooperation procedure (2). As the Single European Act has now been in force for one year, it is possible to make a first assessment of how Parliament is adapting to and making use of these new procedures, and to look at some other developments in parliamentary procedures arising from the Act.

1. ASSENT PROCEDURE

There has, of course, not been any case of Parliament having to approve the accession of a new Member State to the Community. On the other hand, Parliament has had 26 assent procedures to deal with concerning association agreements during the first 12 months of the new procedures. When the Member States signed the Single European Act, it is possible that they did not all fully realize that the assent procedure would be required not only for the basic association agreement, but for any revision or addition to these agreements including financial protocols, which are often agreed on an annual basis.

Parliament's first experience with new procedures concerned the approval of some ten protocols with Algeria, Egypt, Jordan, Lebanon and Tunisia in its September 1987 session. As these agreements were not controversial, it provided an opportunity for Parliament to test its internal procedures, in particular the requirement to obtain 260 votes. In the event, the necessary majority was assembled without difficulty, the agreements being approved by 350 votes to 8 with 3 registered abstentions.

The first political use of the new powers was in the December 1987 part-session when Parliament postponed its consideration of two draft agreements with Turkey involving a financial protocol. A number of Members, particularly on the left, were concerned with the human rights situation in Turkey. This concern had just been re-fuelled by the arrest of the leaders of the Communist party and

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(1) Richard CORBETT, Principal Administrator, Committee on Institutional Affairs, European Parliament. Views expressed in this paper are strictly personal.

(2) The amendments to the Treaty also enlarged the scope of the traditional consultation procedure, notably to Article 99 of the Treaty (harmonization of indirect taxation) and Article 84 (sea and air transport)

Workers party when they returned to Ankara for the Turkish elections accompanied by Members of the European Parliament. Parliament thus demonstrated its ability to delay its assent while seeking some concession. There is no time limit on the Parliament in the assent procedure. Until Parliament decides to place the matter on its agenda and deliver its assent by the necessary majority, a protocol cannot enter into force. At the same December session, Parliament did approve eight other agreements (affecting Jugoslavia, Egypt, Tunisia, Lebanon and Jordan). It eventually approved the Turkish agreement in January 1988.

Parliament went one step further when it considered three protocols with Israel. At a time of considerable unrest in the territories occupied by Israel, on the West Bank and Gaza, and unhappy with the conditions for West Bank exports to the Community, Parliament first postponed, and then rejected the protocols in March 1988. Two of them were rejected by a majority of votes cast and the third (adjusting existing agreements to the accession of Spain and Portugal) fell because it did not receive the necessary 260 votes (256 for, 111 against and 16 registered abstentions). They were thus referred back to Council. Council in turn referred them back to Parliament on 22 March and the Commission - as well as MEPs from various political groups and the Committee on External Economic Relations - had discussions with Israeli representatives which produced some concessions on West Bank exports. Parliament agreed to put the protocols back on its agenda, but has postponed consideration until the autumn.

Parliament has still to use its new authority to try to influence the Commission's negotiating mandate before negotiations for an agreement begin. Parliament has called for a strengthening of its "Luns-Westerterp" procedure for keeping parliamentary committees informed during the course of negotiations.

2. COOPERATION PROCEDURE

a) Legal base of proposals

Before entering into the application of the Community's legislative procedures, Parliament must first ascertain that the correct legal base has been used in the Commission's proposal. The legal base determines whether the cooperation procedure applies at all : Parliament has thus been vigilant to ensure that Treaty articles requiring the cooperation procedure are used in preference to those that do not wherever there is scope for interpretation. Although the procedure applies to only 10 articles of the EEC Treaty, they include important areas, notably the bulk of legislative harmonization necessary for the single market, specific research programmes, regional fund decisions and some social policy matters.

The Commission has been willing to cooperate closely with the Parliament on this. It immediately forwarded a list of some 145 proposals already before Council whose legal base would now be

amended. Parliament (3) agreed with all but 9 of these proposed revisions. Of these 9, it proposed alternative legal bases which in two cases were accepted by the Commission. Parliament also confirmed that the opinions it had already given on these proposals could be considered as its first reading under the cooperation procedure, except in the case of those 12 opinions pre-dating the first direct elections to the Parliament in 1979, for which it insisted on a new consultation (i.e. a new first reading). Parliament also pointed out that some ten international agreements on which it had already expressed an opinion would now have to come back to Parliament for its assent before Council concluded the agreement. These requests were all accepted by the Commission.

This initial exercise concerned the proposals pending at the time. The delay in the ratification of the Single Act necessitated a second report of this nature, still under consideration. For new proposals, the issue arises on a case by case basis, and a procedure for challenging the legal base has been provided for in Parliament's Rules (rule 36,3), allowing the committee responsible, after consulting the Committee on Legal Affairs, to report straight back to the plenary on this point alone.

The most obvious areas that can be subject to divergent interpretations are those concerning harmonisation of environment standards (is it an environmental matter subject to Article 130 S or a harmonization necessary for the internal market under Art. 100 A ?), and matters concerning the rights of workers that could come either under Article 100 or 118 A or, indeed, 235. Parliament and Commission have disagreed on a number of these, but the Commission has accepted Parliament's view that agricultural research should come under Article 130 H.

The most spectacular disagreement was on the Commission's proposal for a regulation laying down maximum permitted radio-activity levels for foodstuffs, where the limits agreed after Chernobyl needed to be replaced by a permanent measure to avoid separate national measures fragmenting the internal market for foodstuffs. Here, the Commission avoided Parliament's involvement under Article 100 A by using Article 31 of the Euratom Treaty as a legal base, requiring only the consultation of Parliament. Parliament first sought to amend the legal base and then delayed giving its opinion when the Commission refused to accept to change it. It was rumoured that Parliament's request was turned down on a vote in the Commission, by a majority of one, the responsible Commissioner voting against. The delay forced Council to prolong the existing (temporary) regulation with its stringent limit values, but Parliament then decided to give its opinion rejecting the Commission's proposal in the December 1987 plenary. In giving its opinion, it allowed Council to take a decision which it has now attacked in the Court of Justice on the grounds of an incorrect legal base.

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(3) Prout Report, see minutes of the European Parliament, 9 April 1987, OJ C 125, page 137

b) The two readings

The first reading is still the more important. Already in its first reading, Parliament proposes amendments to the Commission's text which can more easily be taken into account at this stage. Furthermore, if Parliament does not obtain satisfaction from the Commission, it can always threaten to delay delivering its opinion. The technique of referring a matter back to the responsible parliamentary committee when the Commission refuses to give an undertaking to incorporate Parliament's amendments in a modified proposal was developed following the "isoglucose" ruling of the Court of Justice in 1980 (4). In its new Rules of Procedure that entered into force with the Single Act, Parliament tightened up its procedures in this respect. This is thus an important weapon, especially where an urgent matter is concerned, but Parliament cannot use it during the second reading since it must then meet a three-month deadline. The three institutions also have an interest in reaching a compromise during the first reading in order to avoid stalemate during the second reading when Parliament could reject a common position (in this case the proposal lapses unless all the Member States and the Commission agree to overrule Parliament's rejection) or when the Council could fail to obtain the majorities needed within the time limit set for modifying or approving the text.

The second reading allows Parliament to consider the text agreed by Council (called "common position" even if it is adopted by a qualified majority) and to do one of three things within a 3-month deadline :

- explicitly approve the text, or by remaining silent approve it tacitly, in which case Council "shall definitely adopt the act in question in accordance with the common position" (Art. 149) ;

- reject the text, in which case it will fall unless Council unanimously agrees within three months and (with the agreement of the Commission, which can always withdraw the proposal) to over-rule Parliament ;

- propose amendments which, if supported by the Commission, are incorporated into a revised proposal which Council can only modify by unanimity, whereas a qualified majority will suffice to adopt it. Council has three months to choose one of these options, failing which the proposal falls. Any amendments not supported by the Commission require unanimity to be adopted by Council.

In these last two cases (i.e. rejection or amendment of a common position), Parliament can only act by a majority of its members (currently 260 votes). The three month deadline may be extended to four by joint agreement between Council and Parliament.

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(4) Case 138/79 Roquette Frères and Case 139/79 Maïzena

The consequences of the second reading procedure are ambiguous. On the one hand, parliamentary amendments not incorporated in the text in first reading are hardly likely to fare better in second reading, when Council positions have been fixed and where Parliament cannot act so easily (needing an absolute majority and unable to threaten to delay). Similarly, rejection is an unattractive option as Parliament is usually in the position of persuading a reluctant Council to act. On the other hand, it can be pointed out that, as only legislation that Council wants will reach the stage of a second reading, a Commission-Parliament alliance could put a lot of pressure on Council, as it must choose within a short deadline whether to accept an amended proposal or lose it entirely. Unanimity is required to change it back again. A single ally within Council can strengthen Parliament's position, and the threat of rejection if certain views are not taken into account in the "common position" can strengthen the bargaining position within Council (already in first reading) of any state agreeing with Parliament. If it were to become unthinkable for a parliamentary rejection to be over-ridden (e.g. the Commission agreeing to withdraw any such proposal or a Member State undertaking not to over-rule Parliament for democratic reasons) then a position of co-decision would be achieved and Parliament could negotiate with Council (through the conciliation procedure or elsewhere) as an equal.

In any case, the second reading gives Parliament a chance to react to Council's position, gives some added scope to use public opinion, and provides for a more publicly visible way for dealing with parliamentary amendments. In view of future reforms, it might be useful for the ritual of two readings to become entrenched in the public mind as it gives the impression of classic legislative procedures being followed at European level.

The first experiences (5) with the new procedures have been interesting, but it is still too early to draw general conclusions, and the following figures are still subject to revision. During the first year (July 1987-June 1988), Parliament carried out 40 first readings and 32 second readings (many of the latter concerning legislation on which the first reading was considered to be the opinion given by Parliament before the Single Act came into force - there have been only 17 cases in which both parliamentary readings were carried out in this period).

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(5) The following paragraphes also appear in the paper I wrote with Francis Jacobs, also for this TEPSA symposium, on the "European Parliament's activities and working structures" (p.9). However, the figures in this document have been adjusted in accordance with the latest information available and are more accurate. The figures have been calculated by me on the basis of tables produced by DG IV (Research) and my own knowledge. I am particularly indebted to Mr Wim Hoogsteder.

In first readings, three proposals were approved without amendment by Parliament. In the 37 cases where Parliament put forward amendments, there was no single case of the Commission rejecting all of Parliament's amendments : in 12 cases it accepted all of them, in 7 cases all but one, and only in 3 cases did it accept fewer than half. In total, Parliament adopted 520 first-reading amendments to legislative proposals in this period. Of these, 408 (79 %) were accepted by the Commission.

Inducing the Commission to modify its proposal to Council in order to incorporate Parliament's amendments is just the first stage. As the Commission can constantly change it during negotiations in Council, it is not easy for Parliament to ascertain whether the Commission defends the amendments it accepts with the intensity Parliament would wish. Nevertheless, there has been at least one example (on Benzene) of a proposal being blocked in Council because of the Commission maintaining its text incorporating EP amendments, although a potential qualified majority existed for an alternative "Presidency compromise". On this occasion, the responsible Commissioner (Marin) came before the responsible parliamentary committee to seek compromises, but in the end went along with Council's majority.

Council adopted 49 common positions during the first 12 months of the Single European Act (including 14 adopted during this period but only forwarded to Parliament in July or September 1988). Of these, 23 concerned proposals on which Parliament's opinion had been delivered before the entry into force of the Act and 26 on which Parliament's first reading took place after the entry into force. Of these 26, 2 concerned cases when Parliament had approved the Commission proposal without amendment. In the 24 other cases, where Parliament put forward amendments, there was no case in which Council approved all of them, 2 cases in which it approved none at all and 22 cases in which it accepted some (10 of which less than half). In total, out of some 313 amendments adopted by Parliament in these cases (251 of which, or 80 %, were accepted by the Commission), the Council approved some 149 (48 %) (6).
The 32 second readings held in the first year show Parliament approving without amendment just over half (18) of the common positions referred to it. On no occasion did Parliament reject a common position. On 14 occasions, it sought to amend the common position. In such a situation, Parliament, is trying again to put through an amendment that failed in first reading (or

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(6) If one looks at the other 23 common positions, concerning proposals on which Parliament's opinion pre-dated the Single Act, Council approved 73 (45 %) of Parliament's 162 amendments. 95 (58 %) amendments had been approved by the Commission. Although it is hazardous to draw any conclusions, especially from such a small sample, it would appear that the Commission accepts more parliamentary amendments since the entry into force of the Act. Council approves only a lower proportion of these, though this represents a slightly higher proportion of Parliament's total number of amendments.

exploring a compromise) or else trying to return to parts of the Commission's original proposal which it supported but which Council changed (as in 2 cases where Parliament had approved the Commission's proposal in first reading, but amended the common position in the second). That its amendments are less likely to bear fruit at this stage is borne out by the figures. In 4 cases, the Commission refused to accept any amendments. In 10 cases, it did (in 4 of which it accepted all of Parliament's amendments). In total, it accepted 39 out of 70 amendments (56%). In Council, however, only 16 of Parliament's second-reading amendments were accepted (i.e. 23 %). This means that well over half of the amendments accepted by the Commission appear to be deleted by Council, acting unanimously. In 7 of the 14 cases, no parliamentary amendment survived.

All these figures must be analyzed cautiously. As crude arithmetic they take no account of the importance of various amendments, nor, of course, of the discussion and bargaining that can lead to the withdrawal of amendments before they are voted on, or, conversely, the adoption of "no-hope" amendments merely to put pressure on for a compromise as has certainly happened e.g. on "commitology" (see below). Furthermore, the Commission or Council sometimes agree to take up Parliament's amendments in another way e.g. in another or a new directive or simply give a political undertaking to Parliament. On occasion, Council has responded to amendments by a declaration of intent published in the Official Journal. None of this can be reflected in the figures. What is clear is that Parliament is entering the traditional Commission-Council dialogue, is devoting time and energy to this, and is having a perceptible impact. The hurdles that still need to be overcome are fomidable ones. Nevertheless, it is clear that Parliament is several steps closer to being a co-legislator in certain areas of Community competence.

Concerning the content of Parliament's amendments, an overall assessment is still being drawn up. In some cases, Parliament's impact on the legislation has been procedural (e.g. concerning Parliament's involvement in future revisions) or to do with generalities. It can also claim already a number of specific success, such as on the medical research programme (Parliament's amendments led to a major shift in priorities - to research on cancer and AIDS -, an increase in spending to a level actually higher than proposed in the original Commission proposal, an extension of the programme from 3 to 5 years and the establishment of a European Primates Centre) ; on the classification, packaging and labelling of dangerous chemical preparations (Council took over in its entirety a new classification system proposed by Parliament, as well as taking up other amendments concerning inspections, child-resistant fittings, obligatory labelling requirements and data sheets) ; on simplifying and strengthening the toy safety directive ; on lowering the proposed sound-level of lawn-mowers ; on strengthening the directives on the pricing of medicinal products ; on equivalence of diplomas ; etc.

c) Reconsultation of Parliament

Where, in its common position (or, during a simple consultation, when it intends to adopt a decision) the Council departs markedly from the text on which Parliament has been consulted, and particularly when it inserts new points, Parliament must be reconsulted. A second reading under the cooperation procedure is not sufficient if the changes made to the Commission's proposal are major ones (unless obviously they are the changes proposed by Parliament). In practice, however, the Council has not agreed to reconsult Parliament when it should. Difficulties have arisen here, particularly as regards the second directive on insurance other than life assurance where the Council has forwarded to Parliament a text that it regarded as its common position but which Parliament insisted was a basic text on which it was being reconsulted on first reading. The ultimately satisfactory outcome of this case gives hope for avoiding such conflicts in the future. Clearly, however, Parliament is often reluctant to demand reconsultation when this would hold up a matter on which it is keen for urgent action. Thus it let through some research programmes (AIM, DRIVE, DELTA) on which it could have insisted on reconsultation.

One special example of re-consultation was on information market policy where Council amended the legal base from Art. 100 A to Art. 235, thus eliminating the need for a second reading. Council instead agreed to reconsult Parliament which gave a second opinion under the ordinary consultation procedure (first-reading procedure) on Council's "common orientation" (rather than "common position").

d) Information on Council's common position

Article 149 par. 2 b) of the Treaty now requires the Council and the Commission to inform the European Parliament fully of the reasons which led Council to adopt its common position. This first hint of Council's accountability to Parliament is, of course, open to very wide interpretation. Council quickly agreed to present its justification to Parliament in writing. However, the first such justification received by Parliament merely referred in the covering letter to the preambles of the draft directives in question as constituting Council's justification. Not surprisingly, Parliament objected strongly to this, once its relevant committee (the Environment Committee in this case) woke up to what had happened. Informal contacts were taken with Council, but President Plumb had to return to this subject again and make a formal statement to plenary on 28 October 1987 on the unacceptability of Council's position. He stated that "as a minimum, the Council should provide a specific and explained reaction to each of Parliament's amendments".

The explanations provided by Council have now improved to the extent that they provide an account of Council's viewpoint on each of the substantive issues raised in the consideration of draft legislation. This is a considerable improvement, but still falls short of President Plumb's request. If Parliament were to know what positions were taken by each Member of Council during

votes, this would not only improve transparency but also enable Parliament to know what support might be forthcoming for possible second-reading amendments.

e) <u>Contacts, negotiations and dialogue with the Council and Commission during the legislative procedure</u>

The increase of its formal powers strengthens European Parliament's position in the contacts and discussions with other institutions that inevitably accompany the consideration of legislative proposals.

The only formal procedure for negotiating with Council is the conciliation procedure on legislation with appreciable financial implications instituted by the Joint Declaration of 4 March 1975. Although its aim is to "seek agreement between the European Parliament and the Council", Parliament has until now had little or no bargaining power in these negotiations. Its new powers could strengthen its position, but the conciliation procedure can only be combined with the cooperation procedure in two areas (individual research programmes and regional fund decisions : the only two areas subject to the cooperation procedure which have budgetary consequences), and Parliament has not yet tried to do so, preferring to use infomal contacts with Council between the two readings. However, a report is currently under preparation in the Committee on Institutional Affairs on the conciliation procedure. It should be remembered that the possible extension of the procedure, approved in principle by the European Council in the Stuttgart Solemn Declaration, is still on the table (Commission proposal of December 1981, amended by Parliament in December 1983, adoption by Council prevented by the opposition of Denmark alone, although Council could vote on this matter).

Dialogue with Council also takes place through the regular appearances of the Presidents-in-Office of the various specialized Councils before the responsible parliamentary committees. Most Presidents-in-Office appear twice during their 6 month term. Since the entry into force of the cooperation procedure, this appearances have become an opportunity to discuss - formally in the meeting or informally in the corridor - the take-up of parliamentary amendments to legislative proposals still being considered by Council. In addition, the Commission also reports to parliamentary committees on developments in Council.

Parliament is also exploring new forms of dialogue with Council. A provision to this effect was included in Parliament's new Rules (Rule 47, Point 5). Meetings and correspondence between Committee Chairmen/Rapporteurs and Presidents-in-Office have increased. On occasion, Committee Chairmen have been invited to participate in relevant Council meetings (Chairman Poniatowski in Research Council). Contacts between officials in the committee secretariats and their counterparts in the Commission and Council are also being developed and this has been

facilitated by the transfer of a small number of such officials from the isolation of Parliament's secretariat in Luxembourg to Brussels.

However, this problem needs to be seen in a wider context. As pointed out by the Head of the Commission's Legal Service and current spokesman of the Commission : "Il ne fait pas de doute qu'à l'instar de la situation que connaissent, dans tous les Etats membres, le gouvernement et le parlement, seul un rapprochement géographique des deux branches du pouvoir législatif (Conseil et Parlement) et de l'exécutif (Commission) permettra de contribuer de manière décisive à une amélioration des relations interinstitutionnelles."(7)

f) Annual legislative programme

In its new Rules of Procedure, Parliament provided for its Enlarged Bureau and the Commission to agree on an annual legislative programme and time-table. Parliament's need to manage its workload and, no doubt, the fact that (unlike some national parliaments) it is master of its own agenda, persuaded the Commission of the advantages of negotiating an agreed programme. It has therefore accepted the procedure, and the first such programme was agreed in March 1988. Although this first experience consisted largely of determining a time-table for Commission proposals and parliamentary consideration thereof on a quarter-by-quarter basis, it does open the door for Parliament to influence the priorities in the Commission 's programme and to press for the inclusion of new items (following-up parliamentary "initiative" reports ?) or even the exclusion of items.

Attempts are now being made to bring Council into legislative planning. This would be an opportunity to press for deadlines for finishing Council's first readings, which can still drag on for years.

3. OTHER DEVELOPMENTS IN PARLIAMENTARY PROCEDURE ARISING FROM THE SINGLE EUROPEAN ACT

a) The executive powers of the Commission and the "Information Procedure"

Most Community legislation provides for the implementation / execution / adaption of its provisions by the Commission as the executive body of the European Community. However, over the years, Council has often subordinated the exercise of these powers to the approval of committees of national civil servants. Such a variety of committees and procedures have been provided for in various items of Community legislation that the name "commitology" has been invented to describe it.

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(7) C.D. EHLERMANN, le Parlement face à la Commission dans "le Parlement dans l'évolution institutionnelle", Université Libre de Bruxelles, 1988

Although the Single Act was intended to strengthen the Commission's executive powers (Art. 10 of the SEA), the framework decision adopted on 13 July 1987 by Council was mainly a rationalization of the commitology system into 3 types of committees :

- advisory committees (purely consultative)
- management committees (which could block the Commission decision if it were opposed by a qualified majority)
- regulatory committees (where the decision could be blocked if it were not approved by a qualified majority)

A blocked decision is referred to Council which has three months to adopt an alternative measure, failing which the Commission decision stands. However, in one "variant" to the regulatory committee procedure, the Council can block a decision by a simple majority even when it could not itself agree to an alternative.

Parliament opposed the regulatory committee procedure, especially the above described variant which was also strongly opposed by the Commission(8). Parliament has generally amended legislative proposals containing unacceptable "commitology" procedures, though it is clear that the different parliamentary committees give varying degree of attention to this issue. Council, however, has tended to make frequent use of the regulatory committee variant and has not usually accepted parliamentary amendments in this field.

Once legislation is in place and the Commission - with the various committees - is making use of its executive powers, the ability of Parliament to scrutinize and monitor executive decisions is of crucial importance in ensuring democratic accountability. During consideration of the Hänsch Report on the implementing powers of the Commission, the latter agreed to keep Parliament fully informed of all proposals it submits to commitology-type committees. This undertaking has now been formalized in an exchange of letters between the President of the Parliament and the President of the Commission (see EP Bulletin 6/A-88 for the full text of the letters). Henceforth, all draft implementing measures, with the exception of routine management documents with a limited period of validity and documents whose adoption is complicated by considerations of

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(8) Parliament also took the matter to the European Court of Justice on the ground that this decision did not conform to the intention of the Single European Act which was to strengthen the Commission's executive powers. However, the Court ruled on 27 September 1988 that Parliament did not have the right to bring proceedings in the Court for annulment. This was a set back for Parliament's legal rights, leaving it in the position of being able to bring cases for failure to act, to intervene in cases for annulment, to be proceeded against itself, but not itself to bring annulment cases to Court !

secrecy or urgency, will be forwarded to Parliament at the same time that they are forwarded to the "commitology"-type committees in question and in the same working languages.

Rule 53 of Parliament's Rules of Procedure requires these drafts to be referred by the President of Parliament to the various parliamentary committees responsible, which can then take up matters, if necessary, with the relevant Commissioner.

b) Parliament and European Political Cooperation (EPC)

The Single Act entrenched in Treaty form the procedures for foreign policy cooperation among the Member States. Although EPC was thereby linked to the Community institutions, its procedures remain essentially intergovernmental. Par. 4 of Art. 30 SEA charges the Presidency-in-Office of EPC with informing Parliament and ensuring its views are taken into account. This is spelled out in more detail in the "Decision of the Foreign Ministers on the occasion of the signing of the Single European Act" which specifies that the Presidency :

- reports to Parliament at the beginning and end of each 6-month term of office
- holds colloquies 4 times a year with Parliament's Committee on Political Affairs as well as special information sessions as required
- answers written and oral parliamentary questions
- sends an annual written report to Parliament
- forwards texts adopted by the Ministers and replies to resolutions of major importance on which Parliament requests its comments.

These provisions are largely a codification of previous practices. The first year of the Single Act brought no innovations other than the regular attendance of the new EPC secretariat, usually its head, at meetings of Parliament's Committee on Political Affairs. Parliament has also sought to involve the Commission in reporting on and discussing EPC matters on the basis of the Commission's full participation therein and its joint responsibility with the Presidency for ensuring consistency between EPC and the Community's external policy (Art. 30.5 SEA). This is in line with Parliament's objective of bringing EPC more into the Community framework. Parliament has also used its new competences under the assent procedure in the Community framework to pursue political foreign policy objectives (see rejection of Israeli protocols, section I above). Parliament also tries to encourage a broad interpretation of "political and economic aspects of security" by adopting reports on security matters, maintaining a security and disarmement subcommittee and developing relations with the WEU Assembly.

c) <u>Budget procedure</u>

The Single Act did not modify the budgetary provisions of the Treaties. However, its implementation, notably the policy commitments to greater economic cohesion, research and new policies, necessitated an increase in the ceiling of Community resources. This was approved by Member States on the basis of the package agreed at the European Council of February 1988 in Brussels.

The major increases in structural fund expenditure (due to double between 1988 and 1993) along with the amounts necessary for the implementation of the Research Framework Programme did raise one important issue in the relations between Council and Parliament. They required an important increase in the level of the maximum rate applicable to the development of non-compulsory expenditure (NCE) up to 1992. However, Parliament's powers to allocate expenditure within the maximum rate could theoretically have allowed it to use the extra expenditure authorized for the expansion of other policies.

The Council argued that within NCE, it was necessary to distinguish between "privileged" and "non-privileged" sectors, of which only the former would be allowed to expand at rates beyond the "normal" maximum rate. This argument was unacceptable to the Parliament and the result could have been continuing budgetary conflict which it was one aim of the Brussels package to avoid.

This prospect was perhaps among the considerations which induced Council to agree in June 88 to the inter-institutional agreement proposed by Parliament. Under the terms of this agreement, expenditure ceilings have been agreed laying down for each year ceilings on six categories of expenditure which allow not only for the planned increase in structural fund spending but also a reasonable but limited development of other sectors. Parliament has thus agreed to use its powers to allocate non-compulsory expenditure in such a way as to allow the orderly doubling of the structural funds (something it had in any case strongly argued for) in return for a guarantee that other non-compulsory sectors will not be frozen. It also gains, for the first time, a veto over excessive increases in agricultural expenditure as the ceilings can only be raised with the assent of both Council and Parliament. At the same time, the agreement is likely to modify the annual budget discussions. With ceilings and the consequent maximum rates agreed in advance, debate will be as much <u>within</u> Parliament on the allocation of expenditure inside each <u>of the</u> various ceilings as <u>between</u> Parliament and Council.

Richard CORBETT

Brussels, October 1988

SUMMARY TABLE OF MAIN STATISTICS ON COOPERATION PROCEDURE

Take-up rate of parliamentary amendments during first 12 months of Single Act

A. First readings: 40 proposals dealt with by Parliament
37 of which it amended
12 of which the Commission accepted all the amendments
7 of which the Commission accepted all but one "
3 of which the Commission accepted less than half

In total, Parliament approved	520 amendments
The Commission accepted	79 % (408)
Council already considered	26 of these proposals (2 of which were unamended by Parliament)
In	0 case did it adopt all of the amendments
	1 case it adopted all but one
	10 cases it adopted less than half (2 cases none at all)
In total, Council adopted	48 % of Parliament's amendments (149 of the 313 it considered so far)

B. Second readings: 32 common positions dealt with by Parliament
18 of which it approved
14 of which it amended
0 of which it rejected

Parliament approved	70 amendments
The Commission accepted	56 % (39)
Council adopted	23 % (16) i.e. less than half of those accepted by the Commission. In 7 of the 14 proposals amended by Parliament, Council accepted no amendment whatsoever. It never accepted more than half of those approved by Parliament.

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October 1988