

THE POLITICS OF CODECISION

Paper presented at the ECSA Sixth Biennial Conference

Pittsburgh, Pennsylvania

June 1999

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(The views expressed in this article are strictly personal and do not necessarily reflect the position of the European Parliament)

ABSTRACT

Codecision has been central to the efforts and energy of the European Parliament throughout the 1990s. But to what effect? This paper considers the extent and nature of the influence that the Parliament had on legislation covered by the codecision provisions of the Maastricht Treaty (Article 189B). It suggests that this influence can be explained in general terms, by the growth of shared norms between Council and Parliament, and in particular, by the specific characteristics of the distributive and regulatory policies covered by codecision. It concludes that the new Amsterdam provision (Article 251) will reinforce the procedure as part of the *acquis communautaire*, but also open a broader debate about the position of the Parliament within the EU.

Introduction

The arrival of the codecision procedure with the Maastricht Treaty was widely heralded as a major advance for the European Parliament and the cause of parliamentary democracy at the European level. The new Article 189B established the principle of direct negotiations between the Council of Ministers and the European Parliament. In the event of the position of the two sides continuing to diverge after second reading, a conciliation committee was to meet with the specific aim of reaching an agreement within a set period of six to eight weeks. Should the committee fail to reach an agreement, the Council retained the right to reintroduce its common position (with or without amendments of the Parliament). However, the Parliament had for the first time the chance of voting down that common position by a majority of its members, thereby ending the legislative procedure on the proposal in question.

With the entry into force of the Amsterdam Treaty on 1 May 1999, the Parliament has been granted even broader rights of codecision, extending the procedure from 15 to 38 Treaty articles. What is more, the Maastricht provision enabling Member States to reintroduce the common position after a failure in conciliation has been removed. From now on if the two sides fail to agree, the procedure is at an end, with neither the full Council nor the plenary of the Parliament being able to alter the result of the negotiations between their respective delegations. As a result, more than one observer has called the Parliament the big winner of the Amsterdam Treaty negotiations.

This article will not ask why this development of the procedure has taken place but rather what effect its introduction has had. In particular, it will consider the difference that the procedure has made to the content of legislation and then seek to identify the reasons for that difference. It will suggest two particular factors as explaining the impact of the procedure: the growth of shared norms of behaviour encouraging the search for consensus and the nature of the issues under discussion in the procedure. It will conclude by considering what we can expect during the next legislature and what the development of codecision will mean for the European Union as a whole.

The impact of the procedure

Has the codecision procedure made any difference? At the outset in 1993 one could have been tempted to make the assumption that the behaviour of the Council of Ministers would not change fundamentally. The Council had enjoyed a legislative monopoly for forty years and would be eager to find ways of maintaining its position or at least not conceding more than it had been obliged to under the cooperation procedure, as provided for under the Single Act. A mechanism to achieve this goal was available under the Maastricht provisions. The Council could reestablish its common position and then challenge the Parliament to find an absolute majority to vote it down. Such a strategy would enable the Council to avoid investing significant energies in making the conciliation procedure work, on the assumption that the Parliament would prefer to have some legislation rather than none.

The results of the procedure over the last five years contradict such a view. Only once (in 1994 on Voice Telephony (ONP)) did the Council reintroduce its common position after a failed conciliation and thereby challenge the Parliament to find an absolute majority to vote it down. The ability of the Parliament to find that majority at its constituent session in July 1994 was an important signal to the Council, encouraging it to look harder for agreement in conciliation. It was a signal that certainly worked. Over the next four and a half years only two procedures failed: the directive on the patenting of biotechnological inventions in 1995 where the plenary of the Parliament declined to ratify the results of the conciliation negotiation and the Securities Committee directive in 1998 where the Council took a decision not to reintroduce the common position in anticipation of the Amsterdam provisions.

However, the impact of the Parliament is not just a question of completed procedures. Both in quantitative and in qualitative terms, there is strong evidence that the Parliament has made a significant difference to the shape of Community legislation, a difference that goes well beyond what could have been achieved under either the consultation or cooperation procedures. Codecision has created a new dynamic within the legislative arena of the European Union.

What do the numbers tell us?

Up until the entry into force of the Amsterdam Treaty, 165 codecision procedures were completed. In ninety-nine cases (60%) agreement was reached without convening the conciliation committee (63 cases where the common position was accepted by the Parliament without amendment plus a further 36 where the Council accepted the Parliament's amendments). This leaves 66 cases where the conciliation committee was convened, of which 63 were completed successfully.¹

Consider the amendments discussed in the course of the successful conciliation procedures that took place under the Maastricht provisions. As the list below indicates, the Parliament has been

¹ The figures that follow are taken from the report on the operation of the codecision procedure from 1993 to 1999 presented by the three Vice-Presidents to the conciliation committee (PE 230.998).

remarkably successful not just in persuading the Council to accept, in full or in part, amendments voted in second reading but also in developing with the Council strategies designed to find mutually acceptable outcomes, which were not part of the starting point of either party.

Amendments adopted by the European Parliament in second reading	913
- amendments accepted without modification	244
- amendments accepted in compromise form	328
- amendments accepted in compromise form with a commitment for the future	59
- amendments accepted in compromise form along with a declaration	45
- amendments already covered by another part of the common position	35
- amendments not accepted, including those replaced by a declaration	202

These figures can be variously interpreted. If one groups together the first four categories, one can say that 74% of the amendments of the Parliament were accepted as they stood or in the form of a compromise more or less favourable to the Parliament's position. However, even if one prefers to restrict the analysis to the first category, the figure of amendments adopted as they stand at 27% of the total is still surprising. Since the introduction of cooperation in 1987, the Parliament has imposed upon itself the constraint of normally not considering at second reading amendments that were not passed at first reading. Hence the Council has had an opportunity, under codecision as much as under cooperation, to consider the contents of what become EP second reading amendments when establishing its common position. As will be argued below, such a percentage cannot be explained simply in terms of the innocuous character of the amendments. If they are so innocuous, why were they not already taken on board at first reading?

The percentage can also be looked at in a comparative perspective. Under the cooperation procedure in the five years preceding the entry into force of the Maastricht Treaty, 24% of the EP's second reading amendments were adopted by the Council (Corbett, Jacobs and Shackleton, 1995, p.199). Hence not only did the Parliament persuade the Council to adopt a greater percentage of its amendments under the codecision procedure but it did so without the same help of the Commission. Whereas the Council needs unanimity under cooperation to overturn EP amendments which win the support of the Commission, this provision does not apply inside the conciliation procedure where Council and Parliament are free to agree to whatever amendments they choose to. The different role of the Commission did not therefore lead to any weakening of the role of the Parliament in terms of amendments adopted.

The figures need also to be disaggregated over the period from 1993 to 1999. At the beginning of the codecision procedure there is evidence that the Council was tempted to modify its style of behaviour as little as possible. It would divide the Parliament's amendments into two groups, one that it could accept and the other that it rejected. The Parliament was encouraged to accept the offer as a reasonable division of the cake but it naturally declined to accept such a logic, thereby provoking a period of considerable conflict. Over time attitudes changed and there was a greater willingness on both sides to look for a third way that did not correspond to the starting position of either side.

Hence the percentage of amendments adopted as they stood declined in importance over the whole period, amounting to 44% in 1994 and only 14% in 1998 and 8% in 1999. The weight of

the other categories also varied considerably as between the beginning and the end of the Maastricht provisions:

- compromises based on the amendments of the Parliament averaged 36% over the whole period but rose as high as 57% and 59% in 1998 and 1999;
- compromises involving a commitment on the part of the Commission or the Council were less significant in numerical terms varying between 2% and 13% of the total but can be seen as an important mechanism, notably for persuading the Commission to take legislative initiatives without recourse to the much heavier procedure provided for under Article 192 (ex-138B);
- amendments already covered by another part of the text became less and less important over the period, not least because the Parliament took greater care to avoid repeating amendments at second reading which were covered by the common position;
- amendments involving declarations declined in importance over the five years but offered a mechanism for compromise that neither party felt able to dispense with; and
- the percentage of amendments withdrawn varied erratically between 7% and 42% but did not exceed one quarter of the total in any of the last three years.

Is it only a question of numbers?

Numbers alone do not offer an adequate view of the impact of the Parliament. It is almost as tempting to take the percentages of amendments adopted as a sign of the influence of the institution as it is to assume that the only amendments that the Council would be willing to accept are ones that are of marginal importance. Both views seem inadequate as a way of encapsulating a much more complex and varied reality. Some EP amendments adopted by Council are of minor significance but equally the adoption of one EP amendment out of many can have a major impact on the direction of Community legislation.

The purpose here is not to provide a comprehensive overview of all codecision procedures under Maastricht but rather to offer some illustrations of the kinds of difference that the new procedure enabled the Parliament to make to the content of legislation. These differences can be broadly identified by looking at the period in advance of conciliation and the period of conciliation itself.

The prospect of conciliation

Conciliation casts a shadow backwards over the whole codecision procedure. The prospect of this final phase of negotiations, as much as the negotiations themselves, has substantially altered the behaviour of both the Council and the Parliament. In particular, there has been a realisation on both sides that conciliation should not be seen as the automatic and sole mechanism for resolving conflicts of opinion. Some highly sensitive issues have not reached conciliation but this is not the same as suggesting that the Parliament had no impact. This can be illustrated with two cases from the first half of 1998 where the EP accepted the common position without amendment: the directive on the banning of tobacco advertising and the directive on the patenting of biotechnological inventions.

In the first case, the majority view in the Parliament was that the exemptions agreed by the Council in its common position, notably for sporting events such as Formula One racing, were

unpalatable but did not justify amendment. Rather it was felt that it would be wiser to avoid conciliation, given the fragility of the coalition of states that had agreed the common position. The country likely to be responsible for conciliation would be Austria which, with Germany, had voted against the common position. All efforts to have amendments carried at second reading, notably by proposing to enlarge the legal base to include Article 129 relating to health alongside Article 100A on the single market, were thwarted. Hence the Parliament's action served to protect and maintain a common position which could only have been weakened rather than strengthened by conciliation negotiations. The result was that a ban on tobacco advertising, a proposal of the Parliament already in 1990, did come into force.

The second case of biotechnological inventions was a directive with a very special history. In 1995 this same issue had provided the first and so far only case where an agreement made by the Parliament's delegation in conciliation was rejected by the plenary. When a revised version of the same directive came back for consideration, there was a strong desire to avoid a similar outcome. The rapporteur, Mr Rothley, made contact with the Council even before the EP's first reading to see how the concerns of the Parliament could be accommodated by the Council. The relative success of this strategy was seen in the willingness of the Council to accept all but one of the Parliament's amendments in its common position. When the Parliament came to vote its second reading, there was no majority for any amendment. As with tobacco advertising, the sensitivity of an issue served to shorten rather than lengthen the codecision procedure but this time the shape of the outcome could be more easily identified in amendments incorporated into legislation.

The process of conciliation

Inside the conciliation procedure, a process of exchange has developed with both sides ready to make concessions but at a price that only becomes clear in the course of the negotiations. This exchange provides an opportunity for the EP to press its point in a much more intensive way than it ever could under the consultation or cooperation procedures. And the evidence shows that it can get through conciliation changes to the common position that do make a substantial difference to the content of legislation. We will consider two examples from 1998: the Auto-Oil package and the 5th Framework Programme for Research and Technology.

The Auto-Oil package concerned measures to be taken against air pollution by emissions from cars and light commercial vehicles as well as the quality of petrol and diesel fuels sold in the European Union. The Parliament adopted more than 100 amendments at second reading which contributed to the complexity of the negotiations but also provided the material for trade-offs between the two parties.

The Parliament found itself facing a British Presidency which had a strong domestic interest in finding a solution. The Deputy Prime Minister, Mr Prescott, had returned from the Kyoto Summit at the end of 1997, committed to reducing the level of CO₂ emissions in Europe. He was therefore eager to ensure that a deal was reached on the Auto-Oil package as a way of showing to the outside world that the EU was respecting the Kyoto deal. The British Presidency therefore made it clear that it wanted to find a compromise with the Parliament. It suggested that the central element of that compromise should be an acceptance by the Parliament of the limit values laid down in the common position but on the basis that those standards should be compulsory by the year 2005 rather than optional as proposed in the common position. The final agreement that

was reached at the end of June 1998 was close to this proposal.

Opinions can differ as to how good this deal was. Critics could point out that the Parliament did not, for example, succeed in its aim of getting agreement on reducing the level of sulphur emissions in fuel; on the other hand, it did get agreement that the 2005 limit values could be introduced earlier by those states that wished to. However, this discussion is not relevant here. The important point is that the bargaining process led to an outcome which was different from the starting point of both parties and from the Parliament's point of view, it resulted in the EU accepting to impose an obligation for improved standards which would have a marked effect for the general public as well as for the car and oil industries.

A second example of the changes that can be made by the Parliament is the 5th Framework Programme for Research and Technology which was adopted at the end of the Austrian Presidency in December 1998. This was a particularly unpromising case for influence by the Parliament as it was an area where agreement in the Council had to be by unanimity. The Austrian Presidency did not have the option of working towards a qualified majority. This was particularly important here as the Spanish government had insisted in including in the common position what became known as the "guillotine clause" under which any budgetary allocation agreed for the new programme would be subject to review pending the outcome of the negotiations on Agenda 2000. These negotiations also made other delegations, notably the Netherlands and the United Kingdom, very reluctant to contemplate any significant increase beyond the common position which had set aside 14bn Euro for the four year period of the programme.

The Parliament insisted that the current level of Community research could not be maintained under the terms of the common position. It voted at second reading a figure of 16.3bn Euro and thus the two institutions entered the negotiations more than 2bn Euro apart. Remarkably an agreement was finally agreed on a figure just short of 15bn, thereby effectively providing for a sharing of the spoils.

Again there was a degree of dissatisfaction in the Parliament with the outcome but there is little question that without codecision it would have been impossible to reach such an agreement. Cooperation, for example, would have allowed the Commission to propose the Parliament's starting figure after second reading but there would have been unanimity in Council to reestablish the common position at a far lower level than that finally agreed. Furthermore, the process of negotiation allowed the two parties to revise the "guillotine clause": it was accepted that the EP would be involved through codecision in any revision of the figures arising from the new agreement on future financing under Agenda 2000. So even unanimity in Council does not prevent the Parliament from influencing outcomes substantially under codecision.

What made Parliament influence possible?

If the conclusion of the previous section is accepted and the Parliament is recognised as making a difference within the codecision procedure, the next question that needs to be answered is why. Some pointers arising from specific cases have already been offered, such as the enthusiasm of the Council Presidency to get an agreement or the desire of both sides to avoid failure. However, to gain a broader understanding of the influence of the Parliament, two more general factors need

to be taken into account: the ability of the two institutions to adapt and the shape of the individual issues. The former draws attention to the importance of informal processes changing the way each party regarded the other; the latter points to the margin for manoeuvre on both sides and the limits as well as potential for change.

The growth of shared norms

Institutions learn and the European Parliament and the Council of Ministers are no exceptions. The codecision procedure was introduced by Treaty but the Treaty could only offer a framework which had to be filled in through practice. This process of adaptation taught both sides that they had to innovate if the negotiations were to have any chance of reaching a successful outcome. It was a question of trial and error but more or less informal procedures and practices were developed which created a virtuous circle in which cooperation and trust were mutually reinforcing. In this process a culture was created which significantly increased the opportunities for the EP to make a mark.

The general importance of informal processes at work throughout the conciliation procedure has been recognised elsewhere (Garman and Hilditch, 1998) but one feature of this informal landscape merits particular attention, namely **trialogue meetings**. Such meetings in the context of conciliation were a response to the gap left in the Treaty between the second reading of the Council and the convening of the conciliation committee. Article 189B (now Article 251) does not say what, if anything, should happen after the Council has given its view on the second reading amendments of the Parliament and before the delegations of the two institutions meet in the committee. During the first year and a half after the entry into force of the Maastricht Treaty, there were contacts but no structured dialogue between Council and Parliament before the conciliation committee met. As a result the two sides found themselves trying to negotiate in a room where there could be more than 100 people present. Only in the second half of 1995 was the conclusion finally drawn that this was not adequate and that the conciliation committee proper needed to be prepared by smaller meetings which could clear the ground and identify the major issues that needed to be addressed in the full committee.

As a result, during the Spanish Presidency in the second half of 1995, the two institutions agreed on the general principle of holding preparatory dialogues and they have become a standard feature of conciliation under every subsequent Presidency. These meetings bring together a reduced number of participants: the Parliament is normally represented by the chair of the responsible committee and the rapporteur for the proposal under discussion; the Council by the Deputy Permanent Representative from COREPER I (only for very few dossiers, notably in the financial field, are the Permanent Representatives involved); and the Commission by the Director-General or Director responsible for the draft legislation. Only four or five people speak, with the bulk of the discussion taking place between Council and Parliament. All three institutions come with a number of officials but normally the total does not exceed 25 and is often less.

This institutional innovation has been of great importance in helping to reduce uncertainty and to channel conflict. It has served to generate a variety of norms about how the parties should behave which can be described as "rules of engagement". By the end of the Maastricht era they had become so self-evident that no-one contested them and all agreed that such meetings were an essential means of reaching a successful conclusion in conciliation.

First, there is the shared assumption that all conciliation meetings should be preceded by at least one, and normally more than one, triologue. On the Parliament side, every constituent meeting of the delegation for a particular dossier formally mandates the committee chair and the rapporteur to meet the Council and to report back to the next meeting. It is a procedural norm that no delegation member has wished to contest. On the Council side, there is an equivalent willingness to invite the Presidency to meet the Parliament once the working group dealing with an issue has examined the Parliament's second reading and COREPER has had a first exchange of views. The anticipation of the Council that the practice will continue has been underlined in the last two to three years by the agreement that the Deputy Permanent Representative of the country holding the next Presidency should be able to attend as an observer at all trialogues in order to become familiar with what is involved.

Second, there is a high level of agreement on how the meetings themselves should be organised. The Parliament expects the Council to come and explain why it cannot adopt all the amendments adopted by the Parliament in second reading. It thereby has come to accept (after some early attempts to widen the base of discussion) that amendments not voted at second reading cannot be raised in the negotiations. The Council responds by offering its comments on all the amendments as presented in a joint document prepared by common agreement by the two secretariats. It will usually divide amendments into three groups, those it can accept, those it cannot accept and those where a compromise might be found. For this last category it may go further and present the Presidency's ideas on paper. The Parliament negotiators will normally indicate their willingness to present the position of the Presidency to the delegation, sometimes intimating their own position on the compromises put forward. This debate serves to create a revised version of the common document which continues to provide the framework for discussion until the conciliation committee itself.

Third, there is a shared belief in the good faith of the other side and in its desire and ability to argue in support of agreed compromises when meeting the rest of the delegation. This has always been a greater problem for the Council in that it has needed to be convinced that a small number of MEPs can speak in a representative capacity on behalf of such a diverse institution as the Parliament. The failure of the biotechnology conciliation in 1995 when the plenary disavowed the EP delegation did weaken Council confidence in this representative function. For the French President-in-Office of the Council it showed that there was 'a problem of method in the codecision procedure' (quoted in Earnshaw and Judge, 1995, p. 646). However, it proved to have a remarkably short-term effect: trialogues have proved successful, despite the very small numbers present on both sides. The Parliament's negotiators, for their part, have generally felt confident that the Presidency not only reports accurately on the balance of opinion in the Council but is prepared to go to some lengths to defend a compromise negotiated in a triologue. And on the Council side, the meetings have made it possible to assess more accurately than can be done in the full committee the level of commitment of the Parliament to particular amendments and the kinds of options that might be acceptable. Trialogues have, for example, served to make it quite clear that the Parliament will never accept a IIIb comitology committee: COREPER I has consistently drawn the appropriate conclusion not to insist on such a formula, not least when it saw the failure of the Securities Committee Directive in 1998 which was dealt with by COREPER II.

Fourth, trialogues have served to accentuate the sense of Council and Parliament enjoying a special relationship from which the Commission is excluded. The Commission is present at all

dialogues and can play an important part in helping to find compromises. However, its representatives can find themselves in difficulty if they take it upon themselves to express their view on the position of the other two parties too overtly. They are likely to be reminded that the Commission does not enjoy the same rights within conciliation as outside (eg. the right to withdraw its proposal) and that the Treaty lays down a specific but limited function, namely, 'to take all the necessary initiatives with a view to reconciling the positions of the EP and the Council'. The result is that the Commission sometimes feels in a clear position of inferiority, whereas the other two institutions feel an increased sense of solidarity which in turn serves to improve the chances of an agreement being found.

These unwritten rules have together served to make dialogues an extremely successful instrument: no-one could now imagine the procedure without them. However, they are not just an instrument to be applied when appropriate. They have affected the way in which each side views the other and fashioned common attitudes which have contributed to the resolution of differences. In this sense, the growth of shared norms helps to explain in general terms why the Parliament has had the influence it has on the conciliation procedure.

The structure of policy

The ability of the two institutions to learn to adapt to the new procedure and to develop its potential does not provide an explanation for why the Parliament was able to make its mark in any specific instance. To do this we need to look at the individual cases and to see if any pattern emerges. For example, one might argue that outcomes depended essentially on the capacities and skills of the individual negotiators on both sides. Such human factors certainly do play a part: ingenuity, determination and nerve are important qualities if the two sides are to get to an agreement. However, there are clear limits to the ability of the negotiators to resolve disputes and these limits are intimately linked to the way in which the two sides conceive of their own interests. What is needed therefore is a recognition of the different kinds of issue that the two institutions were faced with and the way in which the structure of those issues made agreements more or less likely. In other words, outcomes were issue-specific: some were more likely to lead to the Parliament having an influence than others.

Decisions taken under codecision cannot be called "history-making". They are not ones that define the whole shape of the European Union, such as the financial allocations under Agenda 2000 or the general level of own resources. They belong to the "middle-range" decisions which are much less visible, receiving much less publicity but which can have a major effect on the shape of European society. In over 80% of the cases, they take the form of directives: only 5 procedures have resulted in the adoption of a regulation and the remainder have been action programmes (European Parliament, 1999, p.12). Hence acts under codecision normally require transposition into national law and their effect is not felt immediately.

The kinds of decision made can be divided into two main categories: *distributive* and *regulatory*. The former are programmes, such as the 5th framework programme for research and development, which allocate public resources for the achievement of specified objectives by private individuals or groups; the latter establish rules which seek to act against activities that are seen as harmful (for example, the consumption of tobacco) or to promote activities that are seen as beneficial (such as the provision of guarantees for consumers when they purchase goods).

Judge, Earnshaw and Cowan (1994) have suggested that the level of parliamentary influence needs to be considered in the light of the kind of policy being developed. Different types of decision, whether distributive or regulatory, generate different kinds of decision-making and hence make it more or less easy for a Parliament to have an effect. They extend the argument by pointing out that it is not enough to determine the kind of policy: just because policy is regulatory does not mean, for example, that the Parliament can exercise influence more easily than it can for distributive policy. One has to be able to specify more precisely the conditions for the exercise of influence within a particular policy area.

Such an exercise is useful in the context of the codecision procedure and in particular, when there is conciliation. One can identify conditions specific to distributive and regulatory policies which are important in determining whether the Parliament can have an impact. In the former case, the variable to consider is the level of legitimacy accorded to EU action by the Council members: the lower that level, the less chance the EP has of having an impact; in the latter, the variable is the degree of concentration of the costs of the position of the Parliament: the less concentrated they are, the more likely it is that the Parliament can affect the outcome.

It is not possible to apply this analysis here in detail but instead some examples will be put forward to back the general claim and to suggest that these variables are more important than, for example, the question of whether or not decisions in the Council are taken by Qualified Majority Voting or unanimity. The less legitimate an EU activity is in the eyes of even a minority of the Council, the less likely the Parliament can get its way; equally, the more concentrated the costs, the less likely that the Council will be to resort to QMV to satisfy the Parliament.

If we take first *distributive* policies, consider the programme for European Voluntary Service which was discussed during 1998. The programme is designed to enable young people to go and gain work experience in another European country. The main visible part of the argument between Parliament and Council revolved around the volume of resources to be allocated to the programme. The Parliament had to be satisfied with a total of 47.5 mECU as compared with its starting point of 80 mECU and a Council common position of 35 mECU. However, this argument concealed a broader dispute about how worthwhile such a programme was and what its scope should be. The Parliament argued that it should be possible for young people to take work under this programme as a substitute for doing the civilian service that replaces military service in the states that have military service. The British Presidency was not fundamentally opposed to this idea but it found that those states that have military service were not prepared to contemplate the possibility of their internal arrangements for determining the duties of citizens being contaminated by a Community programme. It might be a useful mechanism for helping young people to gain experience abroad but its scope needed to be clearly delimited and not touch national prerogatives. In the face of such a definition of subsidiarity and of the extent of the legitimacy of Community action, no amount of clever redrafting could help the Parliament to prevail. The Council would not move on an issue that was of such importance to a number of Member governments.

As far as *regulatory* policies are concerned, an example of concentrated costs can be taken from the 1997 debate on the directive relating to the protection of personal data. An important amendment here for the Parliament was a provision that would allow individuals to be able to remain ex-directory without charge. A large majority of Member States were willing to accept

this but it did not get through despite the fact that QMV applied in this case. The reason for this was that one state, France, stood to lose very heavily from the provision. As many as 5 million subscribers in France are ex-directory and they are obliged to pay an annual fee to remain so. What is more, the discussion took place at a time when France Telecom was being privatised. A provision that would have made it free in France to be ex-directory was considered likely to have a significant effect on the value of the shares of the telephone company. Under these circumstances, the other Member States were not prepared to force the French to accept the Parliament amendment and instead a compromise was agreed restricting charges to subscribers to the 'real costs' of being ex-directory. The perceived costs of the EP proposal were too concentrated to make its adoption feasible.

By contrast, the Auto-Oil package discussed earlier was a regulatory issue where the costs were much less concentrated and distributed over time. The provision for compulsory limit values in 2005 did not hit any individual interest immediately but allowed both the car and petroleum industries to adapt over a number of years, with some limited derogations being accorded to Member States facing serious socio-economic problems. In these circumstances, it was possible to find an agreement which balanced the diffuse benefits that would gradually accrue to society against a set of costs which were certainly real but which were sufficiently spread for them to be made acceptable in the Council, thanks to an energetic Presidency.

These examples are not intended to provide a complete explanation for the influence exercised by the Parliament under codecision. Nevertheless, they are designed to provide the basis for countering the view that influence is entirely contingent and dependent upon circumstances. There is a structure in any area of policy and that structure has a strong effect on what the Parliament can achieve. Certainly codecision broadens the scope for influence but the field is not limitless. Some issues offer more possibilities than others: the negotiations reveal which are which.

Where do we go from here?

The distance that has been travelled by the Parliament and the Council over the last five years is remarkable. The very term "codecision" was contested during the Maastricht negotiations. The British government in particular insisted on the phrase "the procedure laid down in Article 189B" and even tried, without success, to introduce a new phrase the "negative assent procedure" (Corbett, 1993, p.58). Now all parties are perfectly willing to use the word "codecision". In May 1999, for example, the three institutions adopted together, without fuss, a "joint declaration on practical arrangements for the new codecision procedure". Codecision has become part of the *acquis communautaire*.

But what next? As already indicated, the new Amsterdam provisions substantially broaden the scope of codecision and have eliminated the possibility for the Council to reintroduce its common position. These two changes alone will increase the work of both institutions and put them under equal pressure to find agreement if there is conciliation. The effect is certain to be an even closer level of cooperation. The prospect of a significantly larger number of procedures will give an impetus to earlier contacts designed to find a way to avoid conciliation or at least to reduce its scope. It is unlikely that the possibility provided under the new Treaty of reaching agreement at first reading without the Council having to adopt a common position will be used on a widespread

basis (though it was used for the first time already at the May session of the Parliament for the adoption of the proposal for the new independent anti-fraud agency, known as OLAF). Nevertheless, it will encourage both sides to meet to seek to identify cases where it could work. Equally, the new obligation for both institutions to open the conciliation procedure within a maximum of eight weeks of the Council adopting its second reading will make it necessary to adjust the way in which the sides interact, notably by planning their respective timetables more carefully than in the past. Neither institution can afford to be engaged in constant conciliation talks: conciliation cannot be seen as anything other than a measure of last resort.

Such changes are ones that the institutions will no doubt find ways of dealing with. There are, however, wider questions raised by the development of codecision. What we have witnessed over the last five years is not neutral in its effect for the future of the European Union. The very fact that codecision was further legitimated by the Amsterdam Treaty will encourage a general perception of this procedure as the normal one for legislation under the EC Treaty. Member States will find it difficult to argue against its further extension if it is seen to work and the Parliament continues to be a body with which the Council considers it can negotiate. Moreover, the perception of the Parliament and Council as co-legislators will extend beyond the institutions and become something familiar in such a way that the cases where there is not codecision will be seen as an aberration: this too will make it harder to keep the boundary where it is today.

Will the extension of codecision go further in legitimising the idea of bicameralism at the European level? For the moment it is an idea that is not widely spread. Inside the Parliament some MEPs do use it, not least when arguing against the suggestion that another parliamentary chamber should be created at European level, composed of national parliamentarians. They maintain that we have a bicameral system composed of the Council and the Parliament and do not therefore need a further reinforcement of parliamentarism inside the institutional structure. It is by no means certain that this view will prevail, not least with an enlargement which will bring with it states with very different traditions. Nevertheless, if it does, it will radically change the way in which the Parliament is perceived, both in terms of the level of equality that it enjoys vis-a-vis the Council but also as a central institution in determining the direction of the Union via legislation as well as through control of the executive. At that point who can doubt that the 'F' word, abandoned at Maastricht, will not be far behind!

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