

BRITISH AND FRENCH LEGISLATIVE PROVISIONS
ON THE POWERS OF THE EUROPEAN PARLIAMENT

A. British Legislative Provisions

1. Section 6 of the European Assembly Elections Act 1978, which received the Royal Assent on 5 May 1978, reads as follows:-

"6.-(1) No treaty which provides for any increase in the powers of the Assembly shall be ratified by the United Kingdom unless it has been approved by an Act of Parliament.

(2) In this section "treaty" includes any international agreement, and any protocol or annex to a treaty or international agreement."

2. This section did not appear in the Bill as presented to Parliament, but was incorporated as an amendment during the Bill's passage through the House of Commons.

3. The section is in my view largely declaratory. If amendments were to be proposed to the Treaties to increase the powers of the EP, the procedure to be adopted would be that set out in Art. 236 EEC, which reads:-

"The Government of any Member State or the Commission may submit to the Council proposals for the amendment of this Treaty.

If the Council, after consulting the Assembly and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the Governments of the Member States, the conference shall be convened by the

President of the Council for the purpose of determining by common accord the amendments to be made to this Treaty.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements."

Treaty amendments or new treaties

4. The normal procedure employed in the United Kingdom for ratification of an international Treaty is that the Government lay a copy before Parliament and do not proceed with ratification until the expiration of a period of 21 days¹⁾. The object of this practice is to provide an opportunity for a debate in Parliament on the proposed Treaty before it is ratified by the Government.

5. Community legislation under the European Communities Act 1972 is, in the normal way, dealt with in a different fashion from the Ponsonby practice. Under section 2 of this act, "regulations" under Art 189 EEC, which have binding force and are directly applicable in all Member States, are implemented in the UK by Orders in Council; so also are "directives" and "decisions" under Art 189, which are binding upon the Member States, and upon those to whom they are addressed, respectively.

6. The House of Commons, in discussing the European Assembly Elections Bill, feared that ratification of Treaty amendments increasing the powers of the EP might under Art 236 EEC be effected either under the Ponsonby rule, which would give little

¹⁾ Erskine May, Parliamentary Practice, 18th Ed. p. 251
(This practice is known as the "Ponsonby rule", after a junior Foreign Office minister who initiated it in 1924).

opportunity even for debate, or under the "Order in Council" procedure under the European Communities Act described in the preceding paragraph. This procedure would give little time for debate and no opportunity for amendment by the House of Commons of the proposed Treaty amendments.

7. In adopting section 6 of the European Assembly Elections Act, the House of Commons was thus serving notice on the government that the only acceptable procedure for the ratification of any Treaty increasing the powers of the European Parliament was to submit the provisions of such a treaty to Parliament in the form of a Bill for its approval. Such a procedure would of course provide much wider scope for debate and amendment of the proposed Treaty amendments than either the "Ponsonby rule" practice or the "Order in Council" procedure under the European Communities Act.

8. It is however very doubtful whether any government in the United Kingdom would have attempted to seek Parliamentary approval of treaty amendments increasing the powers of the European Parliament by any other method save that of a Bill, given the climate of opinion in Britain regarding the EEC. Section 6 of the European Assembly Elections Act 1978, it may thus be argued, is largely declaratory in effect as regards amendments to the Community treaties.

International Agreements

9. The situation is less clear in regard to 'international agreements and any protocol or annex to a treaty or international agreement', which by subsection (2) of section 6 of the European Assembly Elections Act 1978 are included in the definition of 'treaty' contained in subsection (1) (see paragraph 1 above)¹. The difficulty is to define an 'international agreement' in terms of the European Assembly Elections Act 1978.

10. Whereas on the one hand a document such as the Protocol on the Privileges and Immunities of the European Communities, which was annexed to the Merger Treaty 1965, would be included in the definition, as would the economic cooperation agreement between the EEC and Yugoslavia of April 1980, and the Treaty on Budgetary Provisions 1975, the status of other types of agreement is less clear.

11. One such agreement is the Joint Declaration by the European Parliament, the Council and the Commission on the conciliation procedure, signed in March 1975. This was adopted 'during the negotiation of the Treaty' on Budgetary Provisions 1975. Other such agreements could be 'inter-institutional agreements' or 'gentleman's agreements', by means of which several rapporteurs of the Institutional Sub-Committee of the Political Committee wish to see the influence of the European Parliament increased. In fact such joint Declarations or agreements could hardly be deemed 'international', as they are intra-Community and have no force of law, either within or without the Community.

12. It would thus appear that such declarations and agreements would not be touched by section 6 of the European Assembly Elections Bill and could be acceded to by the United Kingdom Government in the Council of Ministers without the subsequent necessity to incorporate them in the form of a Bill or Order-in-Council in order to seek the approval of the British Parliament.

¹ This definition is identical to that contained in section 1(4) of the European Communities Act 1972.

B. French Legislative Provisions

13. On 20 September 1976 the Council of Ministers adopted a Decision to which is annexed an Act on the direct election of Members of the European Parliament. Following objections expressed in France, particularly in Gaullist circles, to this Act, President Giscard d'Estaing asked the Constitutional Council of France for an opinion on the conformity of the Act with the French constitution.

14. The Council is composed of nine members, of whom six are nominated by the President and three by the President of the Senate. In 1976 the former were all Gaullists, nominated by Presidents de Gaulle and Pompidou, the latter being 'Europeans', nominated by President Poher, himself a former President of the European Parliament. Its function is to give opinions on the conformity of national laws or of Community legislative provisions with the French Constitution.

15. In December 1976 the Constitutional Council gave its opinion, by a majority of 5 votes to 4, that the Act was in conformity with the Constitution. Article 2 of the Constitution reaffirms the principle of the 'indivisibility' of the French Republic, and the Council was of opinion that the Act of 20 September 1976 did not infringe this principle. But in reaching this decision, the Council imposed very strict conditions and limitations on the constitutional relationship between France and the European Community. These may be summarised thus -

- a) The Constitutional Council saw fit to give an opinion not only on the Act of the EEC Council, but on its Decision under Article 189 EEC. It might be considered that it is in fact for the European Court of Justice to rule upon the legality of such a Decision, not for the French Constitutional Council;
- b) Any uniform electoral procedure proposed by the European Parliament under Article 7 of the Act must respect this principle.

In fact, the principle of the indivisibility of the Republic refers to the dividing up of its territory, and not to election systems. In invoking this principle the Constitutional Council were trying to dictate to the French Parliament, which under Art 34 is responsible for determining the electoral system to be used in France and for the European Parliament, and to the French government its view of what future electoral policy should be in France. In effect the Council was refusing to accept the concept of electoral regions in France.

Two further effects of the Council's opinion would be to render impossible in France under a European uniform election procedure the creation of genuine "European" electoral areas spanning natural boundaries, and even to nullify any proposal for candidates for election to the European Parliament to present themselves in a country other than their own.

- c) The Council reserved for itself the right to give an opinion on any alteration in the balance of power between the Community institutions, as at present set out in the Treaties

In doing this it was categorically rejecting the supra-national character of the EEC and reducing it to the status of an inter-governmental organisation such as the Council of Europe or OECD. By extension, it was implicitly confirming the practice of decision-making by unanimity in the EEC Council.

- 16. Law 77-680 of 30 June 1977 ratified for France the Council Act of 20 September 1976 on direct elections to the European Parliament. Article 2 reads as follows:-

"2. Any alteration in the competences of the Assembly of the European Communities, from those which existed at the date of the signature of the Act relating to the election of representatives to the Assembly by direct, universal suffrage, which has not been authorised by an act of ratification or approval according to the provisions of the Treaties of Paris and Rome, and which, in this case, had not been authorised by a revision of the Constitution pursuant to the decision of the Constitutional Council of 30 December 1976, will have no effect in regard to France.

This provision will apply equally to any act of the Assembly of the European Communities which, without claiming to make a specific alteration in its competences, in fact extends them."1)

17. It will readily be noted that this provision is much more comprehensive than section 6 of the European Assembly Elections Act 1978, in the following ways:-

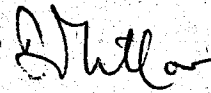
- a) the Article refers to the "competences" of the European Parliament, which is normally considered to be a wider term than "powers";
- b) any alteration in such competences which has not been covered by Treaty amendment according to the provisions of the Treaties is included;
- c) unauthorised alterations are to have no effect in regard to France, which would mean that the procedure set out in Art 236 EEC could not be carried out, as any amendments to the Treaty have to be made "by common accord" (i.e. unanimously) by the conference of representatives of

1) Unofficial translation by author of this note.

the Governments of the Member States convened for this purpose;

- d) in addition, section 2 of Law 77-980 is to apply to any act of the Assembly which in fact extends its competences without specifically claiming to do so.

18. It will readily be concluded that the limitations on the extension of the competences and powers of the European Parliament imposed by this provision of French law are considerably stricter than those foreseen by the equivalent provision in British statute law. The French provision covers everything from Treaty amendments to joint Declarations (such as that on the conciliation procedure), or gentlemen's agreements, such as that proposed by the REY resolution of April 1980 by which Parliament would approve Commission policy before the Commission takes office, and also ratify the appointment of Commissioners after it has taken place.



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