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EUROPEAN PARLIAMENT

Working Documents

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DOCUMENT 1-216/81

Report

drawn up on behalf of the Political Affairs Committee

on relations between the European Parliament and the Council of the
Community

Rapporteur: Mr K. HÄNSCH

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By letter of 25 March 1980 from the Secretary-General of the European Parliament, the Political Affairs Committee was authorized to draw up a report on relations between the European Parliament and the Council of the Community.

On 31 January 1980 Mr K. Hänsch was appointed rapporteur.

The report was drafted by the Subcommittee on Institutional Problems, which adopted it on 4 December 1980.

The Political Affairs Committee considered this draft report at its meetings of 17-18 February, 17-18 March and 21, 22 and 23 April 1981, adopting the report by 29 votes to one, with three abstentions, on the last-mentioned date.

Present: Mr Rumor, chairman; Mr Haagerup, vice-chairman; Mr Hänsch, rapporteur; Mrs Baduel-Glorioso (for Mr Berlinguer), Mr Berkhouwer, Mr Blumenfeld, Mr Diligent, Lord Douro, Mr Fergusson, Mr Fischbach, Mr Forth (for Mr J.M. Taylor), Mrs Fourcade (for Mr Lalor), Mr B. Friedrich, Mr Habsburg, Mrs Hammerich, Mrs van den Heuvel, Mr Israel (for Mr de la Malène), Mr C. Jackson (for Lady Elles), Mr Kappos (for Mr Ansart), Mr Klepsch, Mr Lomas, Mr Penders, Mr Radoux (for Mr Estier), Mr Romualdi, Mr Schall, Sir James Scott-Hopkins, Mr Seefeld (for Mr Brandt), Mr Segré, Sir John Stewart-Clark, Mr Tindemans, Mr Van Miert, Mr Vergeer and Mr Zagari.

The opinion of the Legal Affairs Committee is attached.

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The Political Affairs Committee hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

on relations between the European Parliament and the Council of the European Communities

The European Parliament,

- conscious that since the Community is a union of democratic states all its decisions must take into account the interests both of the Community and of the individual Member States, and that these two components of the decision-making process must be represented in a balanced manner,
 - whereas the Council of the European Communities remains the Community institution in which governments represent the Member States and their interests,
 - convinced that the European Parliament - together with the Commission which is accountable to it - must since its direct election increasingly represent Community interests vis-à-vis the Council,
 - believing that the political and institutional development of the Community over the last twenty years has reduced the overall capacity of the Council and Commission to operate and take decisions,
 - whereas
 - firstly, by largely suspending, as a result of the 'Luxembourg compromise', the majority principle laid down in the Treaties, the Council has attained a predominant position not intended in the Treaties and has thus reduced the influence of the other Institutions on the legislative process;
 - secondly, following the direct elections provided for in the Treaties and agreed upon by the national governments, Parliament has received an autonomous and direct democratic legitimation and hence greater political force, yet, it is still not adequately involved in Community decisions,
 - having regard to the report of the Political Affairs Committee and the opinion of the Legal Affairs Committee (Doc. 1-216/81),
1. (a) Renews its claim to the right to participate in decisions on all matters pertaining to the European Community, in particular in respect of the legislative process and the appointment of the Commission of the European Communities, as provided for in the report by Mr Jean REY adopted on 17 April 1980;

- (b) Reminds the governments of the Community of the final declaration of the Paris summit conference of 1974, in which the heads of governments announced their intention to extend Parliament's powers 'in particular by granting it certain powers in the Community's legislative process' and calls on the governments to extend the rights of Parliament in the spirit of this declaration;
2. (a) Notes that while a corresponding revision of the Treaties would be necessary in order for it to acquire the right of co-decision due to it by virtue of its democratic legitimation, it is also possible to increase its influence on Community decisions within the existing provisions of the Treaties;
- (b) Declares therefore that first of all full advantage must be taken of every opportunity afforded by the Treaties to increase Parliament's influence on the decision-making process of the Community;
- (c) Urges the Council to take, together with Parliament, in particular through joint declarations, the practical steps outlined in this report towards a more balanced and more effective Community decision-making process that is democratically legitimated at both national and Community level;
- (d) Regards such joint declarations by Council, Commission and Parliament as both necessary and feasible, especially in the fields of exchanges of information, consultation and conciliation on internal and foreign issues¹ and in the budgetary procedure;
- (e) Is aware that Parliament itself can contribute to making the Community's activities more efficient, yet requests the Council to help in this by improving its working methods and, with the aid of the measures proposed here, to enable all the organs to act effectively in keeping with the importance ascribed to them by the Treaties;

¹ It should be pointed out that Parliament will consider in due course a detailed report on participation in the development of external relations.

INFORMATION

3. Welcomes the practice whereby each President of the Council delivers a speech before Parliament on entering office, detailing the objectives to be pursued during his term, and hopes that this will be continued; requests, however, that the Council President's statement be submitted to Parliament in writing sufficiently in advance to ensure that - after a brief introduction by the Council president - Parliament can hold a prepared debate on the statement;
4. Regrets that the Council's answers to written and oral questions by Members of the European Parliament are frequently too uninformative and suggests that in future the Council should give more exhaustive answers;
5. Wishes the work of the committees to be more closely involved in the flow of information between Council and Parliament and feels that there ought therefore to be regular formal contacts between its committees and the specialized Councils, not only through individual agreements between the rapporteur, the committee chairmen and the President of the relevant specialized Council, but also including the appearance of Ministers before the relevant parliamentary committee at the beginning of each presidency so as to explain the policy they wish to pursue;
6. Considers it particularly useful in this context that for the budgetary procedure, in which Parliament and the Council together constitute the budgetary authority the Council should be represented at meetings of Parliament's Committee on Budgets and that Parliament should be kept more fully informed by the Council about its deliberations on budgetary matters;

CONSULTATION

7. Notes that the arrangements laid down in the Treaties for the consultation of Parliament before the Council takes a decision can and must be improved, and demands that this longest-standing and important right of Parliament to participate in the legislative process be fully respected by the Council;
8. Takes the view that the Council's practice of consulting it as a matter of course, not only in those cases prescribed by the Treaties but also before any act of legislation, must be continued, and considers that it would be useful for this procedure to be formally laid down;

9. Demands, in the field of foreign affairs, that before the Council concludes agreements in the Community's name with third countries, groups of States or international organizations, it should extend the consultation that is at present required only in certain cases under Article 228 of the EEC Treaty, and the confidential consultation of the parliamentary committees which was introduced as a result of inter-institutional accords, to all agreements concluded on the basis of the Community Treaties before they are signed;
10. Does not deny that it may be of advantage to the Community's activities for the Council to adopt outline decisions which are not specified in Article 189 of the EEC Treaty or elsewhere; urges the Council, however, not to replace decisions taken under Article 189 with such outline decisions thereby circumventing the normal procedure requiring Parliament to be consulted;
11. (a) Requests the Council to undertake in a joint declaration to take full account in its decisions of such further opinions as Parliament may consider it necessary to deliver on its own initiative in the light of new circumstances or legal developments affecting a proposal from the Commission for a legislative act;
- (b) Urges the Council to repeat its consultation of Parliament under the legislative procedure whenever the Commission amends its original proposal on which Parliament has already delivered an opinion and such amendments have not been considered by Parliament;
12. Demands that the Council take no decision on Commission proposals before the Commission has either submitted an amended proposal conforming to Parliament's opinion, or has given Parliament an explanation of the reasons for not doing so;
13. Urges the President-in-Office of the Council to continue the practice started some time ago of forwarding Parliament's resolutions - both those embodying an opinion and those it has adopted on its own political initiative - to the governments of the Member States as rapidly as possible;
14. Demands that the Council in future fully comply with the undertakings given by its Presidents-in-Office, Mr Harmel and Mr Scheel, on 20 March 1970 and 22 July 1970 respectively, by informing Parliament of the reasons for which the Council has failed to act upon Parliament's opinion, whenever this is the case;

CONCILIATION

15. (a) Urges the Council to extend the conciliation procedure laid down in the declaration of 4 March 1975 to all of the Commission's proposals to the Council to which Parliament attaches especial importance and on which it requests that the conciliation procedure be opened when it delivers its opinion; and considers that the legal acts which might be the subject of conciliation should include those concerning the further constitutional development of the Community and decisions on specific Community policies¹;
- (b) Repeats the demand made in its resolution of 17 April 1980² that it should be consulted formally and in the early stages of negotiations on the accession of further states to the Community and calls on the Council and Commission to propose to the Member States procedures which would permit Parliament to exercise its right to participate in such adjustments to the Treaties as are already legally subject to a conciliation procedure in the case of autonomous amendment;
- (c) Wishes to strengthen its influence on the Council's decisions through collaboration at a suitable juncture on agreements with third countries, groups of states or international organizations, and therefore proposes that where Parliament rejects such a text, agreement should be sought through a conciliation procedure; the Political Affairs Committee is asked to prepare a more detailed report on these matters;
16. (a) Takes the view that the requested extension of the area in which conciliation may be held should be accompanied by a tightening-up of procedures and a more efficient organization of work within the Conciliation Committee;
- (b) Feels that there should be an exact definition of the presidency's role and better coordination of concurrent conciliation procedures, in line with the proposals of the 'Three Wise Men';

¹ See Articles 43, 49, 51, 54, 56, 57, 75, 84, 87, 94, 99, 100, 113, 126, 128 of the EEC Treaty and Articles 31, 76, 85 and 90 of the ECSC Treaty

² Contained in the Blumenfeld report, see Doc. 1-49/80

- (c) Calls on the Council always to be fully represented in the conciliation procedure and to give sufficient powers to its representatives to enter into negotiations;
- (d) Intends for its part to do its utmost to increase the efficiency of the contribution of Parliament's delegation to the work of the Conciliation Committee;
- (e) Wishes to draw up, together with the Council, improved rules on the time limits for conciliation procedures, to take account of the need on the one hand to reach a decision within a reasonable period and on the other not to complicate the settlement of difficult matters by imposing inappropriate time limits;
- (f) Demands that the Council give an undertaking to take a decision following conciliation within a period fixed by the Conciliation Committee;

BUDGETARY PROCEDURE

17. Points out that Parliament will in due course, in connection particularly with the forthcoming extension of the Financial Regulation as required under the Treaty, make proposals for improving the budgetary procedure and the implementation and control of the budget, and - without wishing to anticipate these proposals - sets out its main views on the protection and necessary extension of its legal status as an arm of the budgetary authority as follows;
18. Urges the Council fully to respect Parliament's right of decision, as a budgetary authority, over non-compulsory expenditure and not to undermine it by legislative measures by
- setting ceilings, in the regulations in respect of which such expenditure is incurred, for the required budget appropriations which the budgetary authority is responsible, under the Treaty, for allocating;
 - requiring individual regulations to be adopted for each project within the framework of the fund appropriations already approved by Parliament;

19. (a) Urges the Council not to infringe on the Commission's responsibility to implement the budget under Article 205 of the EEC Treaty since this encroaches upon Parliament's constitutional right under Article 206b of the EEC Treaty to supervise the management of the budget and grant a discharge in this respect;
- (b) Calls therefore for the 'Consultative Committees' set up by the Council to support the Commission to be confined to a purely consultative function;
- (c) Demands equal involvement at least in the Council's decision-taking on basic policy regarding the commitment of appropriations to that provided for in the case of general legislative acts under the conciliation procedure;
- (d) Recalls the basic structure of the new financial system of the European Communities (1970 and 1975). This makes the European Parliament the body responsible for monitoring the proposal of the Committee on Budgets and delivering the discharge. The Council thus no longer has the right to freeze the budget against the will of the Commission and Parliament. Transfers of appropriations are essentially a matter for Parliament's decision-making structure. The Financial Regulation should be amended accordingly;
20. Emphasizes the fundamental equality of the Council and Parliament as arms of one and the same budgetary authority and calls for the same equality to be established as regards mutual information and publicity;
21. Emphasizes that respect for the spirit and the letter of the provisions on establishing the draft budget (Article 203 of the EEC Treaty) is an essential prerequisite for a constructive dialogue within the budgetary authority, and that only by working together can Council and Parliament eliminate divergent interpretations when applying such provisions;
22. Calls for better coordination of the Council's and Parliament's activities during the budgetary procedure and refers to the practical proposals put forward by the Committee on Budgets in this connection;
23. Emphasizes once again that certain fundamental questions must be settled outside the actual budgetary procedure by means of conciliation, in particular:
- the structure of the budget,
 - the inclusion of all financing instruments,
 - the distinction between compulsory and non-compulsory expenditure,
 - the budgetary treatment of appropriations for multiannual projects;
24. Demands that the Council, even when operating as the Council of Finance Ministers, must always be fully responsible and have the authority to take decisions and must act in coordination and agreement with the legislative activities of the other Councils.

CONSIDERATION OF THE COUNCIL'S WORK

25. Points out that the work of the Council has a direct impact on the effectiveness of the increasing activities of Parliament in particular and the Community in general; and accordingly urges the Council to set in hand the long overdue reform of its internal structure and working methods in the light of the numerous proposals made, for instance, in the report of the 'Three Wise Men';
26. (a) Recalls the final communiqué of the Paris Summit Conference in 1974 which gave an assurance that the Council would return to majority decision-making, and the Commission's demand of March 1978 for a return to majority decisions before the second enlargement of the Community, and calls upon the Council to revert to the decision-making procedures stipulated in the Treaties as the normal rule;
- (b) Demands that the claim by a Member State that an issue is of 'vital interest' should be recognized as an exceptional case requiring justification by the delegation concerned, especially in the case of proposals that have been endorsed by a large majority of the European Parliament;
27. Urges members of the Council to make more frequent use of abstention in order to facilitate decisions;
28. (a) Considers that there must be closer coordination of the various specialist Councils, and systematic and effective supervision of the committees and working parties responsible to the Council, in order to speed up the decision-making process as a whole;
- (b) Takes the view that the chief responsibility for this lies with the Foreign Ministers, and in particular, with the relevant President-in-Office;
29. Calls on the Council to translate its repeated declarations of intent into practice and make use of Article 155 of the EEC Treaty to transfer power more often and more comprehensively to the Commission for the implementation of the legislation it has enacted;
30. Instructs its President to forward this resolution to the Council and Commission of the Communities, and to the governments of the Member States, and calls on the Council and Commission to notify Parliament of the action taken on this report by the end of 1981.

EXPLANATORY STATEMENT

1. More than a hundred million citizens of the Community have elected their parliament directly for the first time. This requires and justifies a review and reorganization of the European institutions' terms of reference and responsibilities. The relations between Parliament and the Council must be of such a nature as to help the Community achieve the following two aims:

- to strengthen the democratic legitimation of Community decisions by giving the directly elected Parliament greater influence on Community policy;
- to restore and strengthen the capacity of the Council and the Commission to operate and take decisions, particularly in view of the second enlargement of the Community, on the basis of more balanced cooperation between the institutions.

If the requirements set out in this report are satisfied, the Community will come closer to achieving these aims. These requirements are justified by the banal fact that the Community is a union of states and that these states are democratic. So the Community can survive and develop only if all its decisions satisfy two criteria:

- they must be based on rules which are as democratic in letter and spirit as those governing decisions by national states, i.e. there must be adequate democratic parliamentary legitimation at Community level,
- and they must be in the interest both of the national states and of the Community, i.e. these two components of the decision-making process must be represented in a balanced manner.

Neither criterion is fully satisfied in the Community of 1981.

2. (a) There is an increasing lack of legitimation in the Council's decisions. This is not, however, to deny the Council's importance as a Community institution or cast doubt on its democratic legitimation. The Council still can and must reflect the abiding importance of each national state in the development of the Community. Parliament, however, on the basis of its new authority and acting together with the Commission, which is accountable to it must ensure that Europe's communities are more closely involved in the Community's decision-making process.

In fact, Parliament's potential influence in no way corresponds to its autonomous democratic legitimation. This means that a democratic force which is becoming increasingly necessary to legitimate Community decisions is not being used to the full. During the period of construction of the Economic Community the decisions taken were merely designed to achieve the aims laid down in the Treaties, and the substance thereof was virtually pre-determined by the ratification by the national parliaments of the Treaties establishing the Community. Today the Community is exercising an increasingly direct and lasting influence on the lives of its citizens by its measures to approximate laws and its common policy decisions. This applies as much to the fixing of agricultural prices as to decisions on a common transport policy, to eliminating barriers to trade as to protection of the environment and to energy policy as to industrial policy.

The Community makes decisions affecting society with such scant parliamentary legitimation as would be inconceivable in the case of national decisions of the same type. It is pure fiction to say that the Council is acting in a democratically responsible manner vis-à-vis its national parliaments and is controlled by them. Firstly, since the Council's deliberations take place in camera and no national parliament is able to control its government's action in the Council or to influence its decisions. Secondly because the national parliaments are involved in the Community legislative process only insofar as Community law still has to be transposed into national law. This is the case for directives, which represent only a small proportion of Community legislation. Even here the national parliaments are left very little margin for decision-making. The vast majority of Council and Commission decisions have direct force of law in the Member States, as shown by an example taken from the Federal Republic of Germany. From January 1978 to June 1980 the German Bundestag received a total of 1,822 documents concerning Council regulations and directives and other decisions of the Council. Of these only 106 (5.8%) were brought before the Bundestag in plenary sitting in the form of an original document with a recommendation for a decision from the appropriate Bundestag committee. In 64 cases the Council's decisions had already been published in the Official Journal, i.e. entered into force before the Bundestag or the appropriate committee had even discussed them. This example, which reflects the situation in the other national parliaments, shows that the real decision-making powers and influence have long since been diverted from the national parliaments to the European Community without, however, finding a parliamentary equivalent there.

The European Parliament must be given the authority to assume functions which the national parliaments have long since abandoned or become unable to carry out. What is involved therefore is by no means the transfer of further national powers and responsibilities to the Community but a restructuring of those that have already been transferred. In future Parliament must be able to fill the gaps in democratic parliamentary procedure created by the Community's decision-making structures.

(b) The balance between the institutions must be improved. It is all the more necessary to restructure their powers and responsibilities in that the Council not only fully assumes the central position as decision-making power conferred on it by the Treaties but has actually built it up further. It has attained a predominant position not intended in the Treaties by largely suspending the majority principle laid down in the Treaties. It has thus reduced the influence of the other institutions on the legislative process since all too often Commission proposals and the consultation of Parliament on them require not only a majority consensus but unanimity in the Council.

While the Council has been building up its position at the expense of the other institutions, at the same time its working procedures have become increasingly cumbersome it has become increasingly less willing and able to take decisions. Meanwhile Parliament, on the basis of a decision by the national governments, has received autonomous democratic authority. Yet it still does not have a corresponding influence on Community policy. When the authority to take part in decision-making and the right of participation lie so far apart, conflicts are bound to arise, to the detriment of the Community. These conflicts must be neutralized by enhancing the Council's decision-making ability and strengthening Parliament's influence in order to create a natural and fruitful relationship between institutions with different legitimations and tasks.

In this context Parliament refers back to the final declaration of the 1974 Paris Summit Conference in which the heads of governments announced their intention to extend Parliament's powers '...in particular by granting it certain powers in the Community's legislative process'. Parliament must put pressure on the governments to fulfil this undertaking.

Your rapporteur is submitting a comprehensive report to Parliament, discussing all the areas in which Parliament's influence can be strengthened and relations with the Council improved. These areas include two-way information flows, consultation and conciliation in internal and external affairs, budgetary procedure insofar as it gives rise to institutional problems, and the Council's internal working procedures where they directly affect Parliament's position in the Community. Naturally this report deals only with certain aspects of budgetary procedure and of the Council's working procedures; in the case of budgetary procedure it needs to be supplemented by a report by the appropriate committee and in the case of the Council's working procedures, by the adoption by the Council of the proposals of the Three Wise Men.

(c) Parliament can obtain more right to participate in Community decisions only if the Treaties now in force, which confer sole legislative power on the Council, barring a few exceptions, are amended. It will prove increasingly necessary in the next few years to redistribute the various

institutions' powers and responsibilities in order to bring Parliament's right of participation in line with its democratic legitimation.

Yet Parliament's demands do not go beyond the framework set by the existing Treaties. No amendments to the Treaties, designed to strengthen the position of Parliament and the Community as a whole, can be made or can take effect before the second direct election of Parliament in 1984. Parliament must take a different road if it wants to attain sufficient influence on Community policy-making before these elections take place to persuade the citizens of Europe that it is worth taking part in a second round of direct elections. Your rapporteur therefore draws a distinction between Parliament's rights of participation, which can be increased by amending the Treaties, and its influence, which can be strengthened within the framework of the existing Treaties on the basis of inter-institutional agreements.

(d) Joint declarations by the institutions concerned are an appropriate means of strengthening Parliament's influence. Past experience favours this procedure. However, joint declarations must be very specific if they are to facilitate rather than impede the Community's decision-making process. That is why your rapporteur attaches importance to a very precise and detailed formulation of Parliament's demands.

By drawing up a detailed list of specific demands Parliament will finally become able to monitor the implementation of its decisions more successfully. In any case Parliament must pay more attention than in the past to the fate of its own resolutions and check carefully whether and to what extent they are taken into account in the decisions of the Council and Commission. That is why the President is requested to notify Parliament within a certain time-limit whether and to what extent the institutions concerned have taken action on the demands put forward in this resolution. Then Parliament can consider and decide on further measures.

INFORMATION

3. If Parliament is to make an effective contribution in the interplay between the institutions, it must be kept adequately informed of the programme of work and the progress in the discussion and consideration of draft laws and individual measures in the other Community institutions. Its dialogue with the Council and the Commission serves this purpose. Parliament has gradually expanded this dialogue in the past and regards the measures taken on the basis of the Council declaration of 16.10.1973 as a step forward. The flow of information could be further expanded and improved upon.