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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

English Edition

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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A

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 issues[1] 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 policies[1];

(b) Repeats the demand made in its resolution of 17 April 1980[2] 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 consitutional 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.

B

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 predetermined by the ratification by the national parliaments of the Treaties establishing the Community. Today the Community is exercizing 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 <u>rights</u> of participation, which can be increased by amending the Treaties, and its <u>influence</u>, 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.

<u>INFORMATION</u>

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.

When he takes office, the acting President of the Council of Ministers delivers a speech before Parliament detailing the objectives to be pursued during his term of office. This gives Parliament an opportunity to analyse the Council's work programme in public, to deliver its opinion on that programme and to make its wishes known, e.g. on the key points of the Council's work. It can only do this, however, if it is fully prepared for the debate with the President of the Council. Your rapporteur therefore proposes requesting the Council to submit the President's statement in writing sufficiently in advance to ensure that, after a brief introduction by the Council President, Parliament can hold a well-prepared debate on the statement. Parliament must also make an effort to hold its debates on dates which allow time for a reasoned discussion.

It has been suggested in various quarters that the President of the Council should also present a kind of report of activities to Parliament at the end of his period of office. Since the presidency changes every six months, this would involve two programme statements and two reports of activities a year - a total of four policy and programme debates. Such an increase in the number of policy debates would downgrade the speeches by the President of the Council and the Members, do nothing for Parliament's image and hold back the Community's practical work. The statement made by the incoming Council President already gives an account of the preceding period of Presidency and gives Parliament sufficient opportunity to state its position before the Council and the public twice a year.

4. Your rapporteur believes that the Council's answers to written and oral questions are still a suitable means of establishing a more intensive dialogue between the two institutions. This system not only provides Parliament with information on specific questions, but brings individual issues into the open and thus acts as a factor of democratic parliamentary control. But the Council's answers are often too short and too uninformative. No doubt it is more difficult for the Council than for the Commission, for example, to give informative answers on which it has reached internal agreement. But there is certainly room for improvement, which is why your rapporteur proposes requesting the Council to give more detailed and comprehensive answers in future.

5. The work of the committees should be more closely involved in the flow of information between Council and Parliament. Your rapporteur considers regular formal contacts between the parliamentary committees and the relevant Councils extremely useful and productive. They offer an opportunity for confidential in-depth discussions on the further pursuit of Community policies and are often more informative than the answers to parliamentary questions while also giving Parliament a chance to influence the Council's deliberations by putting forward its own ideas.

Some committees, the Committee on Transport and the Committee on Energy for example, have been accustomed for years to invite the President of the appropriate Council once or twice during his term of office. Another idea would be to follow the example of the Legal Affairs Committee and arrange for question times on specific areas of the Council's activities, with the participation of the President of the relevant Council. Your rapporteur considers that the actual form of these contacts should be left to ad hoc agreements between the rapporteur concerned, the committee chairman and the president of the Council concerned. So the resolution confines itself to demanding acceptance of the principle of regular formal contacts between the committees and the Council.

6. It has been variously requested that Members of Parliament should obtain the right to attend Council meetings and to speak on certain items. Your rapporteur does not share this view[1]. While it is true that this would give Parliament first-hand knowledge of the deliberations in the Council and allow it to express its opinion there directly, Parliament would also run the risk of becoming involved in the Council's work to the detriment of its own function in the network of Community institutions.

The Treaties allocate a specific role and specific tasks to each institution for which that institution is politically responsible. If parliamentary representatives took an active part in the Council's deliberations, the necessary distinction made between the institutions by the Treaties would no longer be sufficiently clear. Moreover, it might lead to Council decisions being taken outside the meetings during informal preliminary talks and to Members of Parliament becoming implicated, informally at least, in Council decisions.

The situation as regards budgetary procedure is quite different. Parliament and the Council together constitute the budgetary authority. They each have their own decision-making area and their own functions, but they cannot produce an entirely balanced budget unless they work closely together. The special budget conciliation procedure largely meets this requirement. Your rapporteur regards it as advisable, however, that the Council should keep Parliament better informed, for example, by allowing it access to the minutes of meetings of the Council and of the Permanent Representatives at which matters relating to the budget are discussed. There are other

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[1] A group of Members made such a request in an urgent procedure resolution of 26.7.1980 (Doc. 1-282/80) but the resolution was referred by the plenary sitting to the Political Affairs Committee in connection with this report on the relations between the Council and Parliament.

conceivable ways of improving the flow of information, including representation of the Committee on Budgets at the Council's deliberations on the budget.

CONSULTATION

7. The arrangements laid down in the Treaties for the consultation of Parliament before the Council takes a decision can and must be improved. This is the longest-standing and one of the most important rights of Parliament to participate in the legislative process and the Council must respect it fully. With a view to Parliament's right of co-decision and against the background of direct elections, this consulation must be regarded and treated not as an empty formality but as a vital component of decision-making. Since at present the Council has sole decision-making power, it must take the opinions delivered by Parliament as seriously as Parliament's increased importance requires. It should be remembered that in its declaration of 16.10.1973 to Parliament the Council stated that it had taken internal measures 'to ensure that Opinions given by the European Parliament are taken into consideration at every stage...' In this way it acknowledged its obligations and made provision for duly fulfilling them.

8. Nevertheless, Parliament's opinions are constantly being set aside or the Council takes decisions without waiting for Parliament's opinions.

The isoglucose cases are very typical of the Council's conduct. On 25 June 1979 the Council issued a regulation fixing the isoglucose production quotas for the 1979/1980 sugar marketing year in line with a prior decision of the Court of Justice on the corresponding basic regulation. This regulation was based on Article 43 of EEC Treaty so consultation of Parliament was mandatory. Yet the Council took a decision without waiting for Parliament's opinion. Parliament therefore decided in a resolution adopted in December 1979[1] that the regulation was invalid because it infringed Parliament's right to be consulted. In its decision of 29 October 1979 the Court of Justice found in Parliament's favour, noting that Parliament must be able to participate effectively in the Community's legislative process by being consulted. It described consultation as 'an essential procedural requirement....whose infringement may lead to invalidation of the act....' The supreme court thereby confirmed that consultation is a basic component of the Community's legislative process and must be conducted in such a way as to ensure that the Council takes Parliament's opinions into account in its deliberations prior to taking a decision.

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[1] See Ferri report, Doc. EP 1-478/79

The consultation procedure should be improved by the measures described below. As a rule the Council does not consult Parliament only in those cases prescribed by the Treaties but before any act of legislation. Your rapporteur welcomes this practice and considers that it would be useful for this procedure to be formally laid down. That would also put a stop to the Council's dubious practice of occasionally altering the legal basis of regulations or not mentioning it at all, thereby concealing the fact that it has either not consulted Parliament in cases where this is prescribed or, as in the isoglucose cases, has not waited for Parliament's opinion. If the Council always consulted Parliament before taking a decision, such conflicts would not longer arise. Moreover, it is generally acknowledged that the compulsory consultation prescribed by the Treaties in certain cases is not based on any coherent system.

The formula suggested by the Commission could be adopted to define the Council's broader obligation to consult Parliament. According to this formula only minor decisions, urgent measures and confidential measures should be exempt from consultation.

9. The consultation required before the Council concludes agreements with third countries or groups of states should be extended to all agreements concluded on the basis of the Community Treaties. At present Parliament is involved only on a selective basis in the shaping of external relations, depending on the kind of agreement involved.

The compulsory consultation required under Article 228 of the EEC Treaty after the signing and before the conclusion of an agreement applies only to the individual cases referred to in the Treaty, but not to trade agreements pursuant to Article 113 of the EEC Treaty, nor to the enlargement of the Community by the accession of new Member States pursuant to Article 237 of the EEC Treaty, nor to agreements pursuant to the Euratom and ECSC Treaties.

The confidential briefing of the parliamentary committees, introduced as a result of interinstitutional accords, on the content of the negotiations prior to the signing of an agreement ('Luns-Westerterp procedure') is applied only in the case of association and bilateral trade agreements.

The present system of consulting Parliament does not take adequate account of the scope of the Community's external relations, which have undergone dramatic changes in recent years. New types of agreement, such as multilateral trade agreements, raw material agreements and agreements on international measures to protect the environment, have been negotiated. They are no less important than the traditional types of agreement but have a different legal basis. The constantly changing nature of these relations

demands constant monitoring of the relevant procedures and instruments. Furthermore, the Community's external relations are closely bound up with its internal activities and the two areas are interrelated.

As regards internal Community affairs (legislative and budgetary procedure) Parliament has acquired, or is aiming at, greater power. It must therefore have more say in the formulation of external relations, failing which contradictions and friction might arise between the Community's positions in internal and external relations, which would adversely affect the harmonious development of Community activity as a whole. Your rapporteur therefore proposes that the consultation provided for under Article 228 of the EEC Treaty and the confidential briefing of the appropriate committee introduced by the Luns-Westerterp procedure should be extended to all agreements with third countries.

Obviously the whole House need not be consulted on purely administrative agreements. However, even the extension or renewal of an agreement may give rise to political questions on which Parliament wishes to deliver its opinion and must be allowed to do so. Your rapporteur therefore proposes the following procedure: on principle <u>all</u> international agreements must be submitted to Parliament's appropriate committee at an early date. On the basis of certain criteria, which may where appropriate be agreed in advance with the Council and the Commission, the committee would decide whether the opinion must be submitted to Parliament in plenary sitting or whether a simplified procedure would satisfy Parliament's right to be consulted.

10. Your rapporteur does not deny that it may be of advantage to the Community's activities for the Council to adopt policy decisions which correspond, legally speaking, to the categories of decision referred to in Article 189. The decisions on industrial policy and on economic and monetary union[1] are examples. They are Community action programmes outlining a common policy in a specific area and fixing its implementing timetable, and can give a valuable impetus to Community policy.

Where the Council requests the Commission, in outline decisions of this kind, to submit the appropriate proposals (Article 152), there is generally no problem about Parliament's participation since Parliament still has an

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[1] On the basis of a report by its Political Affairs Committee on relations between Parliament and the European Council, Parliament will in due course deliver an opinion on the European Council's guideline decisions, which is where this problem mainly arises now.

opportunity to give its opinion on the Commission's proposals. But where the Council does not involve the Commission, its decision remains the basic document which may subsequently be treated as a binding guideline for further Community action. This could so prejudice any follow-up decisions in which the other institutions must also be involved as to reduce substantially the Commission's and Parliament's scope for action. Parliament must therefore make it clear that such Council decisions cannot replace decisions within the meaning of Article 189. No decisions of a practical nature may be taken until the normal procedure, which includes consultation of Parliament, has been followed.

11. Your rapporteur proposes the following improvements in normal legislative procedure: the Council should re-consult Parliament whenever the Commission substantially amends its original proposal on which Parliament has already delivered an opinion and where the amendments involved have not been considered by Parliament.

12. Parliament quite frequently delivers an opinion on Commission proposals in a form which no longer represents the basis for the Council's decision. That is because the Commission's right to propose is a multi-stage process and is exercized as such while consultation of Parliament on proposals has hitherto been confined to a single formal act. So the Council consults Parliament on the Commission proposal as submitted to the Council and in the form in which the Council received it. But the proposal is often amended substantially by the time the Council makes its decision (second paragraph of Article 149). So while Parliament is drafting its opinion on the proposal in its original form, often a lengthy process, the Commission continues work on it, in regular contact with the Member States, in the search for compromise formulas on which a decision can be reached.

If consultation is to be of any real use, it must be adapted to the ways and means by which the Commission exercizes its right of proposal. Where the situation so requires, it must be divided into several stages, i.e. the Council must re-consult Parliament on any substantial changes to the proposal. Should the Commission agree to Parliament's resolution of 17 April 1980[1] and consult Parliament prior to the submission of a proposal (and therefore prior to any changes to a proposal), your rapporteur would regard this procedure as adequate.

Parliament's right to deliver a further opinion on a proposal should also extend to the fairly frequent cases in which a proposal appears in a new light because of the passage of time and changed circumstances so that Parliament's original opinion is now out of date. The Commission has the

[1] See report by Jean REY, Doc. 1-71/80 of 14.4.1980

right to withdraw an old proposal if it no longer regards it as pertinent or useful. Similarly Parliament should be entitled, if it regards this as politically necessary and if some time has elapsed since its original opinion without the Council taking action pursuant to Article 149, to deliver a new opinion which the Council must take into account in its decision.

In its declaration of 16 October 1973 the Council stated its intention to take decisions only after receiving Parliament's opinion. To ensure that this opinion is really taken into account in its deliberations, the Council should specify that it will 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. This is the only way to ensure full consultation on proposals on a basis of cooperation between the three institutions.

13. In line with its declaration that Parliament's opinion 'will be taken into consideration at every stage', the Council is urged to continue the practice started some time ago of forwarding Parliament's resolutions to the governments of the Member States as rapidly as possible. It is extremely important for Parliament's opinion on certain questions to be known to all the delegations in the Council at an early date before they reach a final decision. Moreover, Council decisions should not be predetermined by working parties before the Council has received Parliament's opinion.

14. In the letters from Council Presidents Harmel and Scheel[1], the Council undertook to inform Parliament in every case of the grounds on which it failed to act upon Parliament's opinion. This should apply in all cases of real importance. At first this undertaking related mainly to Parliament's opinions on Community instruments with financial implications and was designed to help remove the discrepancy between Parliament's new budgetary powers and its lack of participation in legislative decisions with budgetary implications. In this context, the conciliation procedure introduced subsequently (see next section) brought further improvements.

It is still very much in Parliament's interests, however, to be informed, if only subsequently, exactly why its opinions were not or not adequately taken into consideration. This can help it to update its position on the

[1] of 20.3.1970 and 22.7.1970

questions concerned. Your rapporteur also urges Parliament to make real use of this instrument which is an important means of achieving a continuous dialogue with the Council.

Lastly your rapporteur proposes calling on the Council to undertake to keep Parliament fully informed through its appropriate committees of the progress of the Council's deliberations on the Commission's legislative proposals and the amendments tabled to them in Parliament's opinions. Quite apart from the fundamental question of making the democratic legislative process sufficiently transparent, which your rapporteur will not go into here, this would be of great practical assistance to Parliament. Consultation involves Parliament in the Communities' legislative process. Parliament can make a significant contribution only if it is kept informed of the activities of the decision-making institution, the Council. This information would also help Parliament to formulate its views if a second opinion proves necessary or to investigate delays in the decision-making procedure in full knowledge of the state of the Council's deliberations.

CONCILIATION

15. Your rapporteur regards the conciliation procedure laid down in the Joint Declaration of 4 March 1975 as central to the improvement of relations between Parliament and the Council.

The state of play to date is not very encouraging. In the five years since the conciliation procedure was introduced, only three cases have been brought to a successful conclusion (Regional Fund, the Financial Regulation and the new financial instrument known as the 'Ortoli facility'), five other procedures were initiated but have not been concluded (financial cooperation with third countries and use of the EUA in the Community's legal acts); in five cases Parliament's requests for conciliation were rejected. No new conciliation procedure has been started since direct elections and in only one case has an ongoing conciliation procedure been resumed after months of interruption (financial aid for non-associated developing countries).

There are many reasons for this situation. Yet the conciliation procedure remains the appropriate instrument to supplement consultation and to strengthen Parliament's influence on Council policy without Parliament laying claim to genuine legislative powers, which would require an amendment of the Treaties. So far, conciliation has had little success. This is partly if not largely because Parliament itself does not attach sufficient importance to it and has not encouraged it systematically enough. It is also because the field of application was too vaguely defined and because of the nature of the procedure itself. Parliament should aim to improve both.

The conciliation procedure was introduced in connection with Parliament's new budgetary powers. In a sense it supplements them in the legislative field. At present its field of application remains small. It may be followed for 'Community acts of general application which have appreciable financial implications, and of which the adoption is not required by virtue of acts in existence' (paragraph 2 of the Joint Declaration of 4.3.1975). The third indent notes that 'the increase in the budgetary powers of the European Parliament must be accompanied by effective participation by the latter in the procedure for preparing and adopting decisions which give rise to important expenditure or revenue to be charged or credited to the budget of the European Communities'.

The experience of recent years has shown that this definition of the field of application is vague and too narrow. This is true of the phrase 'acts of general application' for example. In the question of interest rebates granted under the European Monetary System, for instance, this vagueness gave rise to differences of opinion: since the rebate was granted only to some Member States, the Council considered that the act was not of 'general application'. Nor has it been decided whether the conciliation procedure applies only to acts which have appreciable financial implications for the budget or also to others which, like cooperation agreements with developing countries, increase the volume of expenditure of the Development Fund or, like the implementing regulation on loans to promote investment (Ortoli facilities), increase the expenditure of the European Investment Bank. These are both financing instruments outside the budget.

On the other hand, conciliation has proved successful in several important cases situated outside the framework defined by the Joint Declaration of 4.3.1975. The first and perhaps most successful conciliation to date, which led to the establishment of the new Financial Regulation in 1977, did not in the true sense of the word concern an act to which the conciliation procedure could be applied because the Financial Regulation as such has no financial implications.[1] Yet it is unquestionably an act of 'general application' which clearly determines Parliament's new budgetary rights and thus defines its contractual position in detail.

The direct election act of 20.9.1976 is also a regulation which affects the rights of Parliament as a Community institution. Article 13 of the act formally provides for conciliation for any implementing measures that may be required on the basis of the procedure laid down in the Joint Declaration of

[1] Article 107 thereof also prescribes conciliation in respect of subsequent amendments

4.3.1975. A further instance of a basic constitutional decision reached jointly by Council, Commission and Parliament through the conciliation procedure, although it falls outside the actual legislative field, is the 'Joint declaration on the protection of basic rights in the Community'[1].

Your rapporteur considers it necessary to redefine and extend the field of application of the conciliation procedure in order to avoid the demarcation difficulties that have arisen and to take account of Parliament's stronger role within the Community. Parliament should call on the Council to extend the conciliation procedure laid down in the declaration of 4 March 1975 to all Commission proposals to the Council to which the Parliament attaches especial importance and in respect of which it requests that the conciliation procedure be opened when it delivers its opinion. It should also be involved in the appropriate form in the shaping of external relations policy.

Acts in respect of which the conciliation procedure may be opened are primarily decisions on the further constitutional development of the Community and its enlargement. The Vedel report of 25 March 1972 listed these acts in List A[2]. The examples given of successful conciliation outside the usual field of application already suggest that this procedure is being extended to acts concerning Parliament's institutional position within the Community. The institution which represents the citizens of Europe must participate in decisions of principle on the further development of the Communities in the 'constitutional field'.

Secondly, the measures to approximate legislation and basic decisions on common policies given in List B of the Vedel report[3] should be subject to conciliation. These are policy-making measures which have a lasting effect on national law and the life of the citizen.

Pursuant to the second paragraph of Article 237 of the EEC Treaty and the second paragraph of Article 205 of the Euratom Treaty, the conditions of admission of a new member of the Community and the necessary adjustments to the Treaties must be agreed between the Member States and the applicant state. As a rule this also means amending rules which Parliament had a say in formulating on the basis of its special participation rights (see

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1 of 5.4.1977 in OJ C 103 p.1 of 27.4.1977

2 They include decisions under Articles 201 (already encompassed by the Joint Declaration of 4.3.1975), 235, 236 and 237

3 They include decisions under Articles 43, 54, 49, 51, 56, 57, 75, 84, 87, 94, 99, 100,113, 126, 128 EEC and Articles 31, 76, 85, 90 ECSC.

Articles 7 and 13 of the direct election act giving Parliament the right of initiative and enabling it to request the introduction of the conciliation procedure before the implementing provisions are laid down). These special rights may not be curtailed by any adjustments made on the basis of a treaty of accession but without its participation. This requirement was disregarded in the conclusion and ratification of the treaty of accession with Greece. Parliament must insist on the demand it made in the resolution of 17 April 1980[1] that the Council and the Commission must propose to the Member States procedures which would permit conciliation to take place with Parliament on such adjustments to the Treaties as would already be the subject of a conciliation procedure in internal Community procedures.

The conciliation procedure should also be used to strengthen Parliament's influence in the shaping of external relations policy. This does not rule out the possibility of more far-reaching proposals on other aspects of external relations which Parliament will discuss on the basis of a separate report by its Political Affairs Committee.

Your rapporteur considers that Parliament must concentrate above all on effective participation in the conclusion of agreements. The moment the agreements enter into force the appropriate institution must assume, or reject, political responsibility for the negotiated agreement. The Council's sole competence in this area has been likened to the unlimited powers of the sovereign in the days of the preconstitutional monarchy and in no way corresponds to existing constitutional practice in the Member States.

Until Parliament participates in the ratification of agreements, as any elected body representing the people must do - though this can be achieved only by amending the Treaties - it must at least strengthen its influence on the Council's decision in respect of the conclusion of such agreements at an appropriate time. This would mean that if Parliament rejected an agreement, the Council should not enforce it until agreement has been reached through the Conciliation Committee. Your rapporteur suggests that the Political Affairs Committee should prepare a detailed report on such a procedure.

Giving Parliament the right to influence the content of an agreement in this manner would not be entirely consistent with the powers usually allotted to representative assemblies in foreign affairs. Normally they

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[1] See the Blumenfeld report, Doc. 1-49/80

can only ratify or reject a negotiated text as it stands. Your rapporteur regards his proposal merely as a transitional arrangement until such time as the European Parliament is given full ratification rights. It is justified by the special character of the Communities which are still open to further institutional change and still have to find their own solutions to their present incomplete constitutional system.

Parliament must be allowed to request the opening of a conciliation procedure in those cases at least where the Communities have the power to conclude agreements only because they have asserted responsibility for these matters internally and because the agreement relates to matters which would be subject to conciliation procedure in their internal legislation. In its case law on the Communities' authority in external affairs, the Court of Justice has found that, apart from cases dealt with explicitly in the Treaties such as the conclusion of trade agreements, this authority extends to those areas in respect of which the Community has exercized the powers allocated to it in internal affairs and has implemented common policies. This congruence of substance between the Communities' internal and external powers established by the Court of Justice must be accompanied by congruence of form. This means that when the Council acts in the context of external relations, it cannot refuse to open a conciliation procedure with Parliament if it has already agreed to conciliation on the matter in the Communities' internal legislative procedure. Parliament must demand that any further internal inter-institutional developments must be matched by similar developments in external relations.

16. Some of those involved have shown signs of weariness with the conciliation procedure in the past although this instrument of cooperation between the Council and Parliament has not yet been exploited to the full. The conciliation procedure must be applied more efficiently. Endless conciliations would further complicate the already cumbersome decision-making process of the Communities. And that would not be in Parliament's interest.

The extension of the area in which conciliation may be held must therefore be accompanied by a tightening up of procedures and a more efficient organization of work within the Conciliation Committee. An increased number of conciliation procedures is likely to lead to an increasingly cumbersome decision-making process. This must be avoided by improving and perhaps curtailing the procedure. Above all, the parties involved should remember the motives behind the Joint Declaration of 4 March 1975, the third recital of which is worded as follows: 'Whereas the increase in the budgetary powers of the European Parliament must be accompanied by effective participation by the latter in the procedure for preparing and adopting decisions'. That clearly indicates the aims and purpose of conciliation, which should be taken into account in the practical procedure.

Your rapporteur agrees with the Three Wise Men on the importance of preparing more adequately for the Conciliation Committee's meetings by arranging informal talks between the Council and Parliament. The President of the Council, who mediates and provides information, must play a greater part here. Parliament's responsibility at this stage is vested mainly in the relevant committee chairman.

With a view to the increasing number of conciliation procedures, your rapporteur feels there is also a need for better coordination of concurrent conciliation procedures concerning similar problems. In the past Parliament has exercized self-restraint in the interest of work-saving. For instance it did not insist on conciliation on the question of the management committees set up under the financial protocols signed with certain Mediterranean countries because this question had already been discussed in the conciliation procedure in respect of regional policy and aid to non-associated developing countries. Parliament was content with extending the agreement reached in those areas to the others too.[1]

It is clearly possible to determine key issues and to incorporate certain questions which constantly arise into a single conciliation procedure, the outcome of which would also be valid for other areas. In the past two key areas clearly called for conciliation: the setting up of management committees and the inclusion and incorporation of the Development Fund and the European Investment Bank's financing instruments in the budget.

The negotiating procedure in the Conciliation Committee also needs improving. As a rule the procedure is as follows: the President of the Council makes a preparatory statement, then the leader of the parliamentary delegation puts Parliament's view and finally the President of the Council reads a second prepared statement. A meeting of this kind, which is merely a hearing, allows for no progress in the negotiations. It is only at the next meeting, when the two institutions make further adjustments to their positions, that compromises can be reached. In order to tighten up and shorten the conciliation procedures, both sides should therefore be represented fully and the representatives should be given sufficient negotiating powers to enable practical steps to be taken at the meetings to bring the two sides closer together.

Parliament for its part should do its utmost to increase the efficiency of the contribution of its delegation to the work of the Conciliation Committee.

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[1] See the letter from the President of Parliament to the President of the Council of 10.11.1978

The duration and time-limits of the conciliation procedure are not clearly determined in the Joint Declaration of 4 March 1975 (see paragraph 6). Your rapporteur agrees with the Three Wise Men that no single participant may declare the procedure concluded and that this can only be done by joint agreement. A time-limit can have a beneficial effect on the climate of negotiations, quite apart from speeding them up. It might force the participants to approach the negotiations with a greater sense of urgency and encourage them to accept compromises. But as long as one participant, namely the Council, can unilaterally delcare that the conciliation procedure is concluded because the positions of the two sides are sufficiently close (paragraph 7 of the Joint Declaration) this is only partly true, since it means that the Council is free to make a similar decision on points of conflict. In the case of difficult negotiations on important issues, a deadline would therefore tend to be to Parliament's disadvantage.

Setting a strict time-limit of three months or three meetings as proposed by the Three Wise Men cannot be in Parliament's interest either. Your rapporteur prefers a flexible time-limit, to be redefined in negotiations with the Council. An improved system of this kind must, however, take account of the need for the Council to take decisions within an appropriate period, for the procedures not to exceed this period and for the work load of the two institutions to be kept within certain limits, while also ensuring that sufficient time is available for compromises to be reached on difficult issues.

Furthermore, the Council should undertake to take a decision at the end of the conciliation procedure within the time-limit set by the Conciliation Committee and not to put off unpleasant decisions for too long.

BUDGETARY PROCEDURE

17. The budget is an area of particular importance for relations between the Council and Parliament and must therefore be covered by this report, taking into account the responsibility of the Committee on Budgets.

Parliament first acquired a real share of decision-making powers in the area of the budget under the Treaties of 1970 and 1975. These powers are embodied in the amended provisions of the EEC Treaty, the new Financial Regulation and in supplementary agreements, e.g. on budgetary conciliation. These innovations broke new ground but it is now time to follow up with further steps for two reasons: firstly, in its resolution of 13.12.1977[1] Parliament left several important points such as the incorporation of borrowing and lending activities into the budget and the implications of the new concept of commitment appropriations open to a future ruling or further examination. The need for arrangements on these and other points has become

[1] On conciliation regarding the Financial Regulation of the Communities OJ No. C 6/1978, p. 19

evident from recent budgetary procedures. Secondly, Article 107 of the Financial Regulation itself lays down that its provisions should be reviewed every three years. The first three-year period is now up.

It is the Committee on Budgets which is responsible to Parliament for this task, which would, however, exceed the scope of the present report. Moreover, it has become Parliament's custom to deal with the problems which have arisen during the previous budgetary procedure by drawing up each year guidelines designed to make practical improvements to the next budgetary procedure. This too is the task of the Committee on Budgets, which will in due course submit to Parliament a number of important points relating to budgetary legislation and practice. The present report cannot and should not prejudge the Committee's conclusions.

Nonetheless, a report on the institutional relations between Council and Parliament would be incomplete without some reference to the area of the budget. The special relationship between Council and Parliament on budgetary procedures is one facet of overall relations between the two institutions. In this sphere, the Treaty has conferred responsibility for a central area of policy on both Community institutions, Council and Parliament, jointly. Further developements in this 'pilot area' both positive and negative, will therefore have a spin-off effect on all others and hence on overall relations between Council and Parliament.

Although preliminary work on practical improvements in the area of the budget remains the task of the Committee on Budgets, this report must, from the general institutional point of view, present the main lines of Parliament's interpretation of the preservation and necessary extension of its legal status as one arm of the budget authority in relation to the Council.

18. The most important achievement of the 1970 and 1975 budget agreements was the power acquired by Parliament to decide in the last instance on the level of 'non-compulsory' expenditure, within a certain ceiling. It thus acquired autonomous decision-making powers in budgetary legislation, albeit for only a small proportion of some 20% of total expenditure.

However, in practice this right of decision is vulnerable on several counts, since at present it is a power which stands in isolation. To date, Parliament lacks complementary decision-making powers in the legislative field, namely with regard to the regulations and directives giving rise to expenditure. Here the Council continues to decide alone and in a way that seriously impedes the development of Parliament's newly acquired budgetary rights.

When the Council, as it frequently does, sets a maximum rate in the regulations in respect of which non-compulsory expenditure is incurred, it is inadmissibly reducing Parliament's budgetary margin of decision. This is what

happened recently in the 'energy and research' field[1]. What is particularly serious here is that Regulation No. 726/79 authorizes the Council alone to modify the distribution of the sectoral amounts for the various alternative energy sources by more than the usual margin of 10%. That is a basic encroachment on Parliament's right to set priorities within the framework of its decision-making powers on this kind of expenditure and, for example, to allocate more aid to one research area than to another.

If the Council also lays down individual regulations for each project within the framework of the fund appropriations approved by Parliament before the Commission can use these appropriations, it effectively prevents the implementation of Parliament's budgetary decisions.

As a result, the first projects under the non-quota section of the Regional Fund were not approved until late 1980 because the Council failed to reach agreement on the individual regulations any sooner. Until then, the appropriations approved by Parliament were available only on paper and could not be put to the agreed purpose.

Parliament's right to increase non-compulsory expenditure within certain limits and to have the final say in this respect becomes meaningless if the appropriations it enters can be spent only when and if the Council issues the relevant regulations. This practice is not only incompatible with the spirit of the innovations introduced in the budgetary agreements but is also intolerable because its main effect would be to prevent the implementation of new policies.

It is not consistent with the budgetary reforms of 1970 and 1975 that the new, modest budgetary powers granted to Parliament as the first step in parliamentary coresponsibility leading to the greater democracy desired and recognized as necessary by the Member States, should be curtailed and significantly weakened by Council decisions outside the budgetary procedure. On the contrary, the budgetary reform resulted in certain indirect limitations on the decision-making power of the Council in the legislative field, to the extent that this is an inevitable corollary to the development of Parliament's new budgetary powers. Conflicting interpretations of the scope of the decision-making powers of Council and Parliament must be resolved by reference to the legal status of <u>both</u> institutions. Parliament must therefore continue to urge the Council to fully respect Parliament's right of decision over non-compulsory expenditure and not to undermine it by legislative measures.

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[1] Reg. No. 1303/78 and Reg. No. 725/79 of 9.4.1979 fixing the maximum amount of aid for granting financial support for demonstration projects in the field of energy saving in OJ No. L 93/79, p. 1 <u>and</u> Reg. No. 1302/78 and Reg. No. 726/79 fixing the maximum amount of aid for granting financial support for projects to exploit alternative energy sources in OJ No. L 93/79

19. A further important innovation in the budget agreements of 1970 and 1975 is Parliament's right to deliver a discharge to the Commission in respect of the implementation of the budget, under Article 206(b) of the EEC Treaty. The effective exercise of this right is threatened by the 'management committee procedure'.

With a view to the use of the appropriations entered by Parliament, the Council makes management committees available to the Commission. They are made up of representatives of the Member States and are responsible for assisting the Commission in its task of implementing the appropriate provisions.

Management committee and committee on rules procedures have become common practice since 1968 and take different forms depending on the field of application. In its judgment of 17 December 1970 the Court of Justice declared them compatible in principle with the Treaty. Your rapporteur will therefore not call them into question as such, since they are generally regarded as having proved useful and even as having strengthened the Commission's position. What is of interest here is the use of management committees in a marginal area where policy-making (for which the Council is responsible) and policy implementation in line with the budget (for which the Commission is responsible under Parliament's control) are almost inextricably inter-woven.

In many areas of regional policy and energy and research policy the Community merely assesses certain projects in terms of whether they are worth developing and supporting. This can apply both within the Community and to the Community's relations with third countries, especially developing countries. And in every case it is a question of <u>who</u> has the right to decide on individual applications, i.e. to grant the funds.

The committee procedure is generally used to reach a compromise between the respective terms of reference of the Council and the Commission. The Commission decides, after consulting the committee; the Council retains the right, however, to decide afresh under certain circumstances and thus to invalidate the Commission's decision in some cases. Under the regulations on support for projects to exploit alternative energy source, for instance, a Member State simply submits an application and the Council itself takes a decision instead of the Commission. The provisions of the regulation on financial aid to non-associated developing countries prevent the Commission from approving project applications. Even if neither the management committee nor, in the second instance, the Council to which the committee has referred the question, approve the project within a specific time limit, all the Commission can do is submit new proposals. Examples can also be quoted of the Council reserving itself the right of decision from the outset.

The quarrel which flares up time and again on this question has its roots in the dual nature of decisions on projects. It should be noted that political factors also play a part in the decision, particularly in the case of projects in third countries but such decisions are primarily budget implementation acts within the meaning of Article 205 of the EEC Treaty, since the decision on an application for aid involves the commitment of appropriations. Such a decision is clearly an implementing act subject to the limits and conditions laid down in detail in the regulations.

The Commission is, of course, responsible for implementing the budget (Article 205 of the EEC Treaty). Here, it is not exercizing powers conferred on it by the Council (fourth indent of Article 155 of the EEC Treaty), but has its own power of action and decision under the EEC Treaty (third indent of Article 155). To this end it is accountable to Parliament which must give it a discharge (Article 206b of the EEC Treaty). Furthermore, both the Council and the Commission have confirmed that the new version of Article 32 of the Financial Regulation which moreclosely determines the commitment of appropriations cannot be interpreted as meaning that an institution other than the Commission can implement the budget or grant financial support from the individual funds.

The new Article 206b of the EEC Treaty revised by the 1975 Treaty amending certain Financial Provisions gives Parliament the task of controlling the implementation of the budget and giving the Commission a discharge. Parliament can in fact control the budget only if the Commission has some power of decision on its implementation. This control would be superfluous if the Commission's task were confined to book-keeping and cash management.

Parliament must urge the Council to leave this decision-making power to the Commission. Otherwise Parliament's right of control over the Commission would become virtually meaningless, since the major budget implementation measures would be decided by the Council, over whom Parliament has no control. In its answer of 9 October 1978 to a question on this matter, the Commission made it clear that recent further developments in the management committee procedure were approaching the limits of what was admissible under Article 205 of the EEC Treaty and that it preferred the system of purely consultative committees such as the Social Fund Consultative Committee. They would be more likely to enable it to fulfil its tasks in the appropriate manner.

That is why the Council should in principle confine the activities of the management committees which assist the Commission to purely consultative functions and not introduce procedures which detract from the Commission's responsibility to implement the budget. The only exceptions could be foreign-policy decisions (e.g. aid for non-associated developing countries) involving diplomatic questions.

Should the Council continue to assert that decisions on individual project applications are essentially political acts for which it is primarily responsible, and not budget implementation acts for which the Commission is responsible under the Treaty, then Parliament must insist on being involved in the Council's decision-taking on basic policy regarding the commitment of aid appropriations in the same way as it has been involved in general legislative acts with financial implications since the Joint Declaration on the conciliation procedure of 4 March 1975. However, the most recent regulation on financial aid to non-associated developing countries, referred to above, provides only for Parliament to be consulted on the annual basic policy. This is not enough. Parliament cannot accept being excluded from both effective budgetary control and from determining the content of such decisions.

Finally, reference should be made to a further aspect arising from the new financial system of the Communities introduced in 1970 and 1975. Since Parliament is now the institution which is required to keep watch over the implementation of the budget and to give the discharge, the Council no longer has the right to freeze the budget against the will of Parliament and the Commission. Transfers of appropriations are a basic element of Parliament's decision-making structure and the Financial Regulation should be amended accordingly.

20. The 1970 and 1975 budget reforms made the Council and Parliament partners with equal status and equal rights in one and the same budget authority. Parliament must demand that this equality is also established as regards reciprocal information and publicity so that it can fulfil its duties. This applies firstly to information on the wishes submitted by the other institutions to the budgetary authority on their administrative budgets. They should submit their documents to the Council and Parliament <u>at the same time</u> so that Parliament is also fully informed about the original applications and can take due account of them if it later decides to amend the draft budget. Parliament must be given the authority to examine carefully the objective requirements of the administrative budgets of all the organs and institutions. This means that the Council must provide Parliament with sound, complete and clear reasons for approving or rejecting expenditure applied for by the other institutions.

However, this also applies to information on the Council's deliberations in its capacity as an arm of the budget authority. The Council should in future give Parliament access to the minutes of meetings of the Council and of the Permanent Representatives at which matters pertaining to the budget are discussed. Only by ensuring that each arm of the budgetary authority is informed about the deliberations of the other, will it be possible to prevent the Council from taking advantage of always being one step ahead in this respect.

21. As a result of the budget reform, the revised version of Article 203 of the EEC Treaty makes the Council and Parliament jointly responsible for the successful implementation of the budgetary procedure. Provisions on the drafting of the budget, which may be subject to doubt or various interpretations, must be resolved jointly by the Council and Parliament. Respect for the spirit and the letter of Article 203 of the EEC Treaty is an essential prerequisite for a constructive dialogue within the budget authority.

22. The practical implementation of the budgetary procedure requires close coordination of the work of the Council and Parliament. Despite the agreed conciliation between the Council and Parliament, recent budgetary procedures have proved inadequate in important areas and unsatisfactory for the position of Parliament. This applies, for instance, to the treatment of Parliament's individual draft amendments on specific non-compulsory expenditure, the establishment of a new maximum rate of increase in non-compulsory expenditure and the method of dealing with commitment appropriations. In the rapporteur's view, Parliament must call for further improvement to the vital coordination of the work of the Council and Parliament during the budgetary procedure. As mentioned above, the Committee on Budgets will submit practical proposals in this area.

23. As recent experience has shown, the already difficult budgetary procedure has been subjected to additional strain since certain basic issues were not clarified beyond doubt or to the satisfaction of Parliament in the budget reform of 1970 and 1975. These issues include the structure of the budget, the inclusion of all financing instruments, the distinction between compulsory and non-compulsory expenditure and the budgetary treatment of appropriations for multiannual projects. Parliament should take this opportunity to emphasize once again the need to settle these outstanding matters by conciliation with the Council outside the budget procedure. Parliament will in any case adopt an opinion on this subject in due course based on the practical proposals for improvements to be made by its Committee on Budgets.

24. Finally, the inevitable consequences must be drawn from the truism that all budgetary decisions are also political decisions or must be compatible with them. From the outset, Parliament has therefore interpreted and exercised its right to participate in the budgetary procedure as participation in policy-making. It must demand that the other arm of the budget authority takes this into account and is always fully responsible politically and capable of reaching decisions.

The division of the Council into a number of Councils responsible for specific areas of policy - which is dealt with in greater detail in the following section - must not be allowed to result in the Council of Finance Ministers avoiding decisions owing to considerations relating to another area.

Parliament can justifiably expect to negotiate with a political partner in the budgetary procedure and not with a second-rate Council.

The 'Council's' legislative and budgetary decisions must be consistent. In recent budgetary procedures the Council has on various occasions deleted certain expenditure regarded as necessary and entered in the preliminary draft by the Commission, without withdrawing the policy decisions contained in the basic regulations. This was the case for regional, social and energy policy. The Council omitted to draw the budgetary conclusions from its own legislative decisions and to approve the necessary payment appropriations in keeping with policies introduced and commitment appropriations already authorized. In such cases, Parliament can re-enter the missing appropriations from its margin of manoeuvre but the impact on policy it was intended to have is thereby lost since virtually all Parliament's margin of manoeuvre goes towards making up the necessary funds for policies which the Council decided but is unwilling to finance and cannot be used to provide an impetus for new policies. This curtails Parliament's right of innovation. The Council thus conceals its true intentions and this is not acceptable to Parliament. Parliament must therefore demand that the question of political responsibilities be made entirely clear.

INTERNAL IMPROVEMENTS IN THE COUNCIL'S WORK

25. The Council must take a number of internal measures to improve its work. It is not within the scope of this report, which deals with relations between Parliament and the Council, to submit proposals on all the problems of the Council's internal activities. In this connection Parliament confines itself to urgently requesting the Council to carry out the overdue reforms to its internal structure and working methods, taking account of the proposals of the Three Wise Men.

In certain areas, however, the Council's working procedures directly affect the ability to act of the other institutions. Where they affect Parliament's position in relation to the other Community institutions, this report notes the changes that must be made to improve the cooperation between the institutions and restore them to the functions laid down for them by the Treaties.

26. If the Community institutions are once again to work together in a balanced way, in line with their functions, the voting procedure in the Council must be reformed. Parliament must repeat its demands for a return to the Treaties. Following the 1966 Luxembourg compromise, the Council departed from the voting procedure laid down in the Treaties. That means that if a Member State asserts that very important national interests are at stake in a certain issue, the Council continues to negotiate, even in

cases where majority decisions can be taken under the Treaties, until agreement has been reached between all Member States. If no such agreement can be reached, no decision is taken.

The Luxembourg compromise was drafted at a time when much effort was still being put into building the Community. At that time integration decisions were the main issue. Under the timetable for the transitional period, the Council had to introduce Community rules in the various Treaty areas, e.g. organization of the agricultural markets. However, the Member States could tolerate a greater degree of integration only if this did not conflict with important national interests. Any 'acquis communautaire' was based on decisions taken unanimously or by majority vote with the agreement of all concerned. The same applies to the new policies introduced on the basis of Article 235 of the EEC Treaty.

Even today, looking realistically at the structure of legitimation and power within the European Community, it does not seem that a government can be outvoted in any issue of particular national importance. However, this should apply only to 'vital' issues, which must be acknowledged as exceptions. In any case the Community has no adequate instruments at its disposal to compel a Member State to implement a majority decision on its territory. While the Luxembourg compromise had a recognizable function as an emergency brake in exceptional circumstances against any move towards integration which ran counter to the vital interests of a Member State, it is a quite unsuitable instrument to apply to decisions that must be taken as between different policies at the existing level of integration nor must it be applied as a rule.

It is not so much the principle behind the Luxembourg compromise that is a hindrance to Community activity as the fact that it is no longer applied as an exception but as a rule. The effect of this rule is accentuated by the fact that now the running-in period has come to an end the Council increasingly exercizes legislative and administrative rather than guiding functions.

As provided for in the Treaty, everyday political disputes at Community level must be able to be resolved by majority decision. Agricultural policy decisions, for instance, rarely involve the setting up of organizations of the market but relate more often to annual price adjustments.

Why should one Member State be allowed to prevent a price rise proposed by the Commission by referring to its vital interests while a majority of Member States, also invoking important interests, cannot do so? The absurd result of this kind of procedure is not protection of the minority but the dictatorship of the minority over the majority. The Council must therefore

revert to the decision-making procedures stipulated in the Treaties as the normal rule. This is particularly necessary in view of the further enlargement of the Community, which will act as a further burden on the decision-making structures.

It is quite conceivable that a return to the procedures laid down in the Treaties could be achieved in stages. Experience has shown that the veto is used indiscriminately, even on non-vital issues. The Paris Summit Conference called for self-restraint to avoid this abuse, but without much success. Some progress could be made if Member States only referred to important interests in the case of really vital issues and if this practice remained the exception. Nor is it reasonable to allow each Member State to decide this question itself. It must take the trouble to justify its case and open it for discussion. The obligation to justify each case would make it clear that this procedure deviates from the voting rules laid down in the Treaties. It would place the political responsibility for the possible failure to adopt a decision squarely on the shoulders of the government concerned and might persuade all concerned to resort to the veto only in extreme cases.

When the Council decides on proposals which Parliament has endorsed by a large majority, the veto should ideally not be used at all. In such cases the Council and Parliament should jointly define the type of majority and procedures which preclude any appeal to vital interests.

27. Pursuant to Article 148 (3) of the EEC Treaty, abstention does not prevent the adoption of unanimous decisions. Abstention is therefore a good way for a Member State to express reservations on the grounds of national considerations without blocking the Community decision. The Member States are therefore urged to make more frequent use of abstention if national policy reservations prevent them from voting in favour of a decision.

28. It is in Parliament's basic interest for the Council's internal structure to become more efficient. Closer coordination of the various Councils and more systematic supervision of the committees and working parties responsible to the Council are required if the Council is to work effectively and really play its part in the institutional structure of the Community. The Treaties refer only to the Council in the singular. The Council, and not the Councils, is Parliament's and the Commission's partner. In fact the Council takes various forms and acts at various levels through the departments accountable to it and set up by it. Your rapporteur does not dispute the fact that the Council must take a different form from case to case, depending on the area involved, and must set up working parties

and committees if it is to operate in full knowledge of the facts. That is precisely why a special system of horizontal coordination must be introduced - so that, for instance, the Council of Ministers of Agriculture cannot fix agricultural prices in defiance of the Council of Finance Ministers - together with a better system of vertical control, to ensure that certain matters do not get bogged down in committee and the decision-making process is not delayed.

In your rapporteur's view the chief responsibility for coordination lies with the Council of Foreign Ministers and the relevant President-in-Office. That does not mean we are calling in question the different traditional departmental hierarchies in the Member States or giving the Foreign Ministers the main responsibility for European policy. But for practical work at Community level, a clear system of distribution of responsibilities must be found. The Foreign Ministers in the Community are also responsible for institutional questions, apart from their other specific responsibilities, and thus for the functioning of the Community as a whole. That is why the Council of Foreign Ministers is the most suitable coordinating body. It is up to the Council and the Member States to define this task more closely and to take the appropriate measures. It should be remembered, in this context, that at the 1974 summit conference the Heads of State formally conferred on the Foreign Ministers an incentive-giving and coordinating role.

29. It is in Parliament's interest for the Council to be relieved of certain tasks in order to have time for its main task: to adopt general policy decisions after careful discussion and coordination of the various points of view. That is why the Council should more frequently transfer powers to the Commission to implement the rules it has laid down, as provided for in Article 155 of the EEC Treaty. If the Council delegates powers to the Commission, however, it should do so comprehensively and only resort to the management committee procedure in exceptional cases. We referred to the special problem of implementing measures connected with the budget in paragraph 23. The Council will have even more need to be relieved of some of the burden of its work now that Community activities are increasing in scope and incorporating further new areas.

Minority opinion on the draft report on relations between the European Parliament and the Council of the European Communities

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A Danish member of the Group for the Technical Coordination and Defence of Independent Groups and Members holds the opinion that election of the European Parliament by direct universal suffrage should not be accompanied by any increase in its powers or influence.

Such a development would, he feels, be contrary to the interests of the Folketing and would weaken its control over Community policy.

Similarly, the Council's practice of adopting only unanimous decisions must continue, in order that the Danish member may alone, at the direction of the Folketing, block any decision.

The minority opinion also opposes any extension of conciliation procedure and any increase in the Community' own resources.

Opinion of the Legal Affairs Committee

Draftsman : Mr C. PROUT

On 25 March 1980, the Political Affairs Committee received authorisation to draw up an initiative report on relations between the European Parliament and the Council of the Community.

Mr Prout was provisionally appointed draftsman at the Legal Affairs Committee's meeting of 2 October 1980.

The Legal Affairs Committee was formally authorised to draw up an opinion by letter of 26 January 1981.

It examined the draft opinion at its meeting of 25/26 February and 13/14 April 1981; at the latter meeting, it adopted it with 10 votes in favour, 2 against and 4 abstentions.

Present: Mr Ferri, Chairman; Mr Luster, Mr Turner and Mr Chambeiron, Vice-Chairmen; Mr Prout, Draftsman; Mr Balfe; Mrs Boot; Mr De Gucht; Mr Goppel; Mr Gouthier; Mr Plaskovitis; Mr Sieglerschmidt; Mr Tyrrell; Mr Vardakas; Mrs Vayssade; Mr Vié.

1. On 25th March 1980, the Political Affairs Committee was authorised to draw up an own-initiative report on relations between the European Parliament and the Council of Ministers. The Legal Affairs Committee was authorised to draw up an Opinion by a letter of January 26th, 1981. In the time available to us, therefore, we can only comment very generally.

2. The Legal Affairs Committee regrets the terms of reference of the Report were confined to Parliament and Council. The Commission forms an integral part of the legislative process, possessing considerable powers, and the way in which its political relationship with Parliament develops is critical to the growth of Parliament's own power. Until the implications of the Commission's ultimate political responsibility to Parliament under Article 144 are fully explored an examination of the relationship between Parliament and Council is bound to be incomplete.

Consultation

3. On 17 April 1980, the Legal Affairs Committee was asked to draw up an own initiative report on the consultation of the European Parliament in the light of the judgements to be given by the Court of Justice in the "Isoglucose Cases" (138/79 and 139/79). The Parliament had, on an initiative by the Legal Affairs Committee, intervened in support of the submissions by two private parties that Regulation no. 1293/79 of 25 June 1979 be declared void because Parliament had not yet expressed its opinion. The Court has now decided in Parliament's favour and the Legal Committee is drafting its report.

4. We believe it would not be expedient for the Political Affairs Committee to anticipate any conclusions on consultation until the Legal Affairs Committee has reported on the matter. It is vital that Parliament's opinion on this crucial issue should be expressed in the clearest possible way. This would not be the case if it were fragmented and duplicated in two different documents. Further, the issue must, in the opinion of the Legal Affairs Committee, be considered in the context of the changes in the Rules of Procedure of the European Parliament contained in the report of Mr R. Luster (Doc. 1-926/80) at rules 32 - 39 and paragraphs 21 - 32 of the explanatory statement.

Codecision:

5. The development of the European Communities involves a transfer of powers from Member States to Community Institutions in the belief that certain matters are better dealt with in common than by each Member State separately. In all our Member States, legislative power is exercised by democratically elected Parliaments. One of the consequences of this transfer of power is a decline in democratic decision-making because the European Communities' main decision-making body is the Council composed of Member Governments.

It is true that national representatives on the Council are themselves elected democratically. But the decisions they take are the final part of a legislative process in which national Parliaments have not participated. Any loss of powers by national parliaments in this respect must be compensated for by a corresponding increase of the powers of the European Parliament. In our opinion, the quarrels concerning national sovereignty are misplaced. The real battle is to sustain the principles of representative government.

6. The Legal Affairs Committee agrees with Mr Hänsch in Paragraph 1(b) that the most promising basis for progress is that section of the final declaration of the Paris Summit of 1974 in which the Heads of State and Government express their intention to extend the European Parliament's powers, in particular by granting it certain powers in the Community legislative process. We also think that, in the absence of any action by the Heads of State and Government following this declaration, Parliament must take the political initiative in this field.[1]

7. What this political initiative should be needs careful consideration. An ill-judged move could damage the European Parliament. The Hänsch Report should be regarded as a very useful basis to a fuller analysis whose content the Legal Committee would not wish to anticipate.

8. It would be wrong to assume that the only way to increase the powers of Parliament is by Treaty Amendment. The Legal Committee believes, as its remarks on Conciliation and Majority Voting below demonstrate, that the opportunities to exploit rights that we already have under the Treaty have not yet been fully utilised. Moreover, there is the alternative procedure of Joint Declaration which gave birth, for example, to the Conciliation procedure.

9. Further, provided framework directives contain a provision that regulations made thereunder by the Commission should be subject of consultation of the European Parliament, were it to ask for it within a set deadline, greater use could be made of them.

10. Last, but by no means least, there is the possibility of acquiring powers by custom. This is by the development of working practices between the institutions which each comes to recognise as of binding authority. A recent example of this, is the acceptance by the Commission of the principle that statements of intent made by the Commissioners in Parliament on the latter's amendments before a vote are subsequently binding on the Commission. The history of all our democracies illustrate the significance of this gradual approach.

11. The Legal Affairs Committee declares itself in agreement with paragraph 23 of Mr Hänsch's draft report.

[1] See amendment to paragraph 1.b

Conciliation

12. The Legal Affairs Committee does not wish to submit formal proposals for amendments on these two chapters before consulting the Budgets Committee. It will confine itself to making two general observations: Firstly, the conciliation procedure, which is of the highest importance for the European Parliament, is by its nature cumbersome, and requires careful preparation by both delegations which comprise the 'Conciliation Committee'. A multiplication of conciliation procedures, therefore, is undesirable. The procedure should only be opened for questions of the greatest importance.

13. Secondly, attention must be drawn to paragraph 7 of the joint declaration setting up the conciliation procedure [1]:

> When the positions of the two institutions are sufficiently close, the European Parliament may give a new opinion, after which the Council shall take definitive action'.

This text means that the Council cannot act when the positions of the two sides of the Conciliation Committee are not sufficiently close. It cannot be objected that paragraph 6 of the joint declaration prescribes a period of three months for the procedure to be accomplished, because the wording of that paragraph ("The procedure should normally take place during a period...") shows that the deadline is not mandatory. This view is reinforced by the fact that an exception to the general rule is provided for in the same paragraph of the joint declaration, which stipulates that "the Council may fix an appropriate time limit" if "the act in question has to be adopted before a specific date or if the matter is urgent".

Majority Voting

14. Like the European Parliament, the Council of the European Communities has the power to adopt its own rules of procedure (see article 151 of the EEC Treaty). That means that the Parliament has no legal right to ask for modification of the Council's internal working methods. Nevertheless, autonomy in fixing its Rules cannot permit it to breach Treaty provisions. As a result of the 'Luxembourg agreement' of 1965, the Council has abandoned the majority principle enshrined in the Treaties. In fact, Article 148, para. 1, of the EEC Treaties is so drafted:

> "1. Save as otherwise provided in this Treaty, the Council shall act by a majority of its members".

(1) See OJ No. C 89, 22.4.1975, p.2

The effect of this text is that, where a majority vote is provided for in the Treaty, the Council is obliged not to let itself be immobilized by the lack of unanimity. The Treaty system has as its basis that, unlike in decision-making bodies of most international organisations, in the Council of the Communities differences of opinions must be composed in a vote: when the required majority exists, the minority shall have to comply with their position. The practical effect of the 'Luxembourg agreement' is that, because the Council does not vote any more, it does not take a decision on matters for which there is no unanimity, thus prejudicing the rights of those Member States which are in a majority, of the Commission, the author of the proposal, and of the Parliament when it has expressed its opinion thereon. The Legal Affairs Committee reminds the Political Affairs Committee that, where appropriate, the Commission, each Member State or the European Parliament may bring an action before the Court of Justice when the Council fails to act in infringement of the EEC Treaty (see Article 175).

PROPOSED AMENDMENTS

	Proposed New Text
- conscious that since the Community is a union of democratic states every decision that it takes must be in the interest 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,	Unchanged
- whereas the Council of the European Communities remains the Community institution which represents the nation states of the Community,	- whereas the Council of the European Communities remains the Community institution that consists of representatives of the Member States,

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Paragraphs

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';	25. Emphasises that the provision of Article 148, para. 1 of the EEC Treaty is mandatory, and obliges the Council to act, where appropriate, by a majority of its members;

Existing Text	Proposed New Text
26.(a) Recalls the final comminiqué 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;	26. Declares that it has the legal right to initiate an action against the Council in front of the Court of Justice in all cases in which the Council has unlawfully failed to act;
(b) Demands that the claim by a Member State than an issue is of 'vital interest' should be recognised 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;