

EUROPEAN PARLIAMENT

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2 December 1981

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ANNEX

to the REPORT

drawn up on behalf of the Political Affairs  
Committee

on the role of the European Parliament in the  
negotiation and ratification of treaties of  
accession and of other treaties and agreements  
between the European Community and third countries

Rapporteur : Mr E. BLUMENFELD



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OPINION OF THE LEGAL AFFAIRS COMMITTEE

Draftsman: Mr G. DONNEZ

At its meeting of 2 October 1980 the Legal Affairs Committee appointed Mr Donnez draftsman of an opinion on the role of the European Parliament in the negotiation and ratification of treaties of accession and other treaties and agreements between the European Community and third countries, on the basis that the appointment would take effect when the Legal Affairs Committee was officially asked for its opinion.

By letter of 26 January 1981 the Secretary-General of the European Parliament announced that the enlarged Bureau had on 15 January 1981 authorized the Legal Affairs Committee to draw up an opinion for the Political Affairs Committee on the role of the European Parliament in the negotiation and ratification of treaties of accession and other treaties and agreements concluded between the European Community and third countries.

The Legal Affairs Committee considered the draft opinion at its meetings of 10 and 11 November and 24 and 25 November 1981 and at the latter meeting adopted it unanimously save for four abstentions.

Present: Mr Ferri, chairman; Mr Luster and Mr Chambeiron, vice-chairmen; Mr Donnez, draftsman; Mr Alfonsi, Mrs Cinciari Rodano, Mr Croux (deputizing for Mr Fischbach), Mr Dalziel, Mr D'Angelosante, Mrs Ewing (deputizing for Mr Vié), Mr Geurtsen, Mrs Van den Heuvel (deputizing for Mr Megahy), Mr Janssen van Raay, Mr Kaloyannis (deputizing for Mr Efremidis), Mrs Maij-Weggen (deputizing for Mr Goppel), Mr Malangré, Mr Mertens (deputizing for Mr Gonella), Mr Prout, Mr Sieglerschmidt, Mr Tyrrell, Mrs Vayssade (deputizing for Mrs Théobald Paoli) and Mr Vetter.

The Legal Affairs Committee, after examining the question of the role of the European Parliament in the negotiation and ratification of treaties of accession and of other treaties and agreements between the European Community and third countries in the light of the draft report drawn up by the Political Affairs Committee (PE 67.937/res./rev.III), draws the attention of the Political Affairs Committee to the following points, taking into account in particular the statement from the Commission of the European Communities presented on 14 October 1981 by Mr Gaston THORN to the European Parliament in plenary sitting.

I. THE CONCLUSION OF AN INTERINSTITUTIONAL AGREEMENT CONCERNING THE NEGOTIATION AND RATIFICATION OF AGREEMENTS WITH THIRD COUNTRIES AND GROUPS OF STATES

1. First of all, the Legal Affairs Committee considers that it would be appropriate to recall the essential legislative principles relating to authorization to ratify international agreements.

This is all the more justified in view of the fact that the European Parliament has been elected by direct universal suffrage and in view of its budgetary powers.

It should be stressed that most of the agreements concluded by the Community have financial consequences for the Community budget.

As a result the European Parliament should be able to give its final assent in the procedure for the ratification of the agreements concluded by the Community.

In the light of the foregoing, the Legal Affairs Committee recommends that the Political Affairs Committee should insert in the final motion for a resolution, immediately after the preamble, the following paragraphs:

[The European Parliament,]

- Notes that as a general rule the constitutions of the Member States provide that the ratification of important treaties and agreements or treaties and agreements having financial consequences for the budget must be authorized by a law passed by Parliament;
- Emphasizes that the agreements concluded by the Community often entail financial consequences for its budget;
- Recalls that the budgetary powers given to the European Parliament place that Institution under a duty to review the financial consequences of the agreements concluded by the Community;
- Points out that in the procedure for the conclusion of agreements which come within the exclusive jurisdiction of the Community there is a lacuna relating to the final assent of Parliament, both at national and at Community level;

- Considers that the authorization given by Parliament for the conclusion of an agreement between the Community and one or several non-Member States<sup>1</sup> or an international organization is an essential condition as the democratic expression of the intention to bind the Community definitively to the substance of the agreement.

## II. NOTIFICATION OF THE EUROPEAN PARLIAMENT BY THE COMMISSION OF THE EUROPEAN COMMUNITIES

2. It is desirable for the information supplied by the Commission of the European Communities to be addressed to the Parliament as such. The equilibrium between the Institutions enshrined in the Treaties and the task of political control over the Commission performed by the European Parliament make such a practice necessary.

This in no way affects the procedure known as the Luns-Westerterp procedure for notifying the parliamentary committees responsible at the end of the negotiations carried out by the Commission of the European Communities.

Thus the Legal Affairs Committee recommends that the Political Affairs Committee should delete the words 'through its relevant committees' in point A I of paragraph 1.

## III. CONSULTATION OF THE EUROPEAN PARLIAMENT ON THE NEGOTIATING MANDATE

3. Consultation of the European Parliament on the negotiating mandate would give full effect to parliamentary control.

Subsequent examination by the relevant committees and the possible organization of an orientation debate therefore become superfluous at this stage.

In view of these observations, the Legal Affairs Committee recommends that the Political Affairs Committee should replace the first sentence of point A II of paragraph 1 by the following sentence: 'The Council shall consult the Parliament on the negotiating mandate which it proposes to give to the Commission' and should delete the second sentence of point A II of paragraph 1.

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In the final motion for a resolution the word 'State' should be used (instead of 'country') in accordance with Articles 228 and 238 of the EEC Treaty

IV. CONSULTATION OF THE EUROPEAN PARLIAMENT UNDER ARTICLE 238 OF THE EEC TREATY

4. As it is a question of granting the European Parliament the right to exercise a power of control which has not been expressly laid down in the Treaties, the question arises whether it would not be advisable to accompany this power by a proposal that the Council should agree not to sign or to conclude an agreement if the Parliament rejects it by a great majority. This majority might be three-fifths of the Members of Parliament, for example.

In view of these remarks, the Legal Affairs Committee recommends that the Political Affairs Committee should alter the last sentence of point A V of paragraph 1 to read as follows:

'The Council must agree not to sign or conclude an agreement if Parliament rejects this agreement by a three-fifths majority of its Members'.

V. NOTIFICATION OF THE EUROPEAN PARLIAMENT BY THE COMMISSION DURING THE NEGOTIATIONS FOR ACCESSION TO THE EEC

5. Regard must be had for the fact that the Commission has collective responsibility. Besides, information, as stated in point II above, must be forwarded to the European Parliament as such.

For these reasons, the Legal Affairs Committee recommends that the Political Affairs Committee should alter point B V of paragraph 1 to read as follows:

'The Commission shall forward to the Parliament information on the development of negotiations during the course of the negotiations with the applicant States'.

VI. THE ORGANIZATION OF A DEBATE ON ACCESSION AND THE POSSIBLE REJECTION OF THE TREATY OF ACCESSION BY THE EUROPEAN PARLIAMENT

6. Here too, it seems appropriate from a legal point of view to propose to the Council a very great majority representing an overwhelming majority of the peoples of the Community.

In view of this remark, the Legal Affairs Committee recommends that the Political Affairs Committee should alter point B VI of paragraph 1 to read as follows:

'Following the signature of the treaty of accession Parliament shall hold a debate thereon in the presence of the Council. The Council must agree to renegotiate this treaty if the European Parliament rejects it by a three-fifths majority of its Members'.

## VII. CONCLUSIONS

7. The Legal Affairs Committee also wishes to draw the attention of the European Parliament to the scope of the communication from the Commission presented to the European Parliament in plenary sitting by Mr G. THORN on 14 October 1981 in accordance with the undertaking given on 11 February 1981 on the occasion of the presentation of the Commission's 14th Annual Report.

8. In this communication on relations between the institutions of the Community the Commission discusses various proposals with regard to the conclusion of international agreements by the Community (paragraphs 23 and 24).

The Commission states that it is prepared to seek an agreement with Parliament and the Council on a real improvement to the existing procedures with a view to associating Parliament more closely with the process of drawing up international agreements.

The improvement to these procedures could take the form of providing Parliament with more comprehensive information through a policy debate held before the start of important negotiations.

During negotiations the Commission would be prepared to inform Parliament informally and confidentially through the parliamentary committees of how negotiations were progressing.

9. These proposals represent a cautious but positive approach on the part of the Commission and, as such, merit serious consideration.



Rapporteur: Mr S. JONKER

I. Introduction

1. The European Community's importance as a political and economic force in international affairs is steadily increasing. As a result the Community's sphere of influence and responsibility are also increasing. Its external and internal activities are inseparable from each other. Thus, the changing international situation has repercussions on the Community, while at the same time changes within the Community cannot fail to have an effect outside.

This situation calls for a permanent review of the procedures and instruments used by the Community in international relations.

Such a review must be based on two criteria:

- the attempt to ensure that internal developments in policy content and methods are reflected as fully as possible in external affairs, i.e. to prevent divergence of internal and external objectives and procedures; and
- constant efforts to make available the most efficient instruments possible for international activities.

2. The steady increase in the Community's external powers is not being achieved completely without difficulty as the Member States attach importance to the maintenance of their own scope for influence in external relations. For this reason machinery has been created, and is still being developed, to ensure that the Community's external economic policy does not come into conflict with the policies of individual Member States. This machinery (for example the committee provided for under Article 113 of the EEC Treaty) compensates to a certain extent for the formal loss of powers by national executives. There are no similar mechanisms to make up for loss of control by national parliaments.

It is more obvious in external relations than in almost any other field that integration has frequently been bound up with a shift of decision making powers, or at least of political responsibility, from the parliaments concerned to the relevant executives. The current procedures for developing external relations in the European Community do not provide for sufficient participation by the European Parliament. In the long term it is unacceptable for a Community based on democracy to fail to bring the development of external relations into the democratic process.

3. Direct elections have given an additional dimension to this general requirement concerning the establishment of contractual external relations.

Since the elections, Parliament has enjoyed the independent and legitimate right to take part in decisions of the European Community and to share the responsibility for such decisions. If the Commission and Council, which so far have largely borne the sole responsibility for external relations policy, did nothing about the risk that contradictions might arise between external trade policy content and procedures on the one hand and the positions adopted by Parliament on the other, they would in the long term be placing the authority and enforceability of their measures in jeopardy. It is therefore in the interests of the Community as a whole and of all the institutions for procedures to be introduced with a view to ensuring that common positions can be adopted.

The transfer by the Member States to the Community of responsibility for external trade extinguished the national parliaments' powers in that domain. So far they have not been replaced by a corresponding level of participation by the European Parliament in the conclusion of trade and cooperation agreements. This has created a 'democratic vacuum' which cannot be reconciled with the constitutional principle of the separation of powers.

The rapporteur takes the view that a pragmatic approach should be adopted and that the present situation could be considerably improved by arrangements between the institutions. If such an approach failed to meet with success, however, we should have to press resolutely for a change in the treaties.

## II. Current forms of cooperation with the European Parliament on the negotiation and conclusion of international agreements

4. Under the Treaties establishing the European Communities one of the activities open to the Communities in the field of international trade is the conclusion of agreements with third countries and international organizations. The relevant case law of the European Court of Justice<sup>1</sup> shows that in addition to those cases in which the Treaties expressly give the Community the power to conclude agreements (commercial agreements under Article 113 of the EEC Treaty and association agreements under Article 238 of the EEC Treaty) other provisions of the Treaties and Community laws adopted in accordance therewith can also grant the power to enter into commitments under international law. The general import of this is that the Community's external powers extend sufficiently far to ensure that the internal tasks conferred upon it can be effectively carried out.

5. As regards the procedure for the conclusion of international agreements, Article 228 of the EEC Treaty lays down that

'1. Where this Treaty provides for the conclusion of agreements between the Community and one or more states or an international organization, such agreements shall be negotiated by the Commission. Subject to the powers vested in the Commission in this field such agreements shall be concluded by the Council, after consulting the Assembly where required by this Treaty'.

6. The Euratom Treaty and the ECSC Treaty make provision for different procedures for the conclusion of agreements. Thus, the second paragraph of Article 101 of the EAEC Treaty empowers the Commission not only to negotiate - albeit in accordance with directives of the Council - but also to conclude agreements under international law. Such agreements require the approval of the Council, acting by a qualified majority.

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<sup>1</sup>In particular Case 22/70 (AETR), European Court Reports 1971, page 263.

Cases 3, 4, 6/76 (Kramer) European Court Reports 1976 page 1279.

Agreements or contracts in the Euratom field whose implementation does not require action by the Council and which can be effected within the limits of the relevant budget may be negotiated and concluded solely by the Commission; the latter simply has to keep the Council constantly informed (third paragraph of Article 101 of the EAEC Treaty).

The ECSC Treaty contains no general provisions on the procedure for concluding agreements. Thus, the High Authority is solely competent to negotiate and conclude international agreements within the framework of its own comprehensive powers<sup>2</sup>.

7. Identical provisions in the EEC and EAEC Treaties (Articles 238 and 206 respectively) govern the special case of association agreements as follows:

'The Community may conclude with a third State, a union of States or an international organization agreements establishing an association involving reciprocal rights and obligations, common action and special procedures.

These agreements shall be concluded by the Council, acting unanimously after consulting the Assembly'.

8. The procedures laid down by the Treaties with regard to Parliament's participation in association and trade agreements have been clarified and extended by arrangements between the Council and Parliament and between the Commission and Parliament:

(a) Council - Parliament:

Associations ('LUNS' Procedure)

'A debate may take place in Parliament before the opening of negotiations with a view to the establishment of an association between a third country and the Community. In the course of the negotiations close contacts shall be maintained between the Commission and the appropriate parliamentary committees. After the negotiations, but before the agreement is signed, the Council or its representative shall inform the appropriate committee, in confidence and unofficially, of the substance of the agreement.' (Council Minutes of 24/25 February 1964, page 26).

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<sup>2</sup>In fact the first international agreement concerning the ECSC was concluded solely by the High Authority with the International Labour Organization on 14 August 1953.

Trade Agreements ('LUNS-WESTERTERP' Procedure)

- ' - Prior to the opening of negotiations concerning a trade agreement with a third country and in the light of the information supplied by the Council to the appropriate parliamentary committees, a debate could, where appropriate, be held in the European Parliament.
- When negotiations are completed, but before the signing of the agreement, the President of the Council or his representative would confidentially and unofficially acquaint the competent committees with the substance of the agreement.
- Bearing in mind the European Parliament's interest in trade agreements concluded by the Community, the Council would acquaint the European Parliament with the content of such agreements, after their signing and before their conclusion.'

(Declaration of the Council 16 October 1973).

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'As regards the operation of the 'LUNS-WESTERTERP' procedure the Council considers that experience has shown that a distinction should be drawn between two situations, for which the following practical arrangement could be contemplated:

(a) Agreements of major importance

The Council concurs with the Parliament's view that as a general rule such agreements involve rather lengthy meetings which are difficult to fit into the day normally set aside for the Council. The Council therefore feels that such meetings could, where appropriate, be held outside the Parliament part-sessions at dates and venues to be mutually agreed.

In addition, the Council intends to supply the parliamentary committees with memoranda beforehand in order to make for increasingly detailed exchanges of views between them and the President-in-Office of the Council.

(b) Less Important Agreements

The Council suggests that a tacit procedure be adopted in such cases. The Council would then simply inform the Parliament in writing of the opening and close negotiations on such agreements. If, however, within two weeks of receiving such information the European Parliament expressed the wish that the procedure described in (a) be applied, this could be done.'

(Letter from the President-in-Office of the Council, Mr Crosland of 10 February 1977, PE 47.837/EUR).

(b) Commission - Parliament

'The Commission is ready moreover to involve Parliament to a greater extent in the process of making trade agreements. It will cooperate in any general debate in Parliament or parliamentary committees concerning the holding of proposed trade negotiations, though obviously the significance of any particular negotiation would determine Parliament's decision as to whether and where such a debate would be held. It will also keep the competent parliamentary committees informed of the progress of negotiations on trade agreements. In the case of important trade agreements, the Commission will propose to the Council that Parliament be consulted<sup>3</sup>.

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<sup>3</sup>Commission Memorandum of 30 May 1973, Doc. 103/73.

### III. Problems of the present legal situation and current practice

9. The procedures for the conclusion of international agreements by the European Community cause problems with regard to participation by Parliament: the latter has repeatedly criticized this situation<sup>4</sup>. The agreements with the Commission and Council mentioned in paragraph 3 may be regarded as an initial step towards a substantial strengthening of Parliament's influencing on the formulation of international agreements. At the same time they point the way to further improvements.

10. In the present situation particular problems arise in connection with the following four factors:

- (a) the nature of the agreements in which participation by the European Parliament is possible;
- (b) the budgetary aspects of international agreements;
- (c) the strengthening of Parliament's influence on the content of agreements:
  - when the negotiating mandate is issued;
  - at the negotiation stage;
- (d) the entry into force of the agreement.

11. These points call for the following detailed comments:

- (a) Nature of the agreements

As already mentioned, the nature of Parliament's involvement in international agreements concluded by the European Community is based first and foremost on the three Treaties establishing the Communities and has been extended in respect of trade agreements. However, it is regrettable that no provision has been made for involving Parliament in:

- agreements in the ECSC field,<sup>5</sup>

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<sup>4</sup>Inter alia, in the following reports FURLER Doc. 31/63-64;  
GOES van der NATERS Doc. 119/64-65;  
GIRAUDO Doc. 300/72-73 Lord REAY Doc. 148/78-79.

<sup>5</sup>Despite the fact that in its memorandum of 30 May 1973 the Commission gave a far-reaching assurance that the European Parliament would be consulted on ECSC matters.

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- agreements in the EAEC field (except association agreements);
  - any agreements seeking to enlarge the Community (Article 237 of the EEC Treaty);
  - a large number of bilateral and multilateral agreements not classified by the Commission and Council under either trade policy or association policy or not regarded as 'important'.

The European Parliament will not of course be able to deal with agreements of a purely administrative nature. However, arrangements should be made with the Council and the Commission with a view to ensuring that in principle all international agreements to be concluded on the basis of the three Treaties establishing the Communities are submitted to Parliament in the way in which a given agreement should be handled is determined in good time and that by a procedure agreed between the three institutions involved on the basis of type and content of that agreement. This would be particularly necessary when the Community is to conclude 'mixed agreements', i.e. agreements in which the Member States are involved.

(b) Budgetary aspects

12. Attention should be drawn to the basic position of the European Parliament in the scheme of the Treaties. The Parliament is not the Community's legislative body, but it is one arm of the budgetary authority. In practice this means that it is pointless to assert that an increase in Parliament's powers, without a change in the Treaties, should not result in a position in which Parliament becomes the equivalent of a legislative authority. The concept of 'consultation' is legally meaningless if the opinion of the body consulted can have no effect. Thus, when the Treaties call for the consultation of Parliament, they require the consultation to take place at a stage in the proceedings when the opinion of Parliament can have a practical impact. In the case of international agreements, such consultations should therefore be held before the content of the agreement is finally settled.



13. In addition, the other institutions may not use their powers in such a way as to rob Parliament's role as a budgetary authority of all its meaning.

In view of these considerations, 1975 saw the entry into force of a conciliation procedure between the three institutions. Although this procedure is applicable without distinction to all legal acts meeting certain criteria as regards content it has not so far ever been applied to international agreements.

It would seem appropriate to seek means of using this procedure in the short term to strengthen the European Parliament's role in the Community's international activities.

(c) Negotiating mandate

14. The following two stages must be distinguished in connection with the strengthening of Parliament's influence on the content of international agreements;

- the issuing of the negotiating mandate, and
- the negotiations themselves.

Since the mandate is generally issued by the Council and the Commission subsequently keeps to this mandate, decisive importance attaches to Parliament's influence on the content of the mandate.

The Council and Commission should take steps to ensure that the European Parliament can deliver an opinion on the planned subject of an agreement (i.e. on the Commission's draft negotiating mandate) before the negotiating mandate is formulated. This opinion should be considered by the Commission and Council when establishing the mandate by analogy with the arrangements whereby effect is given to an opinion of the European Parliament in the legislative procedure.

The appropriate committees of Parliament are kept informed of the progress of the negotiations themselves by the Commission, and the Council reports on them after they have been completed.

Experience has shown that this procedure gives no guarantee of complete and up-to-date information. One of the main reasons for this is that the negotiators are concerned that the information could be released prematurely and thus jeopardize the Community's negotiating position.

The Commission cannot be relieved of its responsibility for conducting the negotiations. For this reason procedures should be created which will guarantee the independent and timely release of information to Parliament.

(d) Ratification

15. After the issuing of the negotiating mandate and the formulation of the agreement, the third decisive stage in the adoption by the Community of an international commitment is the entry into force of that commitment. In the first two phases particular importance attaches to responsibility for content whereas at the end of the procedure the primary factor is overall political responsibility, i.e. parliamentary legitimation of the agreement. The first two phases could be improved by pragmatic reinforcement of Parliament's role, whereas in the latter stage greater formal weight must be given to the opinion of Parliament.

The fact is that at this late stage it is an extremely difficult and politically delicate matter to make changes in the content of an agreement. Parliament should therefore concentrate on establishing whether it is politically acceptable to allow this agreement to come into force in the Community. In practice, therefore, a ratification debate must be held.

16. Any declaration of ratification will of course be meaningless unless the Council is prepared to take special account of it. Thus, for example, it could undertake not to implement a Community agreement that Parliament has rejected by a given qualified majority.

This would be technically feasible if an appropriate proviso were attached to every draft agreement.

17. The procedure for concluding the agreement on enlargement constitutes a special case. If such agreements impinge on provisions of the Treaties which, by express requirement, can be amended only under special procedures, then such amendments must be made under these procedures unless other procedures are worked out by general agreement. In practice this means that, for example, provisions on the system for the election of Members of the European Parliament may be changed with a view to the accession of a new Member State only with the agreement of Parliament in accordance with the procedure laid down by Article 138(3) of the EEC Treaty and Article 7 of the Act of 20 September 1976. The Greek Treaty of Accession does not fulfil this requirement. Parliament should not accept such a violation of the Treaty again.

#### IV. Legal situation and practice in the Member States of the European Community

18. The special features of the Community's constitutional system make it impossible to adopt for the European Community the model of Parliamentary participation in external relations used in one or more Member States. However, the constitutional practice in the Member States may serve to clarify possible approaches and procedures for parliamentary participation and thus to generate fruitful discussion on improvements in the European Parliament's situation.

A study prepared by the Directorate-General for Research and Documentation (PE 58.142), included as Annex III to this Working Document, describes the situation in each of the Member States.

In addition, it is also worth looking at the situation in Ireland.

The position of the Irish Parliament and in particular that of the lower house (Dáil Éireann) in this respect corresponds broadly to that of the parliaments of the other Member States. Art. 29(5) (2) and (3) of the Irish Constitution deserve brief mention here. Art. 29(5) (2) places the executive under a binding obligation to obtain the assent of parliament to international agreements having financial implications. Art. 29(5) (3) excludes from that obligation all purely technical or administrative agreements. This system, like that used in the USA (executive agreements), resembles the forms of parliamentary participation found in the other Member States. The Irish system proceeds along similar lines in other spheres of parliamentary participation.