

EUROPEAN PARLIAMENT

Working Documents

1981 - 1982

27 May 1981

DOCUMENT 1-207/81

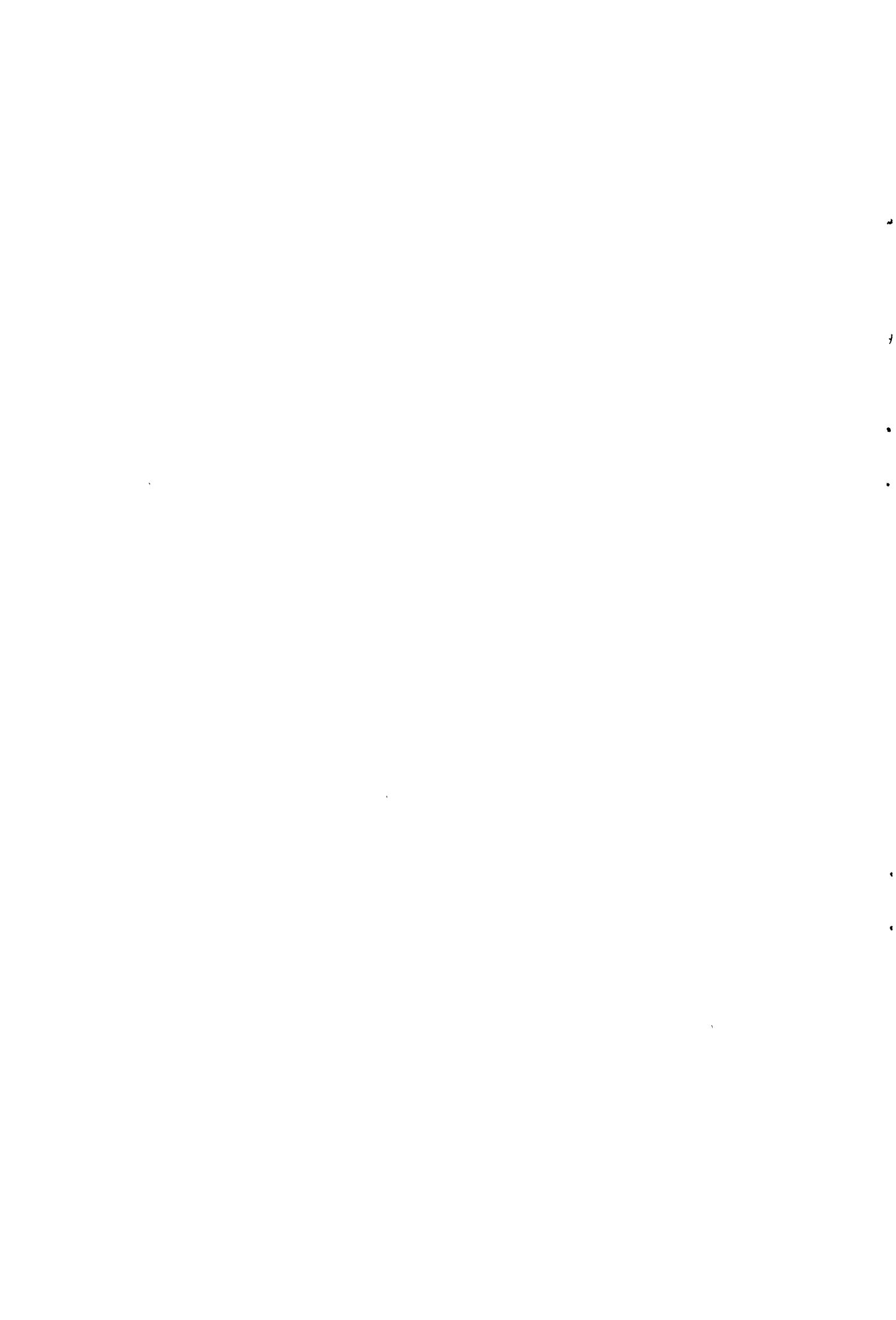
Report

drawn up on behalf of the Political Affairs Committee

**on the right of legislative initiative and the role of the European
Parliament in the legislative process of the Community**

Rapporteur: Mr Karel van MIERT

12.1



On 25 March 1980 the Political Affairs Committee was authorized by the European Parliament to draw up a report on the right of legislative initiative and the role of the European Parliament in the legislative process of the Community.

On 31 January 1980 Mr Van Miert was appointed rapporteur.

The report was drafted by the Subcommittee on Institutional Problems, which adopted it on 26 November 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 1, with 3 abstentions, on the last-mentioned date.

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

The opinion of the Legal Affairs Committee is attached.

C O N T E N T S

| | <u>Page</u> |
|--|-------------|
| A. MOTION FOR A RESOLUTION | 5 |
| B. EXPLANATORY STATEMENT | 9 |
| Minority opinion | 26 |
| Opinion of the Legal Affairs Committee | 27 |

ANNEXES

| | |
|---|----|
| I. Extract from the letter from Mr Harmel, President of the Council, to Mr Scelba, President of the European Parliament, dated 20 March 1970 and the letter from Mr Scheel, President of the Council to Mr Scelba, dated 22 July 1970 | 30 |
| II. Text of Annex 3 of the report of the Committee of Three to the European Council on the European Institutions | 31 |

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 the right of legislative initiative and on the rôle of the European Parliament in the legislative process of the Community

The European Parliament,

- considering that the formal legal right of legislative initiative lies, under the Treaties - with the exception of proposals concerning the election of the Parliament - with the Commission,
 - considering that the European Parliament should develop further its right to make policy proposals concerning Community legislation,
 - considering that the Council and the Commission should undertake to give due weight to opinions on Commission legislative proposals adopted by the directly elected European Parliament,
 - recalling the statement made by the Heads of State or of Government in Paris in December 1974 to the effect that:

'The competence of the European Assembly will be extended in particular by granting it certain powers in the Communities' legislative process',
 - considering that the time is due for a return to majority voting in the Council as laid down by Article 148 of the EEC Treaty,
 - having regard to the report of the Political Affairs Committee and the opinion of the Legal Affairs Committee (Doc. 1-207/81);
1. Considers that Parliament should develop further its right to make proposals concerning Community policy through resolutions requesting the Commission to introduce legislative proposals;
 2. Requests the Commission to agree, in a joint declaration, to introduce the formal legislative initiatives needed to transform proposals concerning the initiation of Community legislation made by the European Parliament and originating under Rule 25 of its Rules of Procedure¹;

¹ Text of Rules of Procedure in force until May 1981

3. Requests the Commission to agree, by means of a 'joint declaration', to submit legislative proposals to the Council embodying policy proposals made in 'own-initiative' reports adopted by the European Parliament, within an appropriate time-limit as fixed by Parliament in its relevant resolution;
4. Considers that, under the terms of the same 'joint declaration' the Commission should agree to explain, orally, to Parliament its reasons for not submitting an appropriate legislative proposal to the Council or, if the Commission has substantive reasons for not being able or for not wishing to introduce appropriate legislative proposals it should agree to explain, orally, its failure to act before the expiry of the time-limit set by Parliament;
5. (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) Draws attention, in relation to its demand to be consulted again by the Council in cases where the Commission has amended the original proposal on which Parliament delivered an opinion and that amendment has not been debated in Parliament, to the report on relations between Parliament and the Council¹;
6. 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;
7. Requests the Council and the Commission to agree to keep Parliament fully informed, through its competent committees, concerning the course of discussions in the Council on Commission legislative proposals and on amendments to them proposed by Parliament in its opinions;

¹ HANSCH report, Doc. 1-216/81

8. 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;
9. 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;
10. (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;

(b) Draws attention in relation to Parliament's claims for greater participation in the shaping of the Community's external relations to the report on relations between Parliament and the Council¹;
11. 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 in the Conciliation Committee and draws attention in relation to individual demands in this regard to the report on relations between Parliament and the Council¹;
12. Considers that the European Council should agree that whenever it makes policy recommendations the Commission should make the detailed legislative proposals required, concerning which the European Parliament should be consulted;
13. 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;

¹ HANSCH report, Doc. 1-216/81

14. Requests the Commission to agree to consult regularly with the President and the enlarged Bureau of Parliament, informing Parliament in the presence of a representative of the Council of its legislative programme for the following six months, to enable Parliament to plan and organize effectively the debates planned for its forthcoming sessions;
15. Resolves to request that Commissioners discuss the annual programme of the Commission with the relevant parliamentary committees whenever the Parliament decides that the programme has been presented in insufficient detail;
16. Requests the Commission to agree that on every occasion when it wishes to put forward a legislative proposal, the appropriate Commissioner should, first, fully explain the nature and content of the draft legislative proposal to Parliament's appropriate committee, with a view to the Commission incorporating suggestions made by Parliament's committees in its formal legislative proposal;
17. Instructs its President to transmit this resolution, together with the accompanying explanatory statement, to the Council and the Commission of the European Communities.

EXPLANATORY STATEMENT1. Introduction

1. First, it seems useful to draw a distinction between the right of legislative initiative and the right to make policy proposals. Under the Treaties the right of legislative initiative, in its strict legal sense, lies solely with the Commission. This right is not defined or set out in any one article or section of the Treaties but is derived from numerous references to the Commission's right of initiative scattered throughout the texts of the Treaties.
2. Distinct from the Commission's legal right of legislative initiative is the right to make proposals concerning Community policy. This right has a political rather than a legal basis and it is common to the three institutions which are involved in the legislative process of the European Community, Commission, Council and Parliament.
3. The right to make policy proposals has been used both by the Council, particularly at the level of the European Council, and by the European Parliament. Thus the proposal to create the European Monetary System was made by the European Council, whilst the proposal to create the European Regional Fund was first made by the European Parliament as was the proposal to hold direct elections to the European Parliament in application of Treaty obligations. But whether it is the Council or Parliament which makes a policy proposal it is nonetheless the Commission that takes the legislative initiative in submitting draft legislation to the Council.
4. The Commission itself, apart from its formal right of legislative initiative, can also make policy proposals in the form of memoranda, studies etc.
5. Thus the right of initiative has two aspects. First, there is the political right, shared by the Commission, the Council and Parliament, to make policy proposals. Second, there is the formal legal right of legislative initiative which, according to the Treaties, lies with the Commission.
6. Many citizens of the European Community consider that the move from a nominated to a directly elected European Parliament should entail a greater role for Parliament in Community legislation. Some of these citizens have hoped that such an increase should be of a dramatic nature transforming the European Parliament into a legislature. Thus they look forward to the directly elected Parliament initiating and voting European laws.
7. But expectations and hopes of this kind are based on a misunderstanding of the basic role and functions of the Community institutions as laid down by the Treaties.

8. As the Vedel report has observed¹ : 'The Treaties do not reproduce at Community level the distinction generally made by national constitutions between the legislature and the executive. According to the original constitution of the Community, the Council is its legislature. We could not substitute the Parliament for the Council in this role without attacking the very roots of the Treaties. So any increase of the Parliament's powers would have to be achieved not through replacing one body by another but through a system enabling the Parliament to participate in law-making decisions.'

9. The Treaties themselves do not define, in detail, in a separate chapter or section, the precise competences and functions of the institutions. It is clear, however, from numerous references occurring throughout the Treaties, that the right of legislative initiative in the Community rests with the Commission and thus that proposals leading to regulations, directives and decisions of the Council are based on proposals made by the Commission. In simplified terms this legislative process of the Community takes the following form: a legislative proposal is introduced by the Commission and submitted by it to the Council. The Council will then, normally consult the European Parliament, requesting its opinion on the Commission's proposal. When the Council has received Parliament's opinion, which may include amendments to the proposal, the Council will take its decision.

10. The Treaties distinguish between matters concerning which consultation of Parliament by the Council is obligatory and those concerning which it is optional. In practice the Council now consults Parliament concerning a high proportion of legislative proposals submitted to it by the Commission, including many proposals concerning which consultation of Parliament is optional.

11. It is important to remember that the political weight of the Commission's legislative right of initiative, though not its legal status, has been very much reduced by the Luxembourg Agreement of January 1966 since when the principle of majority voting by the Council on Commission proposals (except as otherwise provided for in the Treaties), as set out in Article 148 of the EEC Treaty, has been very largely replaced by the consensus or unanimity method of decision in the Council. In consequence the Commission's ability to propose new policy has been weakened, politically, since it is pointless for the Commission to suggest new policies that do not have a very high chance of being accepted by all members of the Council.

¹See Chapter IV Section II of Report of the Working Party examining the problem of The Enlargement of the Powers of the European Parliament.

12. The Commission is no longer unique as an institution making major policy proposals. The European Council has established a practice of suggesting major initiatives to be undertaken by the Community in new areas. The policy proposal to create the European Monetary System is a notable example of this practice. Further, policy initiatives taken by the European Parliament and the European Council led to the decisions to hold direct elections to the European Parliament and the creation of the Regional Fund.

13. As a result of these factors the balance of effectiveness in Community legislation has shifted dramatically from the Commission to the Council in political if not legal terms.

14. If Parliament's opinion on Commission legislative proposals were 'binding' on the Commission and on the Council Parliament's role in the Community decision-making process could be regarded, from its own point of view, as highly satisfactory, even if limitations and legal constraints still existed concerning its ability to 'initiate' legislation. But this is not the case. The major drawback of the Community's legislative process, as seen from the point of view of Parliament, is that apart from Parliament's specific role in the establishment of the Community budget, particularly with regard to amendments relating to non-obligatory expenditure, its opinion is in no way binding on the Council. True, Article 149 of the EEC Treaty provides for the possibility of the Commission altering its proposal in the light of Parliament's opinion, so long as the Council has not taken a decision. Indeed in a proportion of cases where Article 149 can be applied the Commission does alter its proposal to take account of Parliament's views. But there is no means of enforcing alterations.

15. Formally the Council's decisions often seem to be uninfluenced by Parliament's opinions, and all too often the consultation of Parliament seems to be a mere formality. In practice, however, the main strands of political thought expressed by Parliament in debating Commission legislative proposals can influence the views of individual governments when taking their decision in the Council. Further, views originating in Parliament's committees can affect the formal decision taken by the Council through influencing, at a pre-legislative stage, the formulation of the Commission's legislative proposal itself. Nonetheless one of the main aims of the Parliament, in improving the effectiveness of its consultative role, should be to ensure that the Council agrees to take its opinions more fully into account.

16. Suggestions as to how this could be changed, in practice, are set out later in the report.

2. The Paris Communiqué

17. The Communiqué of the meeting held by the Heads of State in Paris in December 1974 stated: 'The competence of the European Assembly will be extended in particular by granting it certain powers in the Communities' legislative process.'

18. This statement represents a promise. But the promise has not been kept. Neither the member governments nor the Commission have made proposals concerning the implementation of the Paris statement. On the side of the European Parliament, however, the late Sir Peter Kirk, followed by Lord Reay who succeeded him as rapporteur of the Political Affairs Committee on Interinstitutional Relations, made a number of suggestions in a draft report on that subject (PE 50.948/fin). The Political Affairs Committee adopted a motion for a resolution, accompanied by a detailed explanatory statement, in May 1978, but at the request of some members of Parliament the report was referred back to committee and was not adopted by Parliament.

19. It might be useful if your rapporteur recalls some of the main proposals that have been made concerning Parliament's participation in the legislative role of the Community before himself making precise proposals.

3. The right of initiative

20. The Vedel report observed, as long ago as 1972, that: "The Parliament is already able to propose initiatives affecting legislation by means of resolutions requesting the other institutions of the Community, especially the Commission, to take action. It does not seem to be advisable to transform this de facto ability into a formal power of legislative initiative. It is in the Commission that the Treaties vest the role of initiator and promoter of Community norms. So as not to endanger this prerogative, conferred on the Commission for the benefit of the Community interest, it would be much better to retain the flexible practice which in fact allows the Parliament to propose initiatives in the legislative field: moreover the efficacy of this practice can only be strengthened when the Assembly accedes to full parliamentary status."

21. It might also be useful to bear in mind the comment made by the Vedel report distinguishing the system of 'framework laws', laying down laws of principle, from the mass of detailed measures applying those laws. The Vedel report considered that Parliament's work could be overloaded by tasks of secondary importance if it were to pay too much attention to detailed measures of application rather than to the establishment of rules of principle.

22. In his report on European Union submitted to the European Council in December 1975 Mr Tindemans made the following proposal concerning a right of initiative for the European Parliament in Chapter V Section A (Doc. 481/75):

' - the Council should immediately allow the Parliament to take initiatives by undertaking to consider the resolutions which Parliament addresses to it. This will permit the Assembly to make an effective contribution towards defining common policies;

- in the course of the progressive development of the European Union this practice should be given legal value through a Treaty amendment which would accord to the Parliament a real right of initiative;

- Parliament should be able, from now on, to consider all questions within the competence of the Union, whether or not they are covered by the Treaties.'

23. The report made by the Committee of Three to the European Council in October 1979 on the European Institutions drafted by Barend Biesheuvel, Edmund Dell and Robert Marjolin, made no significant proposal concerning a possible right of legislative initiative for the Parliament.

24. On the side of the European Parliament, the abortive report on interinstitutional relations drafted by the late Sir Peter Kirk, with additional material added by Lord Reay¹ made the suggestion that Parliament could exercise a power of initiative analogous to private members' bills i.e. legislation introduced by individual members of Parliament. Sir Peter Kirk argued that initiatives of this kind would not replace but complement the Commission's right of initiative and he stated that their financial implications, if any, must be clearly defined. He suggested that under this proposal it should be possible for one of Parliament's committees to draft proposed legislation which would then, following approval by the Bureau, be voted on in plenary session and if agreed transmitted to the Commission which would then submit it - possibly with modifications - to the Council. Thereafter it would follow the normal course of Community legislation with provision for accelerated procedure in Parliament if unchanged or only insignificantly changed by the Commission. Proposed legislation of this kind involving financial expenditure would have to wait until the adoption of the annual budget before implementation.

25. Under this proposal an individual member of Parliament, a number of members of Parliament or a committee could draft proposed legislation on matters of particular interest to themselves, and which would complement the normal type of Commission legislative proposal. The draft legislation would take the form of a motion for a resolution. Motions for a resolution constituting such policy proposals would be considered by the Bureau in the presence of a member of the Commission. At the Bureau meeting the Commissioner would state whether or not the Commission could agree, in principle, to put forward, itself, a legislative proposal based on a text identical or close to that of the motion for a resolution concerned. This procedure should be the object of a 'gentlemen's agreement' between the Parliament and the Commission under which the Commission would undertake to

¹ Paragraph 30 of Document PE 50.948/fin/Ann. I

introduce the formal legislative initiative required to transform the ideas originating from Parliament into draft legislation. The consultation of the Commission by Parliament, in the Bureau, would provide the Commission with a safeguard that the proposals made by Parliament, under this system, were useful or sensible.

26. Under the terms of the 'gentlemen's agreement' the Commission would undertake to explain to the Bureau its reasons for wishing to give an unfavourable opinion or veto concerning policy proposals, in the form of proposed draft legislation, originating in Parliament. In the event of the Commissioner giving a favourable opinion the Bureau would refer the motion for a resolution to the competent committee which, if it agreed with the aims of the text concerned, would adopt it in its original or amended form following which it would be voted on in plenary session. Once voted by Parliament the text would be transmitted to the Commission which would then submit it - possibly with modifications - to the Council. Thereafter it would follow the normal course of Community legislation with provision for accelerated procedure in Parliament if unchanged or only insignificantly changed by the Commission. Proposed legislation of this kind involving financial expenditure would have to wait until the adoption of the annual budget before implementation.

27. Paragraph 9 of the resolution adopted by Parliament on 17 April 1980 contained in the report by Mr Jean Rey suggested another way in which Parliament could make proposals relating to legislation. This involves 'pre-legislative' consideration by parliamentary committees of suggestions made by the Commission concerning proposed legislation. In effect the Commission should undertake: 'to consult Parliament on all preliminary draft Commission decisions and not to prepare definitive texts for submission to the Council until agreement on the fundamental points has been reached with Parliament.'

28. The problem that is posed to the directly elected Parliament is: how can the promise made by the Heads of Government at the Paris Summit of 1974 be put into effect? In particular, how far should or could Parliament develop a right of legislative initiative without diminishing the traditional right of initiative of the Commission?

29. Your rapporteur is convinced that it is essential to maintain and safeguard the spirit of the Treaties. Although it is clear that the 110 million Community citizens who elected the members of the present Parliament will expect some increase in Parliament's right of legislative initiative, it is also clear that the Commission's right to initiate legislation must not be undermined or sabotaged by Parliament. If, as your rapporteur hopes, these two premises are accepted any proposals that Parliament makes concerning its own role in the initiation of Community policy should take both of them into consideration.

30. At this point your rapporteur thinks that it is necessary to take note of the statement made by President Jenkins to Parliament on 16 April 1980. In the general institutional debate at Strasbourg Mr Jenkins said:

'In the Commission's view any watering-down or weakening of its right of initiative to make proposals could only act to the detriment of the Community decision-making process itself. The right of initiative is the central part of the Commission's political mandate. It cannot be shared and it must be exercised to the full in the interests of the Community as a whole.'

31. This statement is not, perhaps, fully up to date or comprehensive concerning the way in which policy is initiated in the Community. As your rapporteur has already noted earlier in the report, the Commission has the sole legal right to initiate legislation in the Community. But once again it is necessary to draw the distinction between the right of legislative initiative in the legal sense and the political right, shared by the Commission, the Council and Parliament, to make proposals concerning the development of new Community policies. If the statement of President Jenkins is interpreted in the legal sense it cannot be disputed. But it must be remembered that this second political right to propose new policies also exists and that it is used not only by the Commission but by the Council - particularly the European Council - and by Parliament.

32. Further, as the Vedel report recorded in 1972, 'The Parliament is already able to propose initiatives affecting legislation by means of resolutions requesting other institutions of the Community, especially the Commission, to take action.' The Vedel report commented that this capability was a 'de facto facility' rather than a 'formal power of legislative initiative'. Any interpretation of the words of President Jenkins should, in the view of your rapporteur, recognise that although the legal right of legislative initiative belongs solely to the Commission, the European Council and Parliament both possess a right to make proposals concerning Community legislation which may, or may not, according to the case, be transformed into formal legislative proposals by the Commission.

33. Quite apart from Parliament's practical and political right to request the Commission to initiate legislative proposals, there is one subject concerning which the Treaties specifically instruct Parliament, rather than the Commission, to initiate proposals. This concerns the election of members of the Parliament by direct universal suffrage. Thus Article 138(3) of the EEC Treaty lays down that: 'the Assembly shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States.'

34. It was, of course on the basis of the draft convention presented by Mr Patijn, on behalf of the Political Affairs Committee, and Parliament's accompanying resolution, that the Council decided on the provisions under which members of the Parliament were finally directly elected in June 1979. Under

Article 7 of the Act on direct elections agreed by the Council in September 1976 it is, also, the Parliament that is due to 'draw up a proposal for a uniform electoral procedure' which should, in principle, establish the electoral system to be used for the election of members of the Parliament in 1984 and subsequently.

35. Your rapporteur ventures to make the following proposals, in view of the considerations set out above.

36. First, Parliament should develop further its present right to make policy proposals concerning Community legislation by means of resolutions requesting the Commission to introduce legislation.

37. Second, Parliament should obtain the agreement of the Council that it should consider, regularly, suggestions submitted to it by Parliament, in consultation with the Commission, concerning Community policy initiatives of major importance in new areas. Such a system would enable Parliament to make an appropriate input into policy initiatives taken by the European Council. It is clear that all formal legislative initiatives resulting from policy proposals of this kind would have to be introduced by the Commission in accordance with its right of legislative initiative.

38. Third, Parliament should introduce a system of 'private members' bills' as outlined above, which would permit individual members, numbers of members or committees to make policy proposals concerning the initiation of Community legislation on matters of particular concern to themselves and which would complement the normal type of Commission legislative procedure. The implementation of such a system of 'private members' bills' could be achieved by a gentlemen's agreement' between the Parliament and the Commission under which, as proposed above, the Commission would undertake to introduce the formal initiatives needed to change the ideas of Parliament's members into draft Community legislation.

4. Parliament's opinion

39. In view of the fact that proposals aimed at increasing the weight of Parliament's opinions overlap the subject-matter of the reports of Mr Rey on relations between the Parliament and the Commission and Mr Hänsch on relations between Parliament and the Council, your rapporteur has co-operated closely with Mr Hänsch in the preparation of those parts of this section of the report which touch on relations with the Council. As a result of this cooperation the present section of this report (paragraphs 39-62) has been jointly drafted by Mr Hänsch and your rapporteur and represents their joint viewpoint. The jointly written parts of this section of the report will, in consequence, also be included in the report that Mr Hänsch will submit on relations between the Parliament and the Council.

Since Mr Rey's report on relations between Parliament and the Commission was adopted by Parliament in April 1980 it is too late for your rapporteur and Mr Hänsch to work out joint proposals with Mr Rey.

40. In this chapter of the report your rapporteur and Mr Hänsch recall some of the main proposals that have been made concerning ways and means in which Parliament might succeed in giving greater weight to its opinions concerning Commission legislative proposals at the stage when the Council takes its decisions concerning these proposals.

41. Rather than concentrating on strengthening the weight of Parliament's opinions concerning Commission legislative proposals, the Vedel report considered that the main way ahead for Parliament in developing its role in Community legislation should be to achieve the power of 'co-decision' with the Council concerning a number of areas covered by the Treaties. The Vedel report worked out a detailed timetable for the achievement of co-decision. An element of co-decision between the Parliament and Council has already been achieved concerning the establishment of the Community budget and by means of the conciliation procedure.

42. The Vedel report put forward an interesting idea which your rapporteur and Mr Hänsch consider to be most relevant at the present time, that of a suspensive veto that could be exercised by the Parliament. This would involve the right of Parliament to ask the Council for a second deliberation or reading of a Commission legislative proposal concerning which the view of the Council deviates appreciably from Parliament's opinion. Your rapporteur and Mr Hänsch will return to this suggestion in the specific proposals they make at the end of the present chapter.

43. In their report on the European institutions (see Chapter V page 79) the Committee of Three considered that the Commission, on its side, 'should set a higher and more consistent standard of response to the Parliament on the latter's Resolutions. Where these contain Opinions on draft legislation the Commission should explain its reaction to any changes proposed by the Parliament, and inform Parliament regularly on the subsequent course of negotiations in the Council. Where the Resolutions are of the 'own initiative' type containing new ideas from the Parliament, the Commission should say if it intends to follow them up and if not why not.'

44. It might be thought that the Commission would quite normally and automatically apply the Vedel suggestions as a natural consequence of its accountability to Parliament. But it has rarely done so. Parliament has, during the past five years, continually demanded fuller explanations from the Commission concerning its reactions to Parliament's amendments, but the Commission's response has been limited. The recommendation of the Committee of Three is, therefore, endorsed.

45. As far as the Council's reactions to Parliament's resolutions and opinions are concerned, the Committee of Three considers that it is 'up to the Presidency to take the initiative in improving the Council's response to Parliament's Resolutions - both those containing Opinions and those of the "own initiative" type. All too often these are simply filed away by delegations and have no further influence on legislative deliberations. While the practical influence the Resolutions have will depend on their soundness and their quality, the Presidency should ensure that they are at least drawn to States' attention. On major measures of legislation the Council should fulfil the undertaking it has made to explain why it has accepted or passed over the Parliament's points. This response can easily be conveyed during the Presidency's various contacts with the Parliament.'

46. Since direct elections the Presidency has ensured that Opinions and Resolutions of Parliament are brought directly and orally to the attention of members of the Council instead of their constituting a dormant item on the Council's agenda. Thus brief discussions of Parliament's opinions and resolutions have taken place in the Council since direct elections.

47. Perhaps the most interesting ideas that have been advanced about an increase in the weight of Parliament's opinion concerning Commission legislative proposals have been those that have suggested the use of the 'conciliation procedure' in this context. As is well known, the conciliation procedure, which should not be confused with the process of consultation on the Community budget, was established in a Joint Declaration of the institutions of 4 March 1975.

48. In particular, Sir Peter Kirk, in Chapter 2 of his report on inter-institutional relations, which was completed by Lord Reay, proposed the introduction of a system of decision-making concerning Commission legislative proposals as follows:

'When the Commission has established its legislative proposal it would seize Parliament of this text. Parliament would then hold a debate on the Commission's proposal. This would have the advantage of allowing Parliament to formulate and express its views concerning proposals by the Commission before the Council was seized and before the Governments started to entrench their positions. The Commission would then send its proposal together with the amendments adopted by Parliament - set out as parallel texts - to the Council. The Council would then reach its decision concerning both the Commission's proposal and the amendments proposed by Parliament. It would take this decision not in secret but in public. When the Council differs AT ALL from the opinion expressed by Parliament a second reading should be held by Parliament. If, within a specified time limit, the Council should not change its decision so as to agree with Parliament or vice versa, an automatic [conciliation] procedure should be adopted. This procedure would be obligatory. If changes made by the Council were minimal or semantic, the second reading by Parliament could be a mere formality. If, however,

Parliament considered the changes to be significant ones, it would proceed to a full debate. This would avoid the problem of who would define, and how, whether the Council wished to "depart markedly" from the opinion given by Parliament on the first consideration. Any compromise formula agreed between the Representatives of the Council and of Parliament within the framework of a [̄conciliation] Committee, in whose work the Commission would also take part, would be binding on the Council and Parliament after ratification by the two institutions. The [̄conciliation] Committee would be instructed to sit until a compromise agreement was reached. If both institutions agreed with the compromise formula proposed by the [̄conciliation] Committee, this compromise solution would enter into effect immediately following the conclusion of the second of the decisions to be taken respectively by the Council and Parliament.'

49. In effect the Kirk/Reay report called for the use of the conciliation procedure not merely in the case of proposals for acts with financial implications but for all legislative proposals.

50. In the course of the discussions held in the Political Affairs Committee concerning the Kirk/Reay report both Sir Peter Kirk and Lord Reay drew attention to the obligation that already exists, on the part of the Council, to inform the Parliament for what reasons it has not followed Parliament's advice whenever the Council takes a decision differing from Parliament's Opinion concerning either 'Community instruments having financial implications' or "all matters of special importance.'

51. The Council's obligation to give explanations of this kind is set out in two letters: one addressed to Mr Scelba, then President of the Parliament, by Mr Harmel, then President of the Council, dated 20 March 1970; the other addressed by Mr Scheel, then President in office of the Council, to Mr Scelba, dated 22 July 1970.¹

52. In the past it has largely been the fault of the Parliament that this obligation has not been met since Parliament has only too rarely insisted on Council explaining its reasons for differing from Parliament's opinion.

53. The Committee of Three in their report on European institutions lay great stress on the importance of the conciliation procedure and Annex 3 of their report sets out detailed suggestions as to how the conciliation procedure might be improved. The improvements suggested are largely of a technical or administrative nature, but they are, in the view of your rapporteur and Mr Hänsch, most useful and could well be applied to the new type of conciliation procedure favoured by them. The administrative improvements suggested by the Committee of Three are set out in Annex II of the present report.

¹The text of the two letters is set out in Annex I.

Proposals

54. In light of the considerations set out above your rapporteur and Mr Hänsch wish to make the following proposals.

55. First, by means of a joint declaration, the Council should agree to reconsult Parliament concerning all legislative proposals altered by the Commission, under Article 149 of the EEC Treaty, wherever these alterations do not correspond with Parliament's opinion, before it takes its decision on a modified proposal of the Commission.

56. Second, wherever the Commission does not alter a legislative proposal in accordance with an opinion of Parliament, under Article 149 of the EEC Treaty, before the Council decides on the proposal, the Commission should explain its reasons orally to Parliament for not accepting the amendments proposed by Parliament.¹

57. Third, Parliament should set, in the resolution expressing its opinion to the Council concerning a Commission legislative proposal, a time-limit before the expiry of which the Commission should amend its proposal in the sense indicated by Parliament or explain to Parliament its reasons for not doing so. The Council should undertake not to take its decision, under Article 149 of the EEC Treaty, until the Commission had either changed its legislative proposal in the sense indicated by Parliament or had explained to Parliament its reasons for not doing so. A joint declaration by Parliament, Council and Commission would be necessary to achieve this change.

58. Fourth, the Council and the Commission should keep Parliament fully informed concerning the course of discussions in the Council on Commission legislative proposals and on amendments to them proposed by Parliament in its opinions.

59. Fifth, the Presidency of the Council should continue to follow its recently developed practice that Parliament's resolutions - both those containing opinions and those of 'own-initiative' type² - should be drawn to the attention of governments of member states as quickly as possible.

60. Sixth, Council should, in the future, fulfil the undertaking it has already given, in the letters addressed by Mr Harmel to Mr Scelba on 20 March 1970 and by Mr Scheel to Mr Scelba on 22 July 1970, to explain for what reasons it has not followed Parliament's advice whenever the Council takes a decision differing from Parliament's opinion concerning either 'Community instruments having financial implications' or 'all matters of special importance'.³

¹ The Commission could do this in the period set aside, on the Monday of each part-session, for its statement concerning action on Parliament's resolutions

² For detailed proposals concerning policy initiatives taken by Parliament in the form of 'own-initiative' see the following chapter

³ For text of letters see Annex I.

61. Seventh, the use of the conciliation procedure as laid down by the declaration of 4 March 1975, should be extended to cover all proposals of the Commission, with or without significant financial implications, which Parliament considers to be of particular importance and concerning which, when expressing its opinion, it has asked that this procedure be applicable.

62. Eighth, your rapporteur and Mr Hänsch consider that the proposals made in Annex III of the report of the Committee of Three as to how the conciliation procedure might be improved administratively should be implemented forthwith.¹

5. Legislation - an active role for the Parliament

63. How can the Parliament play a more active role in initiating Community legislation without undermining the Commission's right of legislative initiative? Apart from the proposals your rapporteur has made concerning some form of 'private members' bills' he considers a practical way of involving Parliament to a greater degree in initiating Community legislation would be for Parliament to request the Commission to work out and introduce detailed legislative proposals concerning suitable subjects. As opposed to 'private members' bills' the main thrust of Parliament's policy-making initiatives would normally be concerned with major Community issues, such as the development of regional policy.

64. Within the Parliament the basis for such policy initiatives would most appropriately take the form of initiative reports from the competent committees. Initiative reports outlining the aims to be achieved by Community legislation but not entering into technical detail or trying to draft legislative proposals for the Commission - once adopted by Parliament - would be transmitted to the Commission for follow-up action. It would seem wise for Parliament to fix a time-limit, in its resolution, fixing a specified date, in virtue of the nature and difficulty of the subject-matter concerned, before which time the Commission should submit a legislative proposal to the Council. If the Commission did not send its formal legislative proposal to the Council by the date fixed by Parliament it would have to explain to Parliament the reasons why it had not done so.

65. Further, if the Commission had substantive reasons for not being able or for not wishing to introduce legislative proposals along the lines requested by Parliament it would have to explain its failure to act on or before the date set in Parliament's resolutions.

¹ See Annex II of the present report

66. Your rapporteur considers that in practice the responsible Commissioner and/or his officials would be able to explain to Parliament's interested committees the reasons why formal legislation on a subject concerning Parliament was impossible or undesirable, from the Commission's point of view, at an early stage in the deliberations of Parliament's interested committees, so that if these reasons were convincing Parliament would probably not adopt a resolution on an unsuitable or untimely proposal.

67. Your rapporteur considers that this major development in Parliament's ability to play a policy-initiating role could be achieved without Treaty amendment quite simply by a joint declaration by Parliament and the Commission under which the Commission would agree to carry out the system proposed above.

6. Other points

68. Your rapporteur has referred, earlier in the present report, to the role of policy initiative that has been assumed, over the years, by the European Council. The European Council and the Council itself have developed ways and means of initiating Community policy which are not provided for in the Treaties. First, there is the practice of the Council and the representatives of the member states adopting 'resolutions'. Amongst the first examples of such resolutions were those of 14 January 1962 on the organisation of the market for milk products and of the same date on beef and sugar. These were preceded by resolutions of the ECSC Council dating back as far as October 1953. Sometimes Council resolutions constitute Community action programmes fixing the lines of Community policy in a specific policy area and on which future Community action can be based, whereas sometimes Council resolutions lay down internal programmes or give instructions to committees of the Council. Resolutions of representatives of the member states constitute international agreements as the Commission has stated in reply to Written Question 336/68 (OJ 1968 C 38/5).

69. Since resolutions can constitute a framework for future legislation and thus be basic reference documents it seems essential that Parliament should be consulted by the Council concerning all draft Council resolutions before they are adopted, except those which fall clearly under Article 152 of the EEC Treaty.¹ The responsibility of transforming Council resolutions into Community legislation should lie with the Commission.

¹ Under Article 152: 'The Council may request the Commission to undertake any studies which the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals.' Your rapporteur considers that when the first opportunity for securing Treaty amendments arises Article 152 should be changed by the insertion of the words 'or the Parliament' following the first two words.

70. The report of the Committee of Three makes a number of useful suggestions concerning the policy and legislative programme of the Commission. In Chapter 4 of their report the Committee of Three proposed that when the new Commission 'takes office and prepares its initial policy programme, it must go to Parliament to present this programme and take part in a serious debate.'

71. The Rey report on relations between the Parliament and the Commission suggested that Parliament's Political Affairs Committee should hold an exchange of views with the President designate of an incoming Commission concerning the new Commission programme, before the other Commissioners are appointed. The Rey report also proposed a ratification debate with a vote of confidence concerning the appointment of an incoming Commission. The report proposed that Parliament should express its opinion on the Commission's programme, each year, in the form of a vote, (see Doc. 1-71/80).

72. In Chapter 5 of its report on the institutions the Committee of Three considers that 'the Commission should continue to present its overall working programme to the Parliament for debate at regular intervals'. Also 'every six months or so, representatives of the Commission should hold talks with the managers of Parliamentary business to plan out a consultative programme for the coming period. The major legislative proposals likely to come forward should be identified, so that the Parliament can consider how to allocate its debating time and other resources needed to prepare Opinions on them. An observer from the Council Presidency should be allowed to attend.'

73. The Committee of Three also stresses, in the same chapter, the need for all Commissioners to be prepared to appear before Parliament, both in plenary session and in committee 'when matters of any significance in their province', presumably including the explanation and defence of Commission legislative proposals, 'are to be discussed'. The Committee of Three concluded that: 'such contacts cannot simply be left to officials.'

74. One of the main elements in 'the ideal operation' of the Community would be a return to majority voting in the Council as laid down by Article 148 of the EEC Treaty. Your rapporteur would like to see such a development, which would restore to the Commission much of the significance of its power of legislative initiative, which has been so reduced since the Luxembourg Agreement especially as the present political circumstances are now rather more auspicious. He therefore considers it to be more timely and realistic for the Political Affairs Committee to recommend Parliament to press for this reform than in April 1979, when this proposal was included in Part II of the report on enlargement by Mr Pintat. It has sometimes been suggested that Parliament should press governments to agree on a political formula to implement the Communiqué adopted at the Paris Summit of December 1974, in which the heads of government stated: 'that it is necessary to

renounce the practice which consists of making agreements on all questions conditional on the unanimous consent of the member states.' It has also been suggested that Parliament should urge member states to define the 'vital national interests' as laid down in the Luxembourg Agreement in such a way that this formula cannot be used every time a single member government wishes to block a reasonable decision. That changes of this kind are timely has been made clear both by the Commission in its report on the Transitional and Institutional Implications of Enlargement of April 1978 and by the Committee of Three. Various commentators have also stressed that a return to voting as provided for in the Treaties, with a final veto to be used only rarely, is a precondition for any progress by the Community after enlargement.

75. Nevertheless the substance of this matter remains to be dealt with by Mr Antoniazzi in his report on relations between the Parliament and the European Council and by Mr Hänsch in his report on relations between the Parliament and the Council of Ministers.

Proposals

76. Your rapporteur wishes to make the following proposals concerning the points dealt with in the present chapter.

77. First, whenever the European Council decides on major new Community policies it should continue to invite the Commission to make the detailed legislative proposals required. Policy initiatives of the European Council would then be translated into normal Community legislative proposals, involving the consultation of the European Parliament.

78. Second, all resolutions of the Council should be submitted in draft, before they are adopted, to the European Parliament, by the Council, with a request for Parliament's opinion.

79. Third, the Commission should consult with the President and Bureau of the European Parliament, regularly, and inform Parliament of its legislative programme for the following six months, to enable Parliament to plan the debates held during its forthcoming sessions.

80. Fourth, as proposed in the Rey report, on every occasion when the Commission wishes to make a legislative proposal the appropriate Commissioner should, first, fully explain the nature and contents of the draft legislative proposal to the appropriate committee of the Parliament, so as to enable Parliament's committees to express their ideas and proposals, at a pre-legislative stage, to the Commission with a view to the Commission incorporating suggestions made by Parliament's committees in its legislative proposals.

Conclusions

81. The proposals made in the present report try to strike a balance between emphasising, on the one hand, the continued primacy of the Commission's right of legislative initiative and suggesting, on the other hand, ways and means through which Parliament could play an appropriate role in Community policy making that complement this right of the Commission.

82. In particular your rapporteur hopes that the present report can start a process leading to the fulfilment of the promise made by the Heads of State in Paris in December 1974 when they stated that: 'the competence of the European Assembly will be extended in particular by granting it certain powers in the Communities' legislative process.'

83. Although your rapporteur, in making detailed proposals, has at all times respected the Commission's basic right of legislative initiative, he has recognised the fact, which is an historical and political reality, that since the Luxembourg Agreement of January 1966, and since the development of the European Council, the Commission has shared the power to propose new Community policies with other institutions. He considers that Parliament, also, should share this power.

84. Your rapporteur wishes to stress, also, that although he considers that the role of the Parliament in preparing new Community policies should not impair the fundamental right of the Commission to initiate Community legislation, it is inevitable that European Community voters and members of the directly elected Parliament will demand a greater and more effective role for the Parliament in Community legislation and in preparing new Community policies than has existed in the past.

85. Finally, your rapporteur hopes that the proposals made in the present report can be implemented through joint declarations by the Council, the Commission and Parliament, without necessitating Treaty amendment.

Minority opinion on the draft report on the right of
legislative initiative and the role of the European
Parliament in the legislation process of the Community

A Danish member of the Group for the Technical Coordination and defence of Independent Groups and Members is opposed to the provisions of this report which he believes would be harmful to the control exercised by the Danish people over the Community legislative process through the Common Market Committee of the Folketing.

The acquisitions of new powers by the European Parliament, particularly to the detriment of the Commission's right of initiative, with the consequent effects on the institutional balance laid down by the Treaties, may not be brought about by interinstitutional agreement, but only through a revision of the Treaties.

The latter cannot take place without a democratic debate being held in the Member States.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

Draftsman: Mr C. PROUT

On 25 March 1980 the Political Affairs Committee received authorization to draw up an initiative report on the right of legislative initiative and on the role of the European Parliament in the legislative process in 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 authorized to draw up an opinion by letter of 26 January 1981.

It considered 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 and 4 abstentions.

Present: Mr Ferri, chairman; Mr Luster, Mr Turner, Mr Chambeiron, vice-chairmen; Mr Prout, draftsman; Mr Balfe, Mrs Boot, Mr De Gucht, Mr Goppel, Mr Gouthier, Mr Sieglerschmidt, Mr Tyrrell, 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 noted that paragraphs 4, 9 and 16 of the Van Miert report refer to consultation. For the reasons set out in its Opinion on the Hänsch draft Report, it thinks that the ideas contained in these paragraphs should be examined in the context of its forthcoming report on consultation. Moreover, paragraph 16 could be construed as blurring the distinction between the powers of the Commission and of the Parliament.

As for paragraph 15, the proposals set in it seem hardly practical in the rigid form in which they are expressed.

It therefore recommends that these paragraphs be deleted.

3. The Legal Affairs Committee, having examined the draft report ¹ (PE 67.024/A/rev.II) by Mr Hänsch, noted that it overlaps with many sections of Mr Van Miert's. Paragraph 5 of the Van Miert draft report ² corresponds with paragraph 11 of the Hänsch draft report, paragraph 6 with paragraph 12, paragraph 7 more or less with paragraph 5, paragraph 8 with paragraph 13, paragraph 9 with paragraph 14, paragraph 10a with paragraph 15a, paragraph 10b recalls paragraphs 15b and c, paragraph 11 recalls paragraph 16. The Legal Affairs Committee is of the opinion that this duplication serves no useful purpose: it could, moreover, lead to contradicting votes of the European Parliament.

4. It noted that paragraph 12 (the idea contained in which is developed in the draft opinion that Ms Macciocchi drafted for the Legal Affairs Committee on the right to active and passive electorate of migrant workers - PE 62.650 of 21 May 1980) concerns relations of the European Parliament with the European Council, for which a separate initiative report will be drawn up.

5. Paragraphs 1 - 4 of the Van Miert draft report (see the Legal Affairs Committee's opinion thereon - PE 71.239) identify increased 'legislative initiative' as Parliament's highest priority. The Legal Affairs Committee would observe:

¹ See the Legal Affairs Committee's opinion thereon (PE 71.222)

² PE 64.646/fin.

Firstly, the Van Miert draft report presents as an objective a situation which to some degree already exists; the Commission has in the past tabled formal legislative proposals on the basis of requests formulated by the European Parliament. Secondly, the exercise of legislative initiative necessitates a formidable amount of technical means and data. That is all the more true at European level, where account must be taken of existing laws in ten different Member States. The institution that, in the Community, disposes of the appropriate means is the Commission. Of course, the European Parliament can continue to give political guidelines to the Commission, over which it has control, for tabling such drafts as it thinks should be proposed; in exceptional cases, these guidelines can go as far as an articulated proposal (that has been done in the past: for example, the proposal - doc. 340/73 - on the European Cooperation Grouping which the Commission tabled after Messrs Armengaud and Jozeau-Marigné had presented - 9 August 1971 - a motion for a resolution embodying a draft regulation). In short, it is unnecessary to seek to enshrine in the Treaties a right of legislative initiative by the European Parliament as such, provided it acquires overall political control of the Commission.

ANNEX I

1. Extract from the letter sent by Mr Harmel, President of the Council, to Mr Scelba, President of the European Parliament, on 20 March 1970;
2. and also from the letter sent by Mr Scheel, President of the Council, to Mr Scelba, on 22 July 1970.

1. '... as far as Community acts with financial implications are concerned, I am in a position to inform you that in a resolution adopted during its meeting of 5/6 February 1970 the Council undertook, under the decisions taken on that occasion, to explain to the Assembly, where appropriate, the reasons for any departure from the Assembly's opinions.'

2. '... I should first like to remind you that as far as Community acts with financial implications are concerned - and these account for a major part of the Community's activities - the Council has undertaken to explain to the Assembly, where appropriate, the reasons for any departure from the Assembly's opinions.'

I am happy to inform you that on other particularly important matters, the Council is prepared to apply the same procedure.'

(The text of Annex 3 of the report of the Committee of Three to the European Council on European Institutions)

THE CONCILIATION PROCEDURE: ADMINISTRATIVE IMPROVEMENTS

1. This note contains suggestions for easing the practical problems that have arisen in the implementation of the "conciliation" procedure since early 1978. By "conciliation" we mean the process of consultation on certain legislative proposals between Council and Parliament, with Commission participation, which was inaugurated by a Joint Declaration of the institutions on 4 March 1975. Nothing said here applies to the quite different process of concertation on the Community Budget.
2. The main practical problems in implementing "conciliation" have been:
 - disputes over whether particular measures were eligible for applying the process;
 - delay in organizing meetings, after it has been agreed to apply conciliation;
 - difficulties in reaching agreement at the meetings themselves, so that "conciliation" has continued for many months and the adoption of the measures in question been delayed;
 - difficulties of co-ordination between conciliation exercises running concurrently in which similar issues are at stake.

Some of these practical problems undoubtedly reflect deeper differences of view between institutions (and perhaps States) on the true purpose and implications of the conciliation procedure. This is not a dispute which we can resolve; and while it lasts no purely administrative improvements can guarantee that operation of the procedure will be trouble-free. Insofar as the difficulty lies in certain ambiguities of the Joint Declaration itself, failure to find an accommodation between the different approaches could ultimately leave no alternative but to re-negotiate the Declaration - with all that would involve. At best, our practical suggestions for easing the situation might help to avert such an extreme solution.

Suggestions: Role of the Council Presidency

3. Experience suggests conciliation has worked best when the Council, in preparing its common position, has taken Parliament's Opinion into account from the start. This allows differences of view to be anticipated and either avoided in advance or covered by a rational negotiating strategy. Informal contact between the Presidencies of the institutions has also proved most useful both before, during and after the actual conciliation meetings. Since the responsibility for action lies in both cases largely with the Council Presidency, one obvious way to improvement is to define the latter's special duties in conciliation and make sure they are executed consistently.

4. These Presidency duties should include:

- (i) drawing the Parliament's Opinion on a conciliable measure to the attention of Member States from the very earliest stages of Council work (i.e. from working group level);
- (ii) raising the question of a strategy for conciliation at an equally early stage, before the Council's position on the issues becomes rigidly fixed (this is perhaps the single most important point);
- (iii) Discussing the problems and possible solutions informally with the Parliament, before a conciliation meeting actually takes place;
- (iv) providing Member States with the necessary documents, including possible compromise formulae, well in advance of each meeting;
- (v) conducting informal negotiations for compromise, both within the Council and with the Parliament, as the procedure continues.

Where a Member State has allotted a share of its Presidency duties to a junior Minister, he should take a special interest in the administration of the conciliation procedure at all levels, and stand ready to act as a mediator himself in the closing stages. He should work very closely in this with the Commission, who play an essential role in mediating and clarifying the issues.

Co-ordination

5. The handling of conciliation proceedings on different pieces of legislation needs to be well co-ordinated, on both sides. Where similar issues are at stake in parallel exercises the solutions found must be compatible. Furthermore, the procedure itself should be consistently applied: to reinterpret the Joint Declaration afresh each time is wasteful and multiples opportunities for dispute.

6. COREPER, supported in detailed work by the General Affairs Group, has come to play a key role in such co-ordination on the Council side. This role must be clearly recognized and reinforced. The substance of the Council's "common position" will still have to be discussed in the specialized bodies responsible for the policy areas in question. But these groups should produce conclusions in good time, so that Permanent Representatives (or their Deputies) - who will accompany their Ministers to the actual conciliation meeting - can review the negotiating position and give a more "political" steer.
7. We would not favour giving one Council, i.e. that for General Affairs, the task of conducting all conciliation meetings. It is right for Ministers in the specialized Councils involved to gain direct experience of dialogue with the Parliament. But where a junior Minister is specially responsible for Presidency duties involving the Parliament it is sensible for him at least to attend all conciliation meetings and give the benefit of his procedural expertise.
8. The directly elected Parliament will no doubt consider what internal arrangements are needed to obtain the benefits of co-ordination on its own side.

The Time Limit

9. The greatest difficulty in conciliation so far has been in finding and applying a reasonable interpretation of the indication in the Joint Declaration that the process should only take three months. The three-month limit has been overstepped more often than not, sometimes to a dramatic extent, and this brings uncertainty and a risk of wasted effort for all the institutions involved.
10. It would be wrong and impractical for either Council or Parliament to try to enforce a firmer deadline unilaterally. A solution must be found in agreement between all three institutions involved. As a basis for discussion, we might offer the following illustrative approach:
 - (a) When the Council's common position on a conciliable measure has been sent to the Parliament, the latter should indicate within a set period (e.g. six weeks) whether it wants to hold a conciliation meeting.
 - (b) The time limit for completion of the procedure runs from the date of the first meeting.

- (c) The procedure should stop after either three months or three meetings between the institutions, whichever is the shorter.
 - (d) If, when the deadline is reached, either institution wants to go on, the Presidencies of the Council and the Parliament should try to reach agreement on a suitable extension. If the institutions cannot agree on an extension, the procedure is terminated.
-