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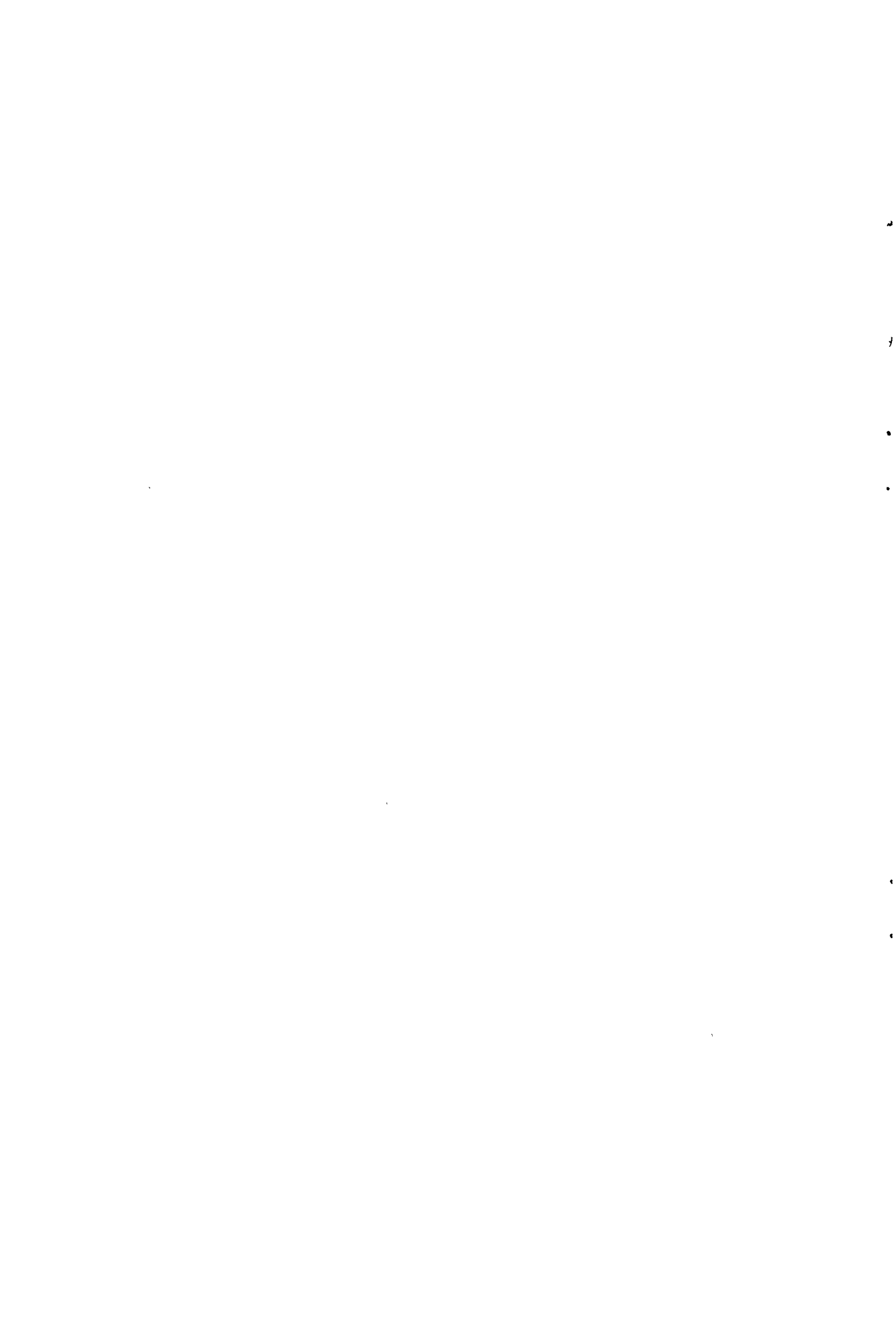
Report

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

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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 Berkhouwer, 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.

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A

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

MOTION FOR A RESOLUTION

on 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 suggestion¹ 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