

# EUROPEAN PARLIAMENT



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### REPORT

of the Committee on the Rules of Procedure, the  
Verification of Credentials and Immunities

on the amendment of the Rules of Procedure within the  
framework of implementation of the Treaty on European  
Union

Rapporteurs: Sir Christopher PROUT, Mr Willi ROTHLEY  
and Mr Luciano VECCHI

PART II: Opinions of the other committees

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PE 205.944/fin./Part II

Consultation procedure requiring a single reading  
| Cooperation procedure (first reading)

\*\*|| Cooperation procedure (second reading) requiring the votes of a majority of the current Members of Parliament  
\*\*\* Parliamentary assent requiring the votes of a majority of the current Members of Parliament

C O N T E N T S

Page

OPINIONS

. of the Committee on Foreign Affairs and Security . . . . .	3
. of the Committee on Economic and Monetary Affairs and Industrial Policy . . . . .	12
. of the Committee on Legal Affairs and Citizens' Rights . . . . .	17
. of the Committee on Civil Liberties and Internal Affairs . . . . .	24
. of the Committee on Budgetary Control . . . . .	27
. of the Committee on Institutional Affairs . . . . .	32

OPINION

(Rule 120 of the Rules of Procedure)  
of the Committee on Foreign Affairs and Security

for the Committee on the Rules of Procedures, the Verification  
of Credentials and Immunities

Draftsman: Mr Alexander LANGER

At its meeting of 23 September 1992 the Committee on Foreign Affairs and Security appointed Mr Langer draftsman.

At its meetings of 16 October 1992, 24 November 1992 and 3 December 1992 it considered the draft opinion.

At the last meeting it adopted the conclusions as a whole by 16 votes to 1.

The following took part in the vote: Catherwood, acting chairman; Langer, draftsman; Aglietta, Avgerinos, Bertens, Ib Christensen (for Canavarro), Ferrer i Casals (for Lacaze), Habsburg, Jepsen, Lenz, Llorca Vilaplana, Magnani Noya, Oostlander (for Penders), Pack (for Pirkl), Prag (for Bethell), Suárez González (for Fernandez Albor) and Titley.

## I. INTRODUCTION

1. In the light of the provisions of the Treaty on European Union concluded in Maastricht, the capacity for political initiative and action of the European Community - which is to become the Union - will have to increase and develop. The difference compared with the present state of affairs will be particularly noticeable in the field of the Common Foreign and Security Policy (CFSP) and will mean that the European Parliament too - despite the deplorably narrow scope of its powers - will need to have greater capacity to exercise its responsibilities in this area.

This will be reflected in almost all aspects of parliamentary activity and will require Parliament to be readier to act, more responsive, more prompt, more flexible and more able to exercise its (albeit limited) powers and genuine democratic political control. In short, the provisions of Maastricht on the CFSP call for a more politicized Parliament, perhaps less weighed down by 'technical' and detailed tasks and instead readier to give political stimulus to the executive and verify and criticize its activities.

This may require a better distribution of work between part-sessions and the work of parliamentary committees, which will lead to changes and innovations in almost all fields of activity covered by the Rules of Procedure. The running of Parliament may have to become more incisive (the President's possibility of meeting and consulting with the chairmen of the political groups at short notice, frequently and without too many formalities will have to be enhanced so that he can constantly monitor the situation and draw the appropriate conclusions).

2. At present the European Parliament works on the basis of rules and procedures which make it very difficult for it to react promptly to events, inform the Council and the Commission effectively of its political views and meet whenever the international political situation requires. This became clear when Kuwait was invaded, when the Gulf War broke out, during the course of the Yugoslav crisis and in the case of Somalia etc. Being able to meet only on a fixed date and not to have any other way of expressing a precise and binding opinion on a political situation has forced Parliament on many occasions to fall back on restrictive procedures which are not appropriate for taking decisions with a proper debate and vote. It is a mistake to imagine that under these conditions prompt and effective 'recommendations' can be issued in accordance with Article J.7 of the Maastricht Treaty, unless new procedures and instruments are introduced.

All this opens up a vast area of new responsibilities, which will require a decisive development in the activities and decision-making capacities of the parliamentary committee responsible for dealing with foreign and security policy.

In various other areas of parliamentary activity, such as questions, urgent resolutions, the debate and vote approving the appointment of the Commission, the whole field of accession treaties and association agreements, other international agreements which Parliament considers to be of major importance and the whole area of security policy, which will involve relations with the WEU, adjustments to the Rules of Procedure will have to take specific account of the implications deriving from the new provisions of the CFSP.

3. In short, it will be necessary to ensure that Parliament's capacity to exercise its powers deriving from Article J.7 of the Maastricht Treaty is structured in the best possible way and organized efficiently as far as the Rules are concerned: provision must be made for it to be consulted on the main aspects of and the fundamental decisions involved in the common foreign and security policy, it must be able to express clearly and promptly those 'opinions' which the presidency of the Council is to take into due consideration; it must be equipped to be 'regularly informed by the Presidency and the Commission of the development of the Union's foreign and security policy'; it must be able not only to 'ask questions of the Council or make recommendations to it' and 'hold an annual debate on progress in implementing the common foreign and security policy' but also to verify the action taken on its recommendations and demand prompt and non-evasive answers to its questions.

The following proposals are intended to serve these purposes.

## II. REASONS FOR THE AMENDMENTS AND SUGGESTIONS

4. In order to ensure that the above happens, an essential instrument is the incorporation in its own Rules of Procedure of the provisions of the Treaty on Political Union referring to the common foreign and security policy; these are found mainly in Title V, which includes Articles J-J.11, as well as the provisions of the Treaty establishing the European Community which regulate these fields.

Another important instrument is interinstitutional negotiations, which will develop and supplement these provisions.

As regards the regulation of the common foreign and security policy in the Parliament's internal rules, this committee would like to make a number of comments and propose a number of amendments.

5. It might be appropriate for the Committee on the Rules of Procedure to study the amendment we propose to Rule 9 of the Rules of Procedure, which concerns the convening of Parliament.

In the event of an emergency, the cases provided for in Rule 9(5) second subparagraph could be extended to enable Parliament to be convened at the request of a committee or a political group as well as at the request of one third of its current members.

We agree that Rule 57 should be repealed, since its contents are transferred to the new Rules 125a and b which we propose in our amendments.

As regards Rules 58, 59, 60, 61 and 62, the provisions of the Maastricht Treaty do not appear to have any immediate consequences. Nevertheless we would emphasize the importance of the political dialogue on the CFSP established between the European Parliament, the Council and the Commission via the tabling of questions. Obviously much will depend on the discretion of the Enlarged Bureau, which will be responsible for ensuring that plenary is sufficiently involved in matters concerning the CFSP, by trying to shorten the deadlines for the inclusion of questions on the agenda (currently five weeks in the case of questions put to the Council). It will be advisable for appropriate interinstitutional dialogue to ensure the proper participation and prompt response of the institutions concerned.

Despite these suggestions, the Committee on Foreign Affairs and Security does not intend to table amendments to these Rules.

6. As regards accession treaties (Rule 32) and association treaties (Rule 33), the experience of the Committee on Foreign Affairs and Security and the former Political Affairs Committee suggests that one should consider the need, mentioned on numerous occasions, to have two formal opportunities of expressing a political opinion. This means that, in addition to the opinion delivered after an accession or association treaty has been signed, but before it has been ratified by the national parliaments, Parliament should be given the opportunity to express its opinion to the Council and the Commission.

In the case of accession agreements, it would be extremely useful if the European Parliament could express its opinion after the report by the committee responsible and after the application for accession has been submitted, and thus influence or provide some guidelines for the process of accession.

With regard to association agreements, it would be useful if the committee responsible were able, at any moment between the beginning of negotiations and the ratification of the treaty in question, to draw up and submit to plenary a report giving its opinion, in which it could exercise its supervisory function vis-à-vis the Council and the Commission.

It would therefore be appropriate to amend Rule 33(3a) (as proposed by Mr Prout in his report) to extend the scope of the term 'negotiations' and replace it by 'throughout the whole process up until ratification ...'

The same amendment should be made to Rule 32(4), replacing the words 'When the negotiations are completed' by the words 'Throughout the whole process up until ratification'.

The only difference in treatment consists in the fact that in the case of association treaties it is the Commission which does the negotiating whereas the Member States are responsible for accession Treaties. Nevertheless, and in case the foregoing might create legal obstacles to Parliament's making recommendations (in the case of accession treaties), there is nothing to stop it from adopting resolutions after the debate provided for under the present Rule 32 has been held. Such resolutions might help the national parliaments to define their positions.

These proposed amendments will lead to better control over the negotiation and ratification of these agreements, which are of paramount importance for the Community. We agree with the amendments proposed by Mr Prout in every other respect.

We have a slight reservation with regard to the last paragraph of Rule 33. Since the Treaty on European Union only requires a simple majority for the adoption of these agreements and this seems to us to constitute excessively loose control, we propose that such votes should always be held after one requiring a qualified majority. This amendment, which we acknowledge to be dubious from the legal point of view, could be replaced by the Committee on the Rules of Procedure, and a high quorum could be set for the adoption of such agreements. This solution seems more suitable and reliable, since it would prevent situations arising whereby, for example, such agreements could not be voted on at an extraordinary sitting at which there is no provision for qualified majority voting.

7. The second subparagraph of Article 228(3) of the Maastricht Treaty states that association agreements and other types of agreement listed in it are to be concluded after the assent of the EP has been obtained, assent having been given by a simple majority (since there is no provision to the contrary). For organizational reasons one Rule (33) is devoted to accession and other significant agreements are covered in Rule 34. However the procedure and the importance assigned to them in the Treaty are comparable; they should therefore be dealt with in the same way. There is no reason for them to be declared to be significant, since importance is already assigned to them by the Treaty.

This is what is proposed in our amendment No. 4 (Rule 34(1)).

Nevertheless, if considered appropriate, the possibility of declaring an agreement (of a kind not covered by Rules 32, 33 and 34(1)) significant for Parliament or the Community could be maintained and it could be assigned special treatment.

If this system seems appropriate, it could be laid down in paragraphs 2, 3 and 4 of Rule 34, as proposed in our amendment No. 4.

This would allow greater parliamentary control, with better guarantees, over commercial and/or cooperation agreements or any agreements not included among those covered in earlier Rules or in Rule 34 (1).

8. We shall now consider the proposals made by Mr Vecchi in his report, which directly refer to the common foreign and security policy.

Our committee approves of creating a new Chapter XIII to deal with the common foreign and security policy deriving from the Maastricht Treaty.

The committee agrees that the expression 'European Political Cooperation' should be deleted from all the provisions of the Rules of Procedure, and be replaced by 'common foreign and security policy', and, when it is referred to as an institution, it should be replaced by 'the Council'.

With regard to Rule 125a (new), the committee has several suggestions to make and proposes one amendment, which will be found in the second part of this opinion.

With regard to the title (Consultation of Parliament), we believe it would be more suitable, in order to make it coincide with Article J.7, first paragraph and the contents thereof, to call it 'Consultation of and provision of information to the European Parliament'.

We should point out that the use of the plural in paragraph 1 of Rule 125a (new) proposed by Mr Vecchi is incorrect, when he says that 'the committees responsible for the various aspects of the common foreign and security policy shall each ensure ...' since at present the only committee responsible for the various aspects of the common foreign and security policy is the Committee on Foreign Affairs and Security.

Secondly, we agree that this paragraph should be worded in such a way as to give the committee responsible the initiative, since it will act as a stimulus to this committee, which will be obliged to monitor continuously compliance with the obligation to consult Parliament on the CFSP and the response made to

Parliament's opinions by the other Community institutions, i.e. the Council and the Commission.

At the end of this first paragraph we consider it appropriate to add the words 'and the activities referred to in Article 228a of the EEC Treaty'. This article establishes that the Council shall take the necessary urgent measures to interrupt or to reduce, in part or completely, economic relations with one or more third countries; this is already seen as a foreign policy measure of great importance. We consider that Parliament should be consulted by the Council on such an important matter.

9. We propose the insertion of a third paragraph saying that the Council will inform the committee responsible regularly and thoroughly about the development of the Union's foreign and security policy.

All this paragraph does is to incorporate the end of the first paragraph of Article J.7 of the Maastricht Treaty, which says precisely this.

Whilst in the consultations on the main aspects of the CFSP the committee responsible (as proposed in the first paragraph of Mr Vecchi's amendment) has the task of ensuring both that Parliament is consulted and that its opinion is acted upon, we consider it safer that the presidency and the Commission should be responsible for providing information on the development of the common foreign and security policy (incidentally this is what the Treaty says), without necessarily being requested to do so, according to procedures approved by the committee responsible and in a regular and detailed manner.

This flow of information will have to be properly channelled towards the Committee on Foreign Affairs and Security so that the latter can actually ensure compliance with the obligation to consult the European Parliament on basic foreign and security policy decisions.

This is why the committee considers that the second subparagraph of paragraph 1 of Rule 125a as proposed by Mr Vecchi should be replaced by the paragraph 3 proposed in our amendment.

10. We propose that in a new paragraph 4 the detailed rules for consulting and informing Parliament, as well as the procedures and timescale, should be included in an annex to the Rules of Procedure. This should be done after the necessary interinstitutional negotiations.

It would also be appropriate to establish that the Council of the Western European Union should be obliged to inform the committee responsible regularly about those matters in which, in accordance with Article J.4, the Western European Union is responsible for implementing the decisions and actions of the Union.

For this purpose it might be appropriate to specify this in a new subparagraph in paragraph 3 of Rule 125a (new).

11. With regard to Rule 125b (new) we agree both that it should be inserted and with the paragraph proposed by Mr VECCHI, but we feel that it should go at the end of the Rule, and give priority to the other faculty envisaged in Article J.7, second subparagraph of the Maastricht Treaty, i.e. Parliament's faculty to make recommendations to the Council.



The non-legislative and confidential nature of foreign policy means that the classic forms of consultation are unsuitable (hence the precautions and specifications proposed above and the need for interinstitutional negotiation afterwards). Whilst it is quite conceivable that the main policy documents of CFSP, such as the half-yearly work programme or the presidency's report, should be presented in plenary, it is unlikely that these procedures can be applied to the numerous measures or declarations in this sphere (report by Mr VERDE I ALDEA, PE 201.471).

Parliament would not be able to express its opinion with the required speed nor guarantee the confidentiality which the Council may wish.

This is why we envisage the system outlined above, giving the committee responsible the initiative to ensure that Parliament is consulted on the basic decisions concerning the CFSP and giving it the instruments, in accordance with the obligation, laid down in the Treaty, to ensure that the presidency and the Commission inform Parliament regularly and exhaustively about these policies. Once it is acquainted with the policies it will be able to control them more effectively.

If we do not want this faculty to make recommendations to the Council, which can actually become extremely important, to remain a dead letter, it must be transferred to the committee responsible, provided that the circumstances or the deadlines so require. The Commission is a specialized forum for the discussion of foreign policy and maintains permanent links with the presidency of the Council and with the Commission; it therefore seems to be the only way of properly implementing the faculty granted to Parliament in the Treaty.

Parliament's faculty to make recommendations should be implemented by creating a fast channel via which the competent parliamentary body (the Committee on Foreign Affairs and Security) may rapidly formulate such recommendations on foreign and security policy. They would of course be subject to the supervision of plenary afterwards and would not interfere with individual political initiatives (Rule 63) or group initiatives (Rules 63 and 64 and the right of initiative) which will continue to be available as before. These already make it possible for political groups or members to propose recommendations which will of course, as Mr VECCHI proposes in his Rule 59a(2), be referred to the appropriate committee.

The procedure proposed by Mr VECCHI is a valid one but, as we said before, we believe that the bases for its implementation already exist in the Rules of Procedure; what is proposed here is a new more specialized procedure, which we feel is of fundamental importance if Parliament's new faculty is to be exploited to the full.

With regard to the co-existence of both procedures (the one proposed by Mr VECCHI and the one proposed by this committee) we feel that there is no reason why they should not co-exist since one of them is a general procedure and the other one a special procedure, each fulfilling a different need.

Nevertheless, and in view of the fact that this faculty to make recommendations has already been given a special form and framework in the new chapter XIII on the common foreign and security policy, it might be appropriate, for practical reasons, not to insert the new article 59a, since control by plenary is already guaranteed - as we shall show below - and the channels via which members of

Parliament and political groups can express their views remain open and unchanged.

12. Furthermore, if we want the system laid down for making recommendations to work well, it should not only be coordinated with the faculty to deliver opinions and receive information: the committee responsible must be able to take the initiative in formulating recommendations whenever it considers that circumstances so require and it must, to this end, be able to meet whenever it deems appropriate and necessary. This is what we propose in the first subparagraph of paragraph 1 of Rule 125b (new).

In connection with this, a second subparagraph is inserted into paragraph 1, aimed at reconciling a number of guarantees with the speed required in dealing with such policies. Thus the general guarantees (the calling of meetings, quorum etc.) and special guarantees (the need for a written text, the vote and the possibility of tabling amendments) are reconciled with the need for the committee to meet, propose a text, discuss it and amend it in one single day - or in an afternoon -; for this reason the text of the recommendation need not be translated into all the languages at the time when it is discussed and it can be amended orally during the meeting, which means proposing a number of derogations from the general rules governing languages.

These proposals are needed to enable the Committee on Foreign Affairs and Security to take advantage of the new faculty to draw up recommendations in an emergency situation without being constrained by translation deadlines.

Ultimately, these provisions virtually mean that, as regards the CFSP, the Committee on Foreign Affairs and Security is subject to the same rules governing languages as the Council and the Commission are in their work.

On the other hand, once the text has been adopted in committee it will be subject to the general rules governing languages in order to be accepted in plenary.

13. As regards the essential system of control by plenary, we believe that the one we propose is the simplest and most effective. When recommendations have been drawn up by the Committee on Foreign Affairs and Security, owing to the pressure of time inherent in such policies, the President of Parliament will enter it on the agenda for the part-session immediately following the formulation of the recommendation and it will be considered as adopted unless it meets with strong opposition from the House - i.e. at least one-tenth of the current members of Parliament, belonging to three political groups. As can be seen, this form of opposition is already covered in Rule 37 of the Rules of Procedure and we feel it is appropriate (although the Committee on the Rules of Procedure may prefer a larger or smaller majority, depending on what it thinks fit).

If there is opposition, the recommendation will be considered and put to the vote in plenary during the same part-session. The vote will be held on the recommendation as a whole in order to avoid the adverse effects of separate votes; it is inappropriate to accept amendments to such a recommendation: either it is adopted as whole or rejected.

This mechanism is dealt with in the proposed second paragraph of Rule 125b (new).

14. We consider that there are valid reasons for creating a new rule in the Rules of Procedure for joint parliamentary delegations but it must be based, wherever possible, on the existing rules for parliamentary delegations (Rule 126).

Although we recognize their special requirements, we feel that joint committees should also be subject to the same rules as delegations (and also committees).

As regards the second paragraph, if we want 'democratic control' to be achieved with a 'Community' parameter, it must be carried out by a Community body which, according to the present Rules of Procedure, is the Committee on Foreign Affairs.

The Committee on Foreign Affairs considers it inappropriate to include internal procedural rules for the joint committees in Parliament's Rules of Procedure; they must have their own internal rules, laid down by mutual agreement with their opposite numbers and approved subsequently by the European Parliament and the other parliament concerned. These internal rules must include the operational rules included by Mr VECCHI in his paragraphs 5, 6 and 7 (which we therefore propose to delete).

As regard the 'policy' suggestions (Mr VECCHI's paragraph 7) there are numerous regulatory instruments allowing members of joint committees to voice their opinions (Rules 63, 64, 65, 56, 58, 62, etc.).

Paragraph 8: as regards the budgetary implications, new budget lines must be created by means of budget amendments and not amendments to the Rules of Procedure.

In our opinion the Rule should include the provision on the election of members and the constitution of the Bureau of the committee: we suggest that wording similar to that of Rule 126(2) and (3) be used.

We consider it would also be useful to insert a paragraph (similar to Rule 126(5)) modified to enable the co-chairmen of joint parliamentary committees to take part in the meetings of chairmen of delegations.

We suggest the insertion of a final paragraph or the inclusion in the rules of what is now established practice, i.e. that the chairman of the joint committee must report to the Committee on Foreign Affairs on its activities.

O P I N I O N

(Rule 120 of the Rules of Procedure)

of the Committee on Economic and Monetary Affairs and Industrial Policy

for the Committee on the Rules of Procedure, the Verification  
of Credentials and Immunities

Draftsman: Mr Panayotis ROUMELIOTIS

At its meeting of 17 March 1993 the Committee on Economic and Monetary Affairs and Monetary Policy appointed Mr Panayotis Roumeliotis draftsman.

At its meetings of 25 March 1993 it considered the draft opinion.

At the latter meeting it adopted the conclusions as a whole unanimously.

The following were present for the vote: Beumer, chairman; Patterson, vice-chairman; Roumeliotis, rapporteur; Peter Beazley, Bofill Abeilhe, Braun-Moser (for von Wogau), de la Camara, Cassidy (for Christopher Jackson), Delcroix (for Caudron), Geraghty, Harrison, Herman, Lulling, Peters (for Rogalla), Metten, Read, Siso Cruellas, Thyssen and von Wechmar.

## 1. Introduction

The Rules Committee is now considering three draft reports by Mr ROTHLEY (PE 202.024/rev.), Sir Christopher PROUT (PE 202.026/rev.) and Mr VECCHI (PE 201.810/rev.) on the necessary changes to Parliament's Rules of Procedure following adoption of the Maastricht Treaty. The 8 amendments ~~adopted~~ relate to issues of concern for the Committee on Economic and Monetary Affairs and Industrial Policy that have not been sufficiently tackled in the three draft reports. A number of other amendments initially tabled by the draftsman were not considered of special relevance to the Economic Committee and hence, the draftsman would not table them in the name of the Committee.

## 2. The Rules of Procedure and EMU

The most important gap in the texts for the Economic Committee is that there has been no response to the new EMU Articles, one of the most important aspects of the Maastricht Treaty. The European Parliament has not been given adequate powers to match these new Community competences, and so it is essential that our Rules of Procedure make the most of the few powers that we have been given.

### (i) Accountability of the Committee of Governors, European Monetary Institute and European Central Bank

Article 109b of the Treaty provides for the President of the ECB to present its Annual Report to the European Parliament, which may hold a general debate on that basis. Moreover the President of the ECB and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent Committees of the European Parliament.

Commentary: These follow on similar provisions already established in the first stage of the EMU for the Chairman of the Committee of Central Bank Governors. Amendment No. 3 in the Vecchi report incorporates a statement by the President of the Court of Auditors on the Court's Annual Report. A similar provision should be included as regards the Committee of Governors, the EMI and the ECB (the lack of such a provision caused problems within the Parliament as regards the presentation of this year's Annual Report of the Committee of Governors). Amendment 2 seeks to remedy this situation. In addition the President of the EMI and later the ECB should be authorized to make other statements in plenary, at their request or at that of the Parliament, when circumstances so justify (monetary crisis, etc.) (see amendment 8).

### (ii) Information to be provided to the Parliament

The EMU section of the Treaty has several references to information being provided to the Parliament:

- Article 73g.2 on Council decisions concerning unilateral actions by a Member State against a third country in the field of capital movements and payments
- Article 103.2, third paragraph, on Council recommendations on economic policy guidelines
- Article 103a.2, on financial assistance to a Member State
- Article 104c.11 on Council actions against Member States not implementing Council recommendations concerning their excessive deficits

- Article 109.1 on the adoption, adjustment or abandonment of ECU central rates
- Article 109c.3 concerning Council decisions on the composition of the Economic and Financial Committee

**Commentary:** This is clearly unsatisfactory for the Parliament but the Parliament should make the most of it. There is no reference to this in our Rules of Procedure and this should be corrected. This issue is covered in amendment 7 (which also covers the issue of what happens when Parliament has not been formally consulted according to Rule 36 but where Parliament's opinion is expected in accordance with inter-institutional agreements within the Commission and/or the Council).

(iii) Multilateral surveillance

Article 103.4 provides for the President of the Council and the Commission to report to the European Parliament on the results of multilateral surveillance. Moreover the President of the Council may be invited to appear before the competent Committee of the European Parliament if the Council has made its recommendations public.

**Commentary:** It might well be useful to include a special provision on multilateral surveillance within the Rules of Procedure (see amendment 5 in this context).

(iv) Guidelines on the economic policies of the Member States and of the Community

Formal agreements on monetary or exchange-rate regime matters

These two specific sets of issues are covered in Amendments 4 and 6.

(v) Confidentiality

This is also an important issue in the EMU context. This refers to Annex VII of the Rules. In the view of your draftsman this does not just cover confidential documents but confidential procedures in general. It should thus be renamed.

(vi) Nomination of President of EMI and Executive Board of ECB

The European Parliament is to be consulted on these nominations pursuant to Articles 109f and 109a of the Treaty and some criteria are even laid down for judging the nominees (they must have 'recognized standing and professional experience in monetary and banking matters').

**Commentary:** No proposals have been made in this context in the Vecchi draft report. How will the Parliament decide on these nominations? What will be the role of our Committee? These issues need to be tackled in our Rules of Procedure (a more detailed note on these issues has been prepared by the Secretariat on the basis of American experience, PE 204.192). Amendment 1 seeks to tackle this issue.

(vii) Inter-institutional agreements

A whole series of institutional questions, including several in the field of EMU (Parliament relations with ECOFIN, with Central Bank System, etc.) may have to be tackled by means of inter-institutional agreements. Inter alia, Amendments 3 and 7 would contribute to providing a framework for the outcome of such agreements to be incorporated within our Rules.

### 3. More general issues

A number of issues are more general in scope but are also important for our Committee and need to be tackled in the Rules of Procedure:

#### (i) Composition of the Conciliation Committee in the co-decision procedure

Article 189b of the Treaty would provide for conciliation committees in the context of the co-decision procedure. These would be composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament.

Commentary: Sir Christopher PROUT has tackled this in his draft report but this has already been criticised (on the ground that it does not give sufficient weight to the responsible Committee). The Environment Committee has already made some proposals.

#### (ii) Nomination of President and Members of the European Commission

Article 158.2 of the Treaty provides for the Parliament to be consulted on the nomination of the Commission President, and later to take a vote on the Commission as a body (but not on individual Commissioners).

Commentary: Mr Vecchi's draft report lays down possible procedures for consultation of the Parliament on the nomination of the President (proposed Rules 29) and for the vote of approval of the Commission (proposal Rules 29(a)). Of particular interest to our Committee (which must deal with so many Commissioners) is that Vecchi suggests that 'Parliament's various Committees may ask the persons nominated for appointment as Members of the Commission to appear before them'. Are these suggested procedures adequate? It would seem logical at the very least to insist that the Parliament be informed of which Commissioner will receive which portfolio, and in sufficient time to be able to cross-examine those Commissioners whose responsibilities will affect our Committee.

#### (iii) Annual and periodic reports

The Maastricht Treaty provides for a number of new annual or periodic reports, some of which are of direct or indirect importance for our Committee:

- Article 109b, which provides for an annual report on the activities of the European system of Central Banks and on monetary policy
- Article 11 of the Protocol on the statute of the EMI, which provides for a similar report (until the ESCB is created)
- Article 130b which provides for a report every three years on progress made towards achieving economic and social cohesion
- Article 130p which provides for an annual report on research and technological development activities

- Article 138e for an annual report of the Ombudsman (which might raise internal market problems, etc.).

Commentary: The existing Rules only mention the Annual General Report of the Commission and the Annual Report of the Commission on the application of Community law, and Mr Rothley's draft report suggests modifications to these two Rules. Would it not be sensible to include an additional Rule setting up procedures for other annual or periodic reports, and giving the responsible Parliament Committees the right to draw up reports on them? This would be provided by Amendments No. 2 and 3.

### Conclusion

The Committee on Economic and Monetary Affairs and Industrial Policy submits the following amendments, whose wording is provisional and possibly in need of improvement, to the draft reports of the Committee on Rules of Procedure, the Verification of Credentials and Immunities:



O P I N I O N

(Rule 120 of the Rules of Procedure)

of the Committee on Legal Affairs and Citizens' Rights  
for the Committee on the Rules of Procedure,  
the Verification of Credentials and Immunities

Draftsman: Mr Jean DEFRAIGNE

At its meeting of 21 May 1992 the Committee on Legal Affairs and Citizens' Rights appointed Mr Defraigne draftsman.

At its meeting of 22, 23 and 24 September 1992 it considered the draft opinion.

At the latter meeting it adopted the conclusions as a whole unanimously.

The following were present for the vote: Vayssade, acting chairman; Defraigne, draftsman; Anastassopoulos, Fontaine, Inglewood, Medina Ortega, Stauffenberg and de Vries.

## INTRODUCTION

By letter of 7 January 1992 the chairman of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities informed the President of Parliament of his wish to obtain from the other parliamentary committees an assessment of the 'implications of the Maastricht Treaty for their own areas of activity'.

At its meeting of 26 and 27 May 1992 the Committee on Legal Affairs and Citizens' Rights decided to draw up an opinion on this matter for the Committee on the Rules of Procedure, the Verification of Credentials and Immunities and appointed Mr Defraigne draftsman.

This opinion cannot deal with all the amendments to the Rules of Procedure resulting from the Maastricht Treaty, even though many of them will directly or indirectly affect the Committee on Legal Affairs and Citizens' Rights. That is the task of the committee responsible, which has set up an internal working party comprising three members, who have divided up their work as follows: Sir Christopher PROUT will deal with the implications of the Maastricht Treaty for the legislative procedure; Mr ROTHLEY will consider the changes to the Rules of Procedure which do not stem directly from the Maastricht Treaty, but which are designed to enable Parliament to work more effectively; and Mr VECCHI will cover the changes to the Rules of Procedure stemming from the Maastricht Treaty which have no bearing on the legislative procedure.

This opinion must of course cover the areas within the current remit of the Committee on Legal Affairs and Citizens' Rights, i.e. examination of the legal basis for draft measures on which Parliament is consulted (Rule 36(3) of the Rules of Procedure) and its powers regarding breaches of Parliament's rights (Rule 55). However, on the latter point the Maastricht Treaty does not seem to have changed the current situation to any appreciable extent. Moreover, on 31 October 1990 the Committee on Legal Affairs adopted an opinion on the matter for the Committee on the Rules of Procedure, the Verification of Credentials and Immunities (draftsman: Mr MEDINA ORTEGA; A3-0274/90). Readers are referred to that opinion.

We shall therefore consider below the question of the examination by Parliament of the legal basis for Community acts on which it is consulted (A). The issue of whether or not, in cases where the committee responsible expresses doubts, the Committee on Legal Affairs should be asked to deliver an opinion on the competence of the Community to adopt a specific item of legislation should also be considered (B). In other words, should it be asked to deliver an opinion on the practical application of the subsidiarity principle provided for in Article 3b of the Maastricht Treaty. These two issues are of course linked, because, prior to any assessment of which legal basis is appropriate for a Community act, it must first be established that the Community is in fact competent to legislate in a particular sphere.

## A. EXAMINATION BY PARLIAMENT OF THE LEGAL BASES FOR COMMUNITY ACTS

### 1. The importance of the choice of an appropriate legal basis for Community acts

It is well known that the Community does not have general powers to legislate, but only powers conferred on it by the Treaties, and henceforth also by the Maastricht Treaty. Each of these powers is subject to specific procedural rules and specific conditions governing its implementation. It is imperative, therefore, that each Community action should be based on a specific Treaty provision, i.e. should have a legal basis.

The choice of the legal basis is a matter of great importance, because it determines the framework for Parliament's role in the legislative process (no opinion, simple consultation procedure, cooperation procedure, assent procedure and, in the future, consultation procedure with up to three readings) and the rules governing the decision-making process in the Council for the adoption of the act in question (unanimity, qualified majority, simple majority).

In the first instance, it is incumbent on the Commission, as the institution with an exclusive right of initiative, to propose a legal basis. This choice has not always proved straightforward since the entry into force of the Single Act. It has given rise to a number of disputes between the institutions, in particular between the Commission and/or Parliament and the Council, revolving primarily around the appropriateness of Article 100A as a legal basis (cooperation procedure), particularly for environmental legislation (disparities between Articles 130S and 100A of the EEC Treaty).

Some of these disputes have been brought before the Court of Justice, which has laid down certain criteria. Mention should be made in particular of two fundamental principles:

- under the system of Community powers and responsibilities, the choice of legal basis cannot depend solely on the conviction of an institution that the objective being pursued is worthwhile, but must be based on objective factors open to judicial review;
- such objective factors must include the objective and the substance of the act<sup>1</sup>.

These principles must guide the Community institutions when they examine the legal basis of a Community act, and such an examination calls for a coherent, global approach within Parliament.

### 2. The need for a coherent, global approach within Parliament

The experience of the last three years clearly shows that the choice of legal basis can lend itself to a variety of interpretations, particularly in areas which overlap (e.g. proposals pursuing several objectives at the same time).

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<sup>1</sup> See, most recently, Case C-70/88, Post-Chernobyl, European Parliament v. the Council, judgment of 4 October 1991

Such instances will no doubt become more frequent with the entry into force of the new powers and procedures provided for in the Maastricht Treaty.

While adhering to the criteria already laid down by the Court of Justice, Parliament has a legitimate right, in cases where the choice of legal basis is open to challenge, to interpret the provisions of the Maastricht Treaty in accordance with the spirit of that treaty, which seeks, in part, to involve the representatives of the peoples of Europe more closely in its implementation, particularly in the Community legislative process. However, opinions regarding the choice of legal basis must be properly reasoned and legally defensible. There is a risk that legal bases might come to be examined in Parliament primarily on the basis of considerations of political expediency which would not stand up to subsequent judicial review by the Court of Justice. Such a state of affairs might arise if, for example, the task of assessing the appropriateness of the legal basis was left solely to committees responsible, which might tend to regard observance of the criteria laid down in the case law of the Court of Justice as a politically unjustified legal constraint. It is vital, therefore, that a coherent system should be established in Parliament which can effectively defend the latter's rights and prerogatives with regard to legal bases. Parliament must ensure that such opinions have a chance of being vindicated should an action be brought before the Court of Justice, given that the latter has conceded that it could call for an act of the Council or the Commission to be annulled 'provided that the action seeks only to safeguard [Parliament's] prerogatives and that it is founded only on submissions alleging breach of them'<sup>1</sup>.

3. Does the current system for examining legal bases safeguard the rights and prerogatives of Parliament? Suggestions for improvements

Rule 36(3) of the Rules of Procedure states :

'The committee responsible shall examine the validity and appropriateness of the chosen legal base for any draft measure on which Parliament is consulted. Where it disputes the validity or the appropriateness of the legal base it may, before dealing with the substance of the proposal and after consultation with the committee responsible for legal affairs, refer the matter to Parliament, reporting orally or in writing.'

As it stands, this provision prompts three remarks:

(a) It seems to offer the committee responsible the option of submitting a report to Parliament, whereas the submission of a report should be a requirement, since the very fact that doubts persist regarding the validity or appropriateness of the legal basis chosen may rule out the application of Rules 37, 38 or 116(1) of the Rules of Procedure; in this context, the words 'peut', 'may' or 'kann' are inappropriate;

(b) Secondly, it does not stipulate that where doubts persist as to the validity or appropriateness of the legal basis chosen the committee responsible should be required to request an opinion from the Committee on Legal Affairs. Since the word 'consultation' has been interpreted by certain committees as an

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<sup>1</sup> Case C 70-88, 'comitology', Parliament v. Council, interlocutory judgment of 22 May 1990, ECR I, p. 2041.

option rather than a requirement, on ..... the President of Parliament asked the Committee on the Rules of Procedure, the Verification of Credentials and Immunities to draw up an interpretation. The committee stated categorically that it was a requirement to be met in all cases. It is understood that the opinion of the Committee on Legal Affairs will be requested on the basis of a decision by the committee responsible;

(c) It makes no mention of the procedure in plenary sitting when amendments concerning the validity or appropriateness of the legal basis are put to the vote there. There is a further problem which should not be skated over here: on occasion, amendments seeking to change the legal basis are employed as a delaying tactic. They are either tabled for the first time in plenary sitting, or re-tabled after being rejected in committee. In both cases, the Committee on Legal Affairs must deliver its opinion on the amendment(s) before it/they are put to the vote in plenary, and in order to spell this out it would be enough to incorporate the existing interpretation into the provisions of Rule 36.

#### 4. Parliament's right to request the Commission to submit a Community act

Mention should be made of this option open to Parliament (see Article 138b of the Maastricht Treaty). The second subparagraph of Article 138b of the Maastricht Treaty states:

'The European Parliament may, acting by a majority of its members, request the Commission to submit any appropriate proposal on matters on which it considers that a Community act is required for the purpose of implementing this Treaty.'

The relevant procedure will, of course, be laid down in the new Rules of Procedure, and will specify in particular who may submit the request to the plenary sitting. At all events, it seems inevitable that parliamentary committees will be empowered to do so, in the context of their powers and responsibilities. Any such request would no doubt have to be justified, particularly as an absolute majority is required for its approval. With that aim in view, and in order to avoid disputes on the legal basis to be chosen at a later date by the Commission, wherever possible Parliament could usefully make a practical, reasoned proposal of its own regarding an appropriate legal basis. The Committee on Legal Affairs should be consulted before Parliament takes any decision, and without fail if the request makes a suggestion regarding the legal basis.

#### B. ON THE IMPLEMENTATION OF THE SUBSIDIARITY PRINCIPLE

The objective of the subsidiarity principle is to safeguard national identities by drawing a distinction between matters falling within the ambit of the Union and those which must be dealt with at national level. This principle should be based on the idea that the Union has at its disposal only those exclusive powers it needs to achieve its objectives, whereas those powers which are not explicitly conferred on it will continue to be exercised by the Member States.

Article 3b of the Maastricht Treaty stipulates that:

'The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.'

It is clear that the implementation of this principle will be a complex matter. It incorporates legal and political elements which are both subject to change and difficult to assess objectively. The examination by the Committee on Legal Affairs of directives on tobacco advertising and the liability of suppliers of services illustrates this point. Here again, therefore, a global, coherent approach by Parliament is required. Given that the Community competence in a specific case is being established or denied, this procedure must logically precede the examination of the legal basis of a Community act. It follows that there is a close link between the two issues, the identification of the appropriate legal basis implying the existence of Community competence to legislate. It is proposed, therefore, that alongside examinations of the validity of legal bases the Committee on Legal Affairs could be asked for its opinion on the competence of the Community to legislate in keeping with the subsidiarity principle provided for in Article 3b of the Maastricht Treaty.

In this connection, it would be enough to incorporate the following words into Rule 36(3) of the Rules of Procedure: 'The Committee responsible shall examine the competence of the Community to legislate and the validity and appropriateness of the chosen legal base for any draft measure on which Parliament is consulted. Where it disputes the competence of the Community to legislate or the validity or the appropriateness of the legal base it shall, before dealing with the substance of the proposal and after consultation with the committee responsible for legal affairs, refer the matter to Parliament, reporting orally or in writing.'

If the question of the competence of the Community to legislate is raised for the first time in plenary sitting, without it having been considered by the committee responsible, the Committee on Legal Affairs must deliver its opinion before the plenary sitting votes on the matter.

It is clear that were Parliament to decide, by a majority of its Members, that the Community act in question did not fall within the sphere of competence of the Community, the Commission should be asked to withdraw its proposal, pursuant to Rule 39(1) of the Rules of Procedure.

### C. CONCLUSIONS

The Committee on Legal Affairs and Citizens Rights adopts the following conclusions and calls on the Committee on the Rules of Procedure, the Verification of Credentials and Immunities to incorporate them into its amendments to the Rules of Procedure:

1. When it considers a proposal on which Parliament has been consulted, the committee responsible must first establish that the Community is competent to legislate in accordance with the subsidiarity principle provided for in Article 3b of the Maastricht Treaty. Where doubts arise, it must ask the Committee on Legal Affairs for its opinion prior to considering the substance of the proposal. It must also consult the Committee on Legal Affairs when the problem arises for the first time in plenary sitting.
2. If the committee responsible disputes the validity or the appropriateness of the legal basis for a proposal, it must refer the matter to Parliament; it is proposed, therefore, to replace the words 'it may...refer' by 'it shall...refer'.
3. If the committee responsible disputes the validity or the appropriateness of the legal basis, it must without fail ask the Committee on Legal Affairs for its opinion on the matter; it is proposed, therefore, to add in the sixth line of Rule 36(3) the word 'obligatory' after the words 'and after'.
4. If amendments seeking to change the legal basis are tabled in plenary sitting without the committee responsible having disputed the validity or the appropriateness of the legal basis, the committee responsible for legal affairs must deliver an opinion on the amendments tabled before they are put to the vote. In this connection, it is proposed that the interpretation which follows paragraph 3 should become a new paragraph of Rule 36 of the Rules of Procedure.
5. Finally, in a new provision of the Rules of Procedure concerning Article 138b of the Maastricht Treaty, it is suggested that when Parliament requests the Commission to propose a Community act the Committee on Legal Affairs should be consulted in advance so that, wherever possible, Parliament can indicate in its request the appropriate legal basis for the Community act in question.

O P I N I O N

(Rule 120 of the Rules of Procedure)

of the Committee on Civil Liberties and Internal Affairs  
for the Committee on the Rules of Procedure, the Verification  
of Credentials and Immunities

Draftsman: Mr LAFUENTE LOPEZ

At the meeting of 24 September 1992 the Committee on Civil Liberties and Internal Affairs appointed Mr Lafuente López draftsman.

At its meetings of 29 September and 3 November 1992 the Committee considered the draft opinion.

At the latter meeting the conclusions were adopted unanimously.

The following took part in the vote: Turner, chairman; Lafuente López, rapporteur; Beazley, Van den Brink, De Piccoli, Elliott (for Peters), Jarzembowski, Magnani Noya (for Crawley), Piermont, Ramirez, Van Outrive.



## OBSERVATIONS

The Committee on Civil Liberties and Internal Affairs, has considered the text of the two new Rules of Procedure proposed by Mr Vecchi in his draft report (PE 201.810) concerning Title VI of the Treaty on cooperation in the fields of justice and home affairs.

The committee considers Mr Vecchi's proposals inadequate, despite their stated intention of implementing Article K6 of the Treaty, since the committee believes that the Rules of Procedure should reflect the full extent of what the current text of the Treaty permits with regard to the field of justice and home affairs.

The third pillar of Maastricht, i.e. cooperation in the field of justice and home affairs, should be erected as of now, since there can be no question that Parliament's Rules of Procedure can make a first-rate contribution to placing collaboration and cooperation on a firm basis by establishing a colloquy or debate, on a biannual basis at the very least, between the appropriate committee and the Presidents-in-Office or Members of the Council responsible for the third pillar, such as the Member States' Ministers of Justice and of the Interior.

Such meetings could provide the best possible guarantee of regular control in this area, involving the President-in-Office of the Council and the competent committee.

This debate or colloquy would oblige the President-in-Office of the Council to account for actions of all intergovernmental committees of senior officials working in the sphere of judicial matters and internal affairs, whose major influence on political decision-making is inversely proportional to the scope they offer for Parliamentary control and influence.

The Committee on Civil Liberties and Internal Affairs therefore believes both that Rule 57 of the Rules of Procedure should be retained (given that the procedure therein laid down is firmly established and must continue) and that over and above the unexceptionable new Rules 127a and 127b set out in the Vecchi report, further rules are called for to provide the appropriate procedural mechanisms for implementing what is specifically set out in Article K6 of the Treaty.

Rule 57 of the Rules of Procedure must be retained because it lays down a procedure for parliamentary control of future policy on external affairs and security which is already firmly established with regard to the present European Political Cooperation.

## CONCLUSIONS

The Committee on Civil Liberties and Internal Affairs calls on the Committee on the Rules of Procedure, the Verification of Credentials and Immunities as the committee responsible to incorporate the following amendments to the Rules of Procedure in its report:

- A. Rule 127(4). The President-in-Office of the Council and possibly the chairman of the appropriate ministers meeting in cooperation in the spheres of justice and home affairs shall hold meetings twice a year with Parliament's appropriate committee(s) to explain current activities in the foresaid areas and accordingly conduct a colloquy or debate on the subjects

put before the appropriate parliamentary committee(s) for consideration. In addition, the appropriate committee(s) may at any time request the President-in-Office of the Council or the chairman of the appropriate ministers to attend and provide information.

- B. Rule 127(5). Twice a year, the President-in-Office of the Council shall report to Parliament in plenary sitting on the activities, work and progress achieved with regard to the matters provided for under Title VI of the Treaty on European Union. Parliament shall consider the report, and, where appropriate, a debate shall be held pursuant to the provisions of Rule 57 of the Rules of Procedure on issues determined by the committee(s) responsible.
- C. Rule 127(6). Parliament may put questions or recommendations to the Council in the fields of justice and home affairs, in the form of proposals drawn up by the parliamentary committee(s) responsible.

**O P I N I O N**

(Rule 120 of the Rules of Procedure)

of the Committee on Budgetary Control

for the Committee on the Rules of Procedure, the Verification  
of Credentials and Immunities

Draftsman: Mrs Annemarie GOEDMAKERS

At its meeting of 14 July 1992 the Committee on Budgetary Control appointed Mrs Goedmakers draftsman.

At its meeting of 14 September 1992 it considered the draft opinion.

At that meeting it adopted the conclusions as a whole unanimously.

The following took part in the vote: Lamassoure, chairman; Holzfuss, vice-chairman; Goedmakers, draftsman; Kellett-Bowman, Langes, Pasty, Theato and Tomlinson.

## I. INTRODUCTION

1. The Maastricht Treaty has brought with it significant changes in the sphere of budgetary control, as regards both the technical control exercised by the Court of Auditors and the political control exercised by Parliament, as the authority responsible for discharge.

2. Many of the changes or innovations introduced in the Treaty are not new in the absolute sense, since they include practices which already existed or non-constitutional provisions (e.g. provisions of the financial regulation making the comments which form part of the discharge decision compulsory).

3. However, the adoption of the new Treaty makes these practices and provisions equivalent to constitutional law, which obviously makes them binding on Community institutions and national administrations.

4. As a result the European Parliament's internal Rules of Procedure should be adapted to the new rules, especially in cases where changes in internal rules may affect Parliament's external relations with the other institutions and, more generally, with subjects of Community law.

5. Three main sectors of budgetary control are affected by the changes brought in by the Maastricht Treaty: the discharge procedure, relations with the Court of Auditors and Parliament's right of inquiry. A fourth sector, the control exercised by Parliament and its committees over the implementation of the current budget, although not specifically dealt with in the new Treaty, nevertheless needs to be codified to take account of long-established practice.

## II. CHANGES TO BE MADE TO THE DISCHARGE PROCEDURE

6. The discharge procedure is regulated by Rule 68 of Parliament's Rules of Procedure which makes reference, as far as detailed rules are concerned, to Annex V (procedure for the consideration and adoption of decisions on the granting of a discharge). The rules set out in the Annex should be expanded, to include a series of new rules contained in the Maastricht Treaty.

### Documents, reports and acts referred to the Committee on Budgetary Control

7. The documents on which the discharge procedure is based, mentioned in Article 1 of Annex V, hitherto consisted of the revenue and expenditure account (including the financial analysis and the balance sheet forwarded by the Commission) and the Court of Auditors' annual report accompanied by the Institutions' answers and the Council recommendation. Article 206 of the new Treaty has now made the 'relevant special reports' by the Court of Auditors as important as the annual report. Such reports should therefore be included among the basic documents for the discharge procedure.

8. Similarly, the essential documents to be assessed by the discharge authority should include the statement which the Court of Auditors submits to the Council and the European Parliament, pursuant to Article 188c(2) of the Maastricht Treaty, in which it assures them as to the reliability of the accounts and the legality and regularity of the underlying transactions. It is clear how important this statement is for the granting of the discharge: if the Commission's accounts were not covered by the statement in question, Parliament

might feel it necessary to refuse the discharge or to alter the figures (cf. in the annex, the amendment to Article 1 of Annex V).

#### The binding force of the comments accompanying the discharge decision

9. The obligations inherent in the comments contained in the resolution attached to the discharge decision were hitherto considered to be non-legal obligations, since the Treaties did not state that they were obligatory. The situation changes radically with the provision in Article 206(3) of the new Treaty to the effect that the Commission must 'take all appropriate steps to act on the observations in the decisions giving discharge'. The legally binding force deriving from this provision may from now on allow Parliament, in cases where the Commission has not taken the measures required by the discharge decision, to invoke Article 175 of the Treaty which provides for action to be brought before the Court of Justice 'should the Council or Commission, in infringement of this Treaty, fail to act'. A new paragraph could therefore be added to Article 7 of Annex V, concerning the implementation of discharge decisions (see annex).

#### The binding force of acts other than the discharge decision

10. Article 206 of the Maastricht Treaty not only makes discharge decisions legally binding but also makes the 'other observations by the European Parliament relating to the execution of expenditure' binding. This is an important new point which assigns legal significance to the comments contained in the resolutions adopted by the European Parliament outside the discharge procedure, but which still concern budgetary control, often based on special reports by the Court of Auditors. This new point should be taken into account in Article 7(2) of Annex V (see annex). Incidentally, it should be noted that although Article 206(3) appears to be saying that the comments accompanying the recommendations on discharge adopted by the Council are compulsory, they cannot actually be regarded as such. Recommendations of this kind are in fact an act within the discharge procedure and as such cannot have effects outside the procedure, in particular vis-à-vis the Commission, to whom only the final act of the discharge procedure is addressed.

### III. RELATIONS WITH THE COURT OF AUDITORS

11. Article 4 of the Maastricht Treaty defines the Court of Auditors as a Community institution. This means that certain aspects of relations with the Court of Auditors, which hitherto were dealt with on an informal and unofficial basis, may from now on be regulated as relations between institutions:

- the President of the Court of Auditors first submitted his institution's annual report at a plenary sitting of Parliament during the discharge procedure for the 1990 financial year. This established that the President of the Court of Auditors can make statements similar to those envisaged in Rule 56 of the Rules of Procedure for the other institutions (Commission, Council and Foreign Ministers). This possibility of access and of making statements could be formalised in the Rules of Procedure (see Annex I, with the amendment constituting a Rule 56a);
- the Court of Auditors makes a substantial contribution to Parliament's work, as the budgetary control and discharge authority. It is therefore obvious that the coordination of the Court of Auditors' work programme with

Parliament's policy decisions is an important matter of priority. The Rules of Procedure could allow the President of the Court of Auditors the possibility of making statements about the work programme, either to the Committee on Budgetary Control or at plenary sittings. The ensuing debate should facilitate coordination of the priorities and guidelines of the two institutions (see Annex I, with the amendment constituting Rule 56a).

#### IV. PARLIAMENT'S RIGHT OF INQUIRY

12. The new Article 138c in the Maastricht Treaty states that Parliament may set up a Committee of Inquiry to 'investigate ... alleged contraventions or maladministration in the implementation of Community law'. This right has certain limits: there is the need to safeguard 'the powers conferred by this Treaty on other institutions or bodies' and a ban on carrying out inquiries if 'the alleged facts are being examined before a Court and while the case is still subject to legal proceedings'.

13. The practicalities of exercising this right should be decided on jointly by the European Parliament, the Council and the Commission. It is therefore difficult at this stage to envisage what changes should be made to Rule 109(3) of Parliament's Rules of Procedure which regulate the present right of inquiry, until the agreement between the European Parliament, the Council and the Commission has been concluded. Suffice it to say that everything concerning the internal workings of Parliament's bodies responsible for exercising the new right of inquiry should be subject to the Rules of Procedure and Parliament's exclusive prerogative should be sanctioned in the above-mentioned agreement.

14. For a variety of reasons it would be appropriate for one or more members of the Committee on Budgetary Control to sit on a committee on inquiry:

- The need to avoid any conflict or overlapping of powers between the temporary committee and the Committee on Budgetary Control (which would also be in conflict with Article 138c of the Treaty, which states that the right of inquiry must be exercised without prejudice to the powers conferred by the Treaty when other institutions or bodies);
- it was the Committee on Budgetary Control which first requested the need for Parliament to be assigned a power of inquiry accompanied by a legal power of investigation similar to that of the parliaments of the Member States (Goedmakers report - A-233/90, together with the resolution of 22 November 1990);
- the need to avoid duplication: the Committee on Budgetary Control already has a special system for obtaining information from the Commission. This system, which consists of an exchange of letters between the two institutions is now reinforced by Article 206(2) of the Maastricht Treaty which states that 'in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.' Parliament is assigned these powers in its role as discharge authority and they are actually exercised by the Committee on Budgetary Control. A parliamentary committee on inquiry will in many cases be guided by this work, which is more substantial in the field in question.

V. MONITORING OF THE IMPLEMENTATION OF THE BUDGET OF THE CURRENT FINANCIAL YEAR: the 'Notenboom' procedure and the work carried out pursuant to the powers of control of Parliament and the parliamentary committees concerned

15. According to long established practice, control over the implementation of the budget is carried out not only after the event, via the discharge procedure, but also during the financial year.

16. The latter type of control is carried out either monthly, by the Committee on Budgetary Control on the basis of information supplied by the Commission and, for example, by the system of prompt recording of EAGGF-Guarantee expenditure, or by means of checks carried out in individual sectors of the Community budget by the committees concerned (often on the recommendation of the Committee on Budgetary Control), or, finally, by means of the so-called 'Notenboom' procedure. The procedure consists of a debate in plenary before Parliament's first reading of the budget, on the basis of a question tabled jointly by the Committees on Budgets and Budgetary Control, in order to ascertain the main problems which have arisen or may arise during the financial year. Both of these kinds of control over the administration of the current financial year (by the individual committees and Parliament meeting in plenary) are extremely important, inter alia for the purpose of the assessments to be made during the budgetary procedure; however, they have not yet been sanctioned in Parliament's Rules of Procedure, which would be useful since written rules could clarify important procedural details. If the rules are codified, it would in particular be important to specify the detailed rules for and the form of the written answers which the Commission would be called upon to provide within one month in reply to questions put by the various committees.

VI. CONCLUSIONS

17. On the basis of the above observations, the Committee on Budgetary Control calls on the Committee on the Rules of Procedure to consider the possibility of incorporating in Parliament's Rules of Procedure the amendments which the Maastricht Treaty has made necessary in the field of budgetary control, on the basis of the draft amendments attached to this opinion.

## O P I N I O N

(Rule 120 of the Rules of Procedure)

of the Committee on Institutional Affairs  
for the Committee on the Rules of Procedure, the Verification  
of Credentials and Immunities

Draftsman: Mrs Adelaide AGLIETTA

At its meeting of 26 February 1992, the Committee on Institutional Affairs appointed Mrs Adelaide AGLIETTA draftsman.

At its meetings of 22 and 23 April 1992, 19 and 20 May 1992, 23 and 24 September 1992, 8 and 9 October 1992, 18 and 19 March 1993 and 1 and 2 April 1993, it considered the draft opinion.

At the last meeting it adopted the conclusions as a whole unanimously.

The following took part in the vote: Oreja Aguirre, chairman; Melis, vice-chairman; Aglietta, draftsman; Boissiere, Bourlanges, De Giovanni, Glinne, Marinho, Puerta and Roumeliotis.



## I. Introduction

The Treaty on European Union signed in Maastricht on 7 February 1992 does not fundamentally satisfy Parliament's hopes, either with regard to the changes to the Community system to be made in the short term, or with a view to the creation of a true Union on a federal basis. In particular, it does not solve the problem of the democratic deficit: on the contrary, the substantial widening of powers unaccompanied by adequate institutional reforms could considerably increase this deficit.

Dissatisfaction with the results of the intergovernmental negotiations must not, however, lead us to abandon the line which we chose, under the guidance of Altiero SPINELLI, after the signing of the Single Act and which was put into effect in the Rules of Procedure adopted in application of the Single Act. The principle of taking full advantage of the possibilities of reforms, even though unsatisfactory - contained in the resolution of 16 January 1986 - is confirmed again in Parliament's resolution on the Maastricht Treaty. This attitude, as the implementation of the Single Act demonstrates, is essential to maintain and strengthen the credibility of the European Parliament. It will, however, be necessary to take particular care to clarify Parliament's positions during the procedures to ensure that they are well expressed outside and, if necessary, distinguished from the final decisions.

This must be the first point of reference for reform of Parliament's Rules of Procedure. The task will be to insert elements into the Rules which will bring out all the possibilities of the new provisions to increase the democratic workings of the Union. Firstly, this principle involves careful analysis of the new procedures, to put into effect the new powers invested in Parliament and therefore to require that the other institutions show full respect for the new rules of the game and a commitment to making them work. Secondly, it involves internal provisions to ensure that the procedures are effective and rapid, both to respect the provisions relating to the new procedures, and to respect the political deadlines which some of them impose.

The second principle to take into account for reform of the Rules of Procedure concerns respect for the fundamental principles of the Treaty; this lays down that the European Parliament, the first legislative organ to examine a proposal for legislation, must check the constitutionality of the texts proposed. Essentially, Parliament, which acquires powers (though incomplete) of legislative co-decision, must carry out its function as legislator to the full. As a corollary to this new role, it is also vital for legislative texts adopted by Parliament to be legally correct and for Parliament itself to be able to ensure that the decisions it takes are completely consistent.

## II. The new powers of the European Parliament

### A. The appointment of the Commission.

Hitherto, Parliament has already been consulted informally (Enlarged Bureau) on the new President and, under its own internal rules, expressed a vote of confidence in the Commission, though without legal effects.

This procedure is now laid down in the Treaty with quite precise legal consequences.

What is new is that Parliament has the power to pass or reject a vote of confidence on the Commission before the Commission can take office. This decisional phase is preceded by consultation of Parliament on who shall take on the presidency of the future Commission.

Parliament - which had asked to express a binding vote on the appointment of the President - should:

- express its opinion on the President appointed in plenary sitting;
- hear and assess, via an appropriate procedure, the people appointed as Commissioners, after distribution of the portfolios and before the vote of confidence;
- express its vote of confidence, taking account of the outline programme which the new Commission will submit;
- establish a very high quorum, to ensure that the vote of confidence has the necessary political weight.

The point is to ensure that maximum importance is attached to decisions and effective control is exercised over the appointment of the Commission.

Still on the subject of the appointment of the Commission, it should be borne in mind that in principle Parliament's term of office will coincide with the Commission's mandate. This means that the appointment procedures should underline the relationship between the popular vote and the choice of a new Commission. As a general rule, the vote on the President should take place at the first working part-session of the newly-elected Parliament.

#### B. Legislative initiative

The Treaty gives Parliament - acting by a majority of its members - a power of legislative initiative, though phrased in a reductive form, without affecting (at least formally) the Commission's monopoly, and with considerable uncertainty as to the legal consequences of Parliament's power. In any case this is a power formally identified in the Treaty. The problems to be tackled from the point of view of the Rules of Procedure are:

- the relationship with the Commission and in particular the reference to an at least political obligation on the part of the Commission to act on initiatives proposed by Parliament;
- methods of defining the procedures to identify legislative initiatives as distinct from strictly political initiatives; this might involve making a distinction, in exercising this power, between actual proposals for legislation and formal invitations to the Commission to submit a proposal for legislation itself;
- recognition (finally!) of the right of individual Members to submit proposals for legislation, without creating any dispersion of Parliament's legislative initiatives; this means that, with such ample opportunity for Parliament to call for legislative initiatives, there should be an appropriate 'filter' system to ensure that Parliament only considers and

votes - according to the majority laid down in the Treaty - on those proposals which are recognized as a priority.

### C. Legislative procedure

We will not now go into all the problems posed by the numerous legislative procedures, but focus only on three questions which result directly from the Treaty:

#### 1. Checking of the constitutionality of laws

The Treaty stipulates that, in areas which do not fall within its exclusive competence, the Union shall legislate only in accordance with the principle of subsidiarity. This provision is particularly important, first of all because it limits excessive centralization which could distort the face of the Union, and also because it clearly defines the Union's scope for action. It is therefore precisely in Parliament's interest to ensure that this principle is respected. Furthermore, the Treaty introduces the rule that laws on expenditure must, in one way or another, provide for financial cover. Finally, the Treaty formally introduces - though worded in a particularly unfortunate way - the obligation to respect fundamental rights.

The new provisions on co-decision make the question of legal bases much more important: it is now no longer a question simply of checking the appropriateness of a procedure which, in fact, in any case left the power of decision-making to a single institution. With the introduction of the co-decision procedure the institutions actually making the decision may vary; Parliament may play a purely consultative role or participate even formally in the decision, and above all prevent a decision it considers unacceptable.

This set of conditions forces us to reflect on the need for Parliament to make sure, by appropriate means, that they, and the 'constitutional' rules in general, are respected.

Essentially, Parliament should exercise what is known in the Member States as constitutional control, and which is exercised by a specific parliamentary body, leaving the last word, in case of dispute, to the plenary. Such control should allow Parliament to block from the very outset of the procedure any proposals manifestly contrary to the Treaty or especially harmful to its own prerogatives.

#### 2. The quality of legislative texts

The Treaty, as we have seen, gives Parliament a role as co-legislator, albeit an uncertain one.

This means, amongst other things, that the legislative texts which Parliament produces must be legally correct. At the same time this requirement must neither in theory nor in practice shift the decision-making power towards some technical organ. It is therefore necessary to establish a 'legal quality control' of texts; but the organ which carries this out must only have the task of giving a technical opinion to the rapporteur, the plenary or committee chairman and, possibly, to those tabling amendments to legislative texts.

#### 3. Signing of acts adopted by co-decision

Finally, the Treaty stipulates that the President of the European Parliament shall be co-signatory to acts produced through the co-decision procedure.

In this case the President is acting autonomously. Probably the Rules of Procedure should simply confirm this.

D. The co-decision procedure

The new procedure gives Parliament limited legislative power. This is put into effect in a series of stages (first reading, second reading with first conciliation procedure, second conciliation procedure), in which Council and Parliament are essentially on an equal footing, and a final stage in which Parliament may only overturn - and by a large majority - any unilateral decision of the Council, and is therefore in a much weaker position.

From the point of view of the Rules of Procedure, an attempt should be made to give prime importance from the outset to the Parliament-Council dialogue; essentially, Parliament's main positive power is to force the existing majorities in the Council to seek a compromise, unless the whole procedure is to come to nothing at the end of the second reading or at the end of the procedure itself.

The drafters of the Treaty do in fact go in this direction, establishing the two conciliation procedures and even, in the second, limiting the Commission's mediating role to give the two arms of the legislative authority the maximum opportunity to reach a compromise between any qualified majority in the Council and the majority of Parliament.

The role of the conciliation procedure - essential in the second round of conciliation, because the two delegations decide, subject to ratification by the two institutions - requires careful reflection on the composition of the Parliament delegation. There is no way that a quasi-technical composition, like that for the present conciliation ('concertation') procedure, can satisfy the demands of this procedure. It is also necessary to give the delegation a certain degree of stability and also some specialization according to subject.

Thought should also be given to the deadlines scattered throughout the co-decision procedure which, if not met, lead purely and simply to a loss of power by Parliament: this goes for the order of business and also for the establishment of instruments for rapid decision on a given subject.

Finally, the introduction of the co-decision procedure strengthens the theory that it is in Parliament's specific interest to bring together - where permitted under the Treaty - all the legislative procedures, in order to make the most of all the possible advantages of the various procedures. This policy above all reflects the need put forward by Parliament to act as co-legislator in all legislative matters.

E. Assent in areas other than international agreements

The procedure for assent of the European Parliament, introduced both for constitutional matters (acting by a majority of its members) and ordinary law, is not particularly satisfactory. While in fact, on one hand, it is quite appropriate for international agreements which, at a formal level, require a yes or no from the legislative authority, on the other hand it completely distorts the legislative procedure. The Rules of Procedure should nevertheless seek to introduce two readings and establish a form of conciliation procedure with the Council.

F. The right of inquiry

The Treaty gives Parliament a right of inquiry, subject to detailed provisions to be determined by interinstitutional agreement. It is therefore difficult at this stage to formulate guidelines for regulating this procedure. It will be sufficient to point out that the Treaty confirms the concept, already contained in Parliament's Rules of Procedure, that the appointment of a committee of inquiry depends on the power of initiative of a minority and that, in any case, the inquiry now takes on a role which is also of legal importance.

III. Other provisions of the Treaty which make it necessary to change the Rules of Procedure to ensure effective action by Parliament

A. New provisions on common foreign and security policy and internal affairs and justice

In these areas Parliament has no decision-making power.

The Treaty confirms the right to table questions to the Council and gives Parliament the following rights:

- information
- consultation
- recommendation.

The Rules of Procedure should aim to allow Parliament to take prompt action, in order at least to exercise effectively what little power of control and orientation it has.

1. With regard to questions, the deadline for the Council to reply to Parliament should be based on political realities and not five weeks, a time limit which was set largely for bureaucratic reasons.
2. Normally it is the competent committees which should receive information, in confidence if necessary. However, in cases of major political interest, information should be given in plenary.
3. Consultation must come before decisions. Thus it could be envisaged that, for urgent questions, Parliament should be consulted before a 'Foreign Affairs' Council, with this already on the agenda. For other questions provision should be made for a normal consultation, possibly via an accelerated procedure. Consultation does not necessarily have to conclude

with a vote on a resolution: in many cases debate could be sufficient to clarify positions.

4. The power of recommendation, formalized in the Treaty, gives Parliament, by formal act, the right to propose the method of tackling a problem of foreign policy or internal affairs.

The recommendation should be fairly solemn in form and be used only for important matters, naturally via a specially rapid procedure, where appropriate, by delegation to the appropriate committee.

In any case, the role of the Commission, which now has the power of initiative, should not be neglected. Its relationship of confidence with Parliament requires, on one hand, that it guarantee information even beyond that given by the Council, and, on the other hand, that it discuss, as far as possible, its initiatives with Parliament. In addition it should not be forgotten that the Commission has a dual function, in also carrying out an essential role with regard to the Community's external relations.

Finally, all these prerogatives require adaptation of the calendars of parliamentary meetings to political deadlines and, therefore, greater flexibility in the meetings of parliamentary bodies and plenary itself.

#### B. The Ombudsman

Parliament has the power/duty to appoint an Ombudsman and, after seeking an opinion from the Commission and with the approval of the Council, to lay down the regulations and general conditions governing the performance of the Ombudsman's duties. The appointment of the Ombudsman requires the introduction of specific provisions in the Rules of Procedure.

There is also the problem of consideration of the annual report and the special reports. While the annual report is essentially an opportunity to discuss general problems of the relationship between the citizen and the Community administration, the special reports may raise serious problems as soon as they occur. It will be up to the committee responsible to alert plenary where necessary.

#### C. The exercise of parliamentary control

The relationship of confidence with the Commission implies a strengthening of democratic control on the operation of the Union. Furthermore, the Treaty stipulates that the Commission and, in certain cases, the Council, should present to Parliament a large number of new sectoral reports, either at fixed dates or periodically. Finally, the role of budgetary control is emphasized in the Treaty.

These new elements call for greater dynamism in the procedures for control, both at the level of parliamentary committees and in plenary. It follows that it would be advisable to avoid falling into routine control procedures (for example by adopting identical and respective resolutions every year) and to choose specific moments for action, such as, for example, brief debates in committee or in plenary in the presence of the Commission and, possibly, the Council, reserving formal acts at the end of the debate for more important questions, especially where there is a disagreement with the Commission or Council.

Thought should also be given to the fact that control must not only be carried out a posteriori, but also during the course of the procedures. This goes for foreign and security policy and for internal affairs, and for the conduct of the Commission in the case of legislative procedures and in negotiation of treaties.

Finally, we must not neglect - as unfortunately we do to a great extent - control of the follow-up to Parliament's acts at Community level. Parliament must also, in cooperation with the national parliaments, exercise control over the implementation of Community legislation in the Member States, naturally respecting the competences of the national institutions.

#### IV. International treaties

Depending on the subject, the Treaty stipulates opinion or assent on the ratification of treaties drawn up by the Community. Commercial policy is the exception, save for specific cases where assent is required.

Parliament therefore has good reason to review the procedures through which it is consulted (or simply informed) on the preparatory stages and on negotiation. With the new provisions, Parliament gives its assent by a simple majority. It could be useful, to strengthen the value of its decisions, for Parliament to fix a high quorum for the vote on international agreements.

