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**BRIEFING No 8
ON
THE CODECISION PROCEDURE**

Or. FR

These briefings have been drafted by the Parliament Secretariat Task Force on the Intergovernmental Conference. Their purpose is to gather together, in an organized, summary form, the proposals and suggestions which the authorities in the Member States, the Union's institutions and specialist commentators have put forward on the issues likely to be on the IGC/96 agenda.

Briefings will be updated as negotiations proceed.

Already out:

- 1 The Court of Justice
- 2 The Commission
- 3 The Court of Auditors, ESC and COR
- 4 Differentiated integration.
- 5 The common foreign and security policy
- 6 The role of the national parliaments
- 7 The hierarchy of Community acts
- 8 The codecision procedure

VIEWS ON REVISION OF THE CODECISION PROCEDURE

Introduction

The codecision procedure introduced by Article 189b of the Treaty on European Union confirms the trend, which was heralded by the conciliation procedure introduced in 1975, and subsequently by the cooperation procedure set up by the Single European Act, towards basing legislative decision-making processes on dialogue and negotiation between Parliament/the Council and the Commission.

Unlike the cooperation procedure, in which the Council has the last word, the codecision procedure provides for a stage of conciliation between the representatives of the Council and Parliament (Conciliation Committee) in cases where the Council is unable to accept all of Parliament's second-reading amendments, and makes it possible for the latter ultimately to reject the act adopted by the Council (Article 189b(3)). The codecision procedure thus provides for the adoption of a common act by the Council and Parliament, concluding a shuttle procedure in which the two institutions should be on an equal footing.

Parliament is automatically involved in the legislative procedure. This increases the importance of the first reading, when Parliament must be able to take up a position, in full knowledge of the facts, which it will then defend throughout the procedure using an appropriate negotiating strategy. The TEU sets out a cumbersome procedure which may go as far as four readings. There is no requirement to go through all the stages of the procedure; on the contrary: the aim should be to reach agreement in the early stages of the procedure so as to avoid, if possible, entrenched positions which would make it excessively lengthy.

The codecision procedure is seen, by and large, in a fairly positive light. The Conciliation Committee has been the forum providing a focus for technical differences and horizontal institutional and budgetary problems. Since the TEU entered into force, 124 proposals for Community acts covered by codecision have been put forward by the Commission. Thirty-three have been adopted, 15 of them actually at second reading. Only one act has been rejected by Parliament at third reading (EP decision of 19 July 1994 on the proposal for a Directive on the application of open network provision (ONP) to voice telephony), and one other has been rejected by Parliament despite agreement having been reached within the Conciliation Committee (EP decision of 1 March 1995 on the proposal for a Directive on the legal protection of biotechnological inventions).

The difficulties experienced initially were not attributable to the procedure itself, but to the political linkage made with a number of sensitive institutional issues, such as commitology and amounts deemed necessary (ADNs). These problems have now been overcome as a result of the *modus vivendi* on commitology agreed with Parliament and the joint declaration on ADNs, both of which will have to be reviewed in 1996.

Another problem, which is partly connected with how the codecision procedure works, needs to be considered, namely that of efficiency, the transparency of the institutions and decision-making mechanisms. There is a need to simplify the decision-making procedures and reduce their number. It would therefore be desirable to see whether and how any procedures can be dropped, and if so, which ones. The institutions have already begun to express their views on this. Some Member States have come out in favour of a full or partial extension of the codecision procedure to cover areas subject to qualified majority voting in the Council.

Summaries or extracts of the positions taken by the following are given below:

- Parliament
- the Commission
- the Council and the Deputy Permanent Representatives
- the Member States

- Justus Lipsius
- the Bertelsmann Foundation.

PARLIAMENT

Views of the Parliament delegation to the Conciliation Committee

The procedure used is cumbersome and complex.

Meetings are very frequent (one or two per week). If the codecision procedure were used more extensively, the number of acts requiring recourse to the Conciliation Committee would be even greater; hence the need to ensure better planning and group texts together in 'packages'.

The time-limits are too tight, particularly since the Council Secretariat is often late in forwarding legislative texts. The time-limits could be extended, which would make more thorough preparation possible, and likewise informal discussions with the Council in advance.

Political representation on the Council side is essential. It would help the Council to speak with one voice and increase its members' room for manoeuvre.

Harmonization of voting procedures might be suggested in order to avoid the current imbalance between the two types of majority required (a qualified majority to reject a common position, and a simple majority to adopt a joint text), which reduces Parliament's room for manoeuvre.

Given the horizontal problems which are likely to arise, a representative of the Committee on Institutional Affairs and a representative of the Committee on Budgets, mandated by their respective committees, should be involved.

Codecision should be used more extensively.

Committee on Institutional Affairs

Bourlanges/Martin report adopted in plenary on 17 May 1995

The codecision procedure should be simplified by making the following changes:

- end the procedure when there is agreement between the Council and Parliament at first reading;
- drop the stage of intention to reject;
- introduce a simplified conciliation procedure at the end of the first reading;
- give the Commission the power to propose and put to the vote, in the two Conciliation Committee delegations, a compromise between conflicting positions;
- harmonize the majorities required for rejecting the final text. (regardless of the results of conciliation);
- eliminate the possibility of the Council acting unilaterally (by reconfirming its common position) in the event of conciliation failing to result in an agreement.

COMMISSION

Report on the functioning of the TEU (May 1995)

Contrary to a number of fears engendered by its complexity and length, the codecision procedure has so far worked well. It has enabled decisions to be taken within a reasonable length of time, notably as a result of satisfactory cooperation between the institutions. To this end, they signed an interinstitutional agreement on 21 October 1993 on the modus operandi of the Conciliation Committee. Taking only Commission proposals submitted since the Treaty entered into force into account, the average time taken by the procedure is less than 300 days. A longer period will be needed, however, to refine this assessment.

COUNCIL

Report on the functioning of the TEU (March 1995)

The operation of the codecision procedure has been complicated by the following:

- the linkage initially made by Parliament to other issues (such as commitology and ADNs), which delayed the adoption of several texts;
- the complexity of the procedure laid down in Article 189b, despite the practical arrangements agreed upon to facilitate its operation;
- the demand sometimes made by Parliament's representatives for the Conciliation Committee to accept amendments rejected by Parliament in plenary (and hence outside the normal scope of conciliation);
- relations between the Conciliation Committee and Parliament sitting in plenary.

Informal exchange of views between the Deputy Permanent Representatives (8 February 1995)

The Deputy Permanent Representatives have made a number of comments and suggestions on the operation of the codecision procedure.

Practical improvements requiring no changes to the Treaty:

- strengthening the triologue: the success of 'plenary' conciliation is heavily dependent on the effectiveness of preparatory work within the triologue; this stage of the procedure should be strengthened, for instance by designating a minister with special responsibility for dialogue with Parliament; this suggestion was criticized by the UK delegation, which expressed the fear that the minister concerned would quickly become hostage to Parliament;
- where the Council and Parliament positions differ only slightly: experience has shown that differences between the Council and Parliament have sometimes been merely matters of form rather than substance; the question is whether it would be possible to envisage a simplified procedure under which an agreement between the two institutions could swiftly be decided, in return for a few minor adjustments to the text, without recourse to the cumbersome Conciliation Committee procedure.

Improvements requiring changes to the Treaty: -

- clarification of the scope of conciliation: Article 189b should state more clearly that conciliation can apply only to amendments to the common position adopted by Parliament in plenary, and to no other provisions;
- elimination of Parliament's first reading: this step is favoured by a majority of delegations, in the interest of simplification;
- elimination of the procedure of 'intention to reject' (Article 189b(2)(c));
- elimination of the 'third reading' (confirmation by the Council of its common position and possibility of rejection by Parliament); the effect of this

change would be that the conciliation stage would complete the procedure (with a positive or negative outcome) and that the two co-legislators (Parliament and the Council) would thus be placed on a strictly equal footing, with each bearing equal responsibility for the success or failure of conciliation;

- scope of the procedure, entailing two aspects:
 - (a) restoring a degree of consistency: it is hard to justify the existence of different procedures for the Leonardo and Socrates programmes;
 - (b) extending the scope to give more power to Parliament: in these circumstances, the existence of a hierarchy of Community acts would make it possible for all legislation which has general application to be adopted on the basis of codecision, counterbalanced by implementing measures being solely a matter for the Commission and the Council; in the event of the legislative process being deadlocked (insuperable differences between the Council and Parliament), and in a situation requiring urgent action, the Council should be able to legislate unilaterally for a specified period ('Orders in Council' arrangement).

Full or partial extension of the codecision procedure to cover areas to which qualified majority voting applies in the Council
Only some Member States have expressed a view on this issue.

	For	Against	No position as yet
Austria			X
Belgium			X
Denmark			X
Finland			X
France			X
Germany	The EP's power of codecision should be on the agenda for the IGC, with the aim of improving the effectiveness of legislative procedures (statement by the Foreign Minister, Mr Kinkel, 21.2.1995)		
Greece	Strengthening of the EP's legislative powers (conclusions of the Government's interministerial committee, 13.6.1995)		
Ireland	Partial extension: environment, transport, culture, research (statement by the Minister of State at the Department of Foreign Affairs, Mr Mitchell, in Messina)		
Italy	General extension: codecision by the EP would be easier to understand following the introduction of a hierarchy of Community acts. Legislative provisions would be adopted by majority voting in the Council, with EP codecision (statement by the Minister of Foreign Affairs, Mrs Agnelli, in Messina, June 1995 and Chamber of Deputies resolution)		
Luxembourg			X
Netherlands			X
Portugal			X
Spain	General extension in conjunction with qualified majority voting (Solana document)		
Sweden			X

United Kingdom		Statement by D. Davies, Le Monde, 13.6.1995	
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According to press reports of the first meeting of the Reflection Group, in Luxembourg, all the Member States apart from the United Kingdom came out in favour of dropping the cooperation procedure.

Views of 'Mr Justus Lipsius' (February 1995)

The cooperation procedure could be abandoned and merged with codecision to produce a new, simpler, unified procedure, since two complex procedures constitute over-sophistication; the scope of the new procedure could combine that of both Article 189c and Article 189b; the new procedure could strengthen the powers of Parliament in order to put it on an equal footing with the Council; Article 189b could be used as a basis and amended as follows:

- paragraph 2(c) would be deleted: it adds greatly to the complexity of the procedure without fulfilling any other useful function;
- paragraph 3 would be amended to enable the Council to accept easily as many of Parliament's amendments as possible;
- paragraph 4 would be amended to enable the Conciliation Committee to adopt the legislative act directly in the event of agreement being reached; paragraph 5 could consequently be deleted;
- whenever the Conciliation Committee was unable to agree a joint text, the proposed act would be deemed not to have been adopted; paragraph 6 of Article 189b could consequently also be deleted.

Views of the Bertelsmann Foundation

In the interests of democracy Parliament must be granted the right of codecision on all European affairs. Development of the Union should move towards a bicameral system in which Parliament would constitute one Chamber and the Council of the Union the other, forming an Assembly of European States. The democratic principle and the federal principle can be combined by ensuring that all key decisions are taken by both Chambers, acting on an equal footing. Substantial simplification of the complex principles on which the Treaties are based, and of European decision-making processes and procedures, provides another potential source of legitimacy.

A unified procedure must embody a number of stages:

- the Commission submits to the Council and Parliament proposals for the adoption of new legal acts; in the cases specified in the TEU such proposals are also forwarded to the Economic and Social Committee and the Committee of the Regions; once the Council has received the opinions of those two bodies, it draws up and adopts a common position, which it forwards to Parliament;
- Parliament considers the draft text, may amend it and adopts a decision thereon; it is then returned to the Council of Ministers;
- if the draft text fails to secure a sufficient majority in favour in the Council, the latter may (like Parliament or the Commission) refer it to the Conciliation Committee, which comprises equal numbers of Parliament and Council representatives and meetings of which are chaired by a non-voting Member of the Commission;
- if agreement is reached within the Conciliation Committee, the legislative act concerned is adopted, following approval by both Chambers.

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For further information about this briefing, please contact Mrs Prode in the secretariat of the Committee on Institutional Affairs (Tel. 284 3510 - Brussels)

