

EUROPEAN PARLIAMENT

COMMITTEE ON EXTERNAL ECONOMIC RELATIONS

Working Document on the

LUNS WESTERTEP PROCEDURE

8 February 1980

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I The Luns Westerterp Procedure

1. Legal Bases: as provided by the EEC Treaty.

The development of the above-mentioned procedure can only be understood if one bears the following articles of the EEC Treaty in mind.

(a) Article 113

This defines the terms of reference for the common commercial policy. It will be noted that there is a contradiction between the lack of parliamentary control and the very existence of the Committee on External Economic Relations.

1. After the transitional period has ended, the common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade such as those to be taken in case of dumping or subsidies.
2. The Commission shall submit proposals to the Council for implementing the common commercial policy.
3. Where agreements with third countries need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.'

It can be seen that there is no authorization for the Council to negotiate but that this is the responsibility of the Commission.

(b) Article 238

This explicitly requires Parliament to be consulted on association agreements without defining this term very clearly and in particular without any clear distinction between such agreements and simple trade agreements.

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

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

(c) Article 43

This refers to the common agricultural policy but the Committee on External

Economic Relations is often involved in such matters. It emphasizes the essential role of the Commission and control by the Assembly with the Council only being involved at the end of the procedure.

' 2. The Council shall, on a proposal from the Commission and after consulting the Assembly, acting unanimously during the first two stages and by a qualified majority thereafter, make regulations, issue directives, or take decisions, without prejudice to any recommendations it may also make.

(d) Article 235

This article allows the Luns Westerterp procedure to be modified, to adopt a simple procedure for certain relations between the institutions and allows a certain flexibility of implementation which could work in favour of the Assembly.

' If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Assembly, take the appropriate measures'.

2. The Luns Westerterp Procedure

As no consultation of the Assembly is provided for in the procedure for concluding trade agreements, there was a need to find an appropriate interpretation of Article 238. This interpretation led to the creation of the Luns Westerterp procedure which provides for the same procedure to be applied to association agreements and trade agreements and requires consultation of the Assembly. Parliament delivers an opinion which resembles a ratification procedure, but, and this difference is an important one, it has no power to rescind an international agreement signed by the Community. This means that if Parliament is consulted once a Treaty of Association has been formally signed, such consultation no longer has any political or legal significance. To have any effect it must take place while negotiations are still in progress.

Under the present circumstances, the Luns Westerterp procedure provides that the European Parliament must be informed through the appropriate parliamentary committees:

- (a) By the Commission of the European Communities while negotiations are in progress;
- (b) By the Council when the negotiations themselves are concluded and before the agreement is signed.

The information given at these levels to the parliamentary committees concerned is nevertheless of a confidential nature.

This procedure does not preclude the official consultation of the European Parliament which takes place following the signing of the agreement and before the instruments of ratification have been deposited.

Practice shows that this procedure presents a certain number of problems. The complex nature of the Community and the problems of relations between the institutions often lead to the parliamentary committees receiving too little information too late, making it sometimes extremely difficult to take account of the opinions expressed in the agreements concerned. But more importantly there are vital areas where Parliament is unable to fulfil its normal functions.

3. The Legal Vacuum

At the present time there are two areas where the lack of parliamentary control has left a legal vacuum.

Since 1 January, 1973

- the conclusion of trade agreements has been the responsibility of the European Communities. Neither the Member States nor the European Assembly are authorized to ratify these and this situation is quite irregular. The growth in the powers of Community institutions demands that for matters which are delegated to the Community, it should be the European Parliament which ratifies such agreements.

- Moreover since 1 January 1978, the Community has full control over its own resources in the budgetary sector and enjoys among other rights, the right to conclude financial protocols. The implications for the budget of trade and vice-versa cannot remain a matter of indifference to the European Parliament.

II The various aspects of external relations which fall within the remit of the Committee on External Economic Relations

1. The large number of areas covered by the Committee on External Economic Relations

Merely listing these fields demonstrates the vital importance for the Committee on External Economic Relations in seeing the Luns Westerterp procedure improved and shows that it must play an essential role in bringing this about.

(a) The Common Customs Tarriff

The problem of Community representation in the negotiation and conclusion of international agreements on customs matters could be more easily resolved if there were greater participation by Parliament.

(b) External trade

This is the essential activity of the Committee on External Economic Relations. Some of its major aspects are:

- free trade agreements
- generalized preferences
- non-preferential agreements
- global and internationa agreements
- agreements with state-trading nations.

(c) Association agreements

Article 238 of the EEC Treaty reads:

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

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

In many cases these imply the setting-up of close economic relations between the states and the Community which fall within the terms of reference of our Committee.

(d) Cooperation Agreements

These are not simply commercial but are based on full equality between the signatories. This ill-defined distinction is used to cover and disguise association agreements and commercial agreements on which the Committee on External Economic Relations should be consulted.

(e) Aid

Given its budgetary repercussions, the Committee on External Economic Relations and Parliament have a major role to play.

(f) Accession to international conventions, particularly those which lay down codes of conduct on pollution or the organization of economic relations.

(g) Participation in the work of international organizations.

It would sometimes be useful if Parliament could attend some meeting with observer status.

(h) Multilateral negotiations and conferences

- GATT
- UNCTAD
- Euro-Arab dialogue

(i) Negotiations with non-member States on the subject of membership

The effects on the external relations of the enlarged Community are of direct relevance to our committee.

(j) Measures taken as part of the Nine's external policy

These represent the first step towards a common foreign policy. In theory, the Commission is represented at discussions of the Political Committee of the foreign ministers, meeting in political cooperation, when the interests of the Community are at stake but only in an unofficial capacity. Parliament is not consulted officially despite the colloquys organized by its Legal Affairs Committee with the foreign ministers.

2. Position adopted by the European Parliament on the subject of the Community in its relations under international law

The European Parliament has commented on all aspects of action taken at the international level by the European Communities. Its attitude here can be summarized by the statement contained in the resolution on the adoption of and prospects for a system of basic prices for imported primary energy sources within the framework of a Community energy policy: 'emphasizes that it is in the Community's interest to speak with one voice at international level'.¹

The European Parliament has always supported action by the Communities in this area. The large range of instruments, which can be further developed or refined, must be deployed in such a way that the Communities are always effectively and permanently represented on the international scene.

¹ OJ C 57, 7.3.1977, p.26

But it is also clear that the Council will never concede to Parliament any powers other than those which it forced to grant it by a shift in the balance of power in favour of Parliament.

III. Scope for changes to the Luns Westerterp procedure

1. Solution adopted since 1973 (see Annex No. I)

- Before negotiations begin on a trade agreement with a third country and in the light of the information received by the appropriate parliamentary committee from the Council, a debate may, in appropriate cases, take place in plenary sitting;
- When negotiations have been concluded but before the agreement is signed, the President of the Council or his representative shall inform the appropriate parliamentary committees as to the content of the agreement on a confidential and unofficial basis;
- In view of the interest which Parliament has in trade agreements to be concluded by the Community, the Council shall inform it of the content of such agreements once they are signed and before they are concluded.

2. Changes which currently appear feasible

The situation has changed radically not in legal, but in political terms. The direct elections to the European Parliament have given the Assembly the backing of 180 million voters which makes it easier to embark on genuine dialogue with other institutions, particularly the Council.

It is not desirable that Parliament itself should participate in negotiations. Its role is to monitor how its suggestions are put into practice.

The most suitable moment for Parliament to intervene is between the time when the Commission has prepared its recommendations and the point at which the Council issues its directives if Parliament is to play an effective role in the real decision-making process.

- Before presenting its recommendations to the Council, the Commission should inform Parliament and the appropriate committees. It should not be forgotten that it is the Commission which has conducted the initial exploratory talks.
- Parliament should then hold talks with the Commission to amend the Commission's recommendations and to show the Council the form it wishes its directives to take.
- The Council does not need to be represented at this point at ministerial level. The presence of an official would be adequate

for the Council to be informed as to the opinion of the parliamentary committee(s) concerned, which would then decide themselves if a general policy debate was necessary in the plenary session or not, possibly leading to the adoption of a formal resolution containing recommendations to the Council before its directives were formulated.

- The Council would take a decision granting the Commission the right to negotiate, which not only reflected the will of the Member States but also that of Parliament.

3. Various practical considerations

- At no time does the Council negotiate so that it is the Commission, and not the Council, which Parliament must seek to influence, before the Council issues its directives.
- Council is not responsible to Parliament.
- The present course of consultation from Commission recommendation to Council to Parliament should be replaced by a procedure which follows the route Commission-Parliament-Council.
- It is clear from the above that the Luns Westerterp procedure (which is based on an agreement between the European Parliament and the Council) must be improved and a new procedure introduced between the European Parliament and the Commission to ensure that the opinion of the European Parliament is taken into account in the Commission recommendation or that the opinion of the European Parliament is sent to the Council at the same time as the recommendations from the Commission.
- Consideration of this change in procedure should be entrusted to a working party in which the Political Affairs Committee, the Committee on External Economic Relations, the Committee on Development and Cooperation and the Committee on Budgets are represented.
- Should the new procedure be adopted, provision must be made for sufficient time between the formulation of recommendations by the Commission and the final directives from the Council so that the parliamentary committees may formulate their opinions and, where necessary, a debate may be held in plenary session. Given the amount of time which experience has shown is needed for parliamentary procedures, this period of time should be not less than six weeks.
- It is essential that Parliament cooperate closely with the Commission on this issue if concrete results are to be achieved.

Procedure for participation by the European Parliament in the conclusion of trade agreements between the Community and third countries¹

1. The importance of having the European Parliament participate in the Community procedure for the conclusion of trade agreements with third countries has been emphasized ever since the session held by our Parliament in January 1965 (see the report prepared by Mr van der Goes van Naters on behalf of the Political Affairs Committee, Doc. 119 of 11 January 1965).

Since the EEC Treaties did not provide for the European Parliament to be consulted in the procedure for concluding such agreements, the parliamentary institution of the Community could not remain indifferent to this anomaly, both legal and political.

2. The first difficulties arose, at inter-institutional level, at the time when association agreements were being concluded between the Community and certain third countries. The problem was on that occasion to find a proper interpretation of Article 238 of the EEC Treaty, which provides that: 'these (association) agreements shall be concluded by the Council, acting unanimously after consulting the Assembly'.

This formula would seem to reflect the usual parliamentary ratification procedure for international agreements as followed by the various national parliaments. With this difference, however - and it is a very important difference - that the European Parliament does not have the right, within the Community legal order, to reject an international Community agreement (a right that national parliaments have²) but only to give an opinion on the agreements in question.

Consequently, if the European Parliament is consulted after the association treaty has been solemnly signed, the consultation no longer has any political or legal sense, even if the treaty in question is not formally concluded until the instruments of ratification have been exchanged. A vote by the European Parliament would not therefore have any value if it were expressed after negotiations had been concluded. In other words, as the European Parliament can do no more than express an opinion, the latter is not 'useful' unless it is delivered during the course of the negotiations.

3. On the basis of discussions held on this subject between the European Parliament and the Council, a solution has finally been found by having recourse to a special procedure commonly known as the 'Luns procedure', being named after the Dutch Minister for Foreign Affairs who was at that time the Council's President-in-Office.

1 Notes from the Secretariat of the Committee on External Economic Relations. October 1973 - PE 34.843

2 To the extent to which this is provided for in the various national constitutions.

Under this procedure the European Parliament has to be informed through its responsible parliamentary committees:

- (a) by the Commission of the European Communities, during the course of the negotiations;
- (b) by the Council, at the end of the negotiations proper and before the actual signing of the association treaty.

These two notifications, made to the responsible parliamentary committees, are, however, of a confidential nature.

Nevertheless, the 'Luns procedure' does not do away with the official consultation of the European Parliament, which takes place after the signing of the association treaty and before the deposit of the instruments of ratification.

4. Such a procedure was applied in the case of all the association agreements concluded by the Community (among others, the association agreements with Turkey and Malta).

5. It has been found, however, that it is often difficult in practice to distinguish between an association agreement and a trade agreement. A large number of trade agreements concluded by the Community are often in the nature of de facto association agreements since they do not simply relate to matters of trade but also embody technical cooperation and financial aid aspects.

6. It has therefore been wondered whether the 'Luns procedure' could not, by analogy, be extended to include trade agreements concluded by the Community.

The wishes expressed on this matter by the European Parliament were acted on by the Council. For the first time the Council's President-in-Office, Mr Westendorp, agreed to 'inform' the responsible committee of the European Parliament of the content of the EEC-Egypt trade agreement at the time of its conclusion.

7. Despite the progress that has thus been made, it has become clear that the role played by the European Parliament in the conclusion of Community trade agreements is still distinctly inadequate and that a more satisfactory procedure ought to be found.

8. This is borne out by numerous considerations:

- (a) in the resolution adopted by the Council as an annex to the Treaty of 22 April 1970 concerning Community acts having financial consequences, it is provided that the European Parliament should be put in possession of all information of use to it in assessing the financial consequences of such acts;
- (b) it is obvious that when a trade agreement provides for a reduction of the common external tariff - an essential element of the Community's own resources - it is necessary to consult the European Parliament so that the latter may appraise the reasons that have led to this reduction of the Community's own resources;
- (c) since 1 January 1973, the date on which the Community's commercial policy came into operation, trade agreements have been signed by the Community as such. It is, then, obvious that if such trade agreements - which are no longer subject to the approval of national parliaments - were to be concluded without the European Parliament being consulted, there would no longer be any form of parliamentary control on acts having the greatest importance, not only economic but also political, in international relations.

9. These various reasons prompted the European Parliament to present on 13 February 1973 a report drawn up on behalf of the Political Affairs Committee by Mr Giraudo on procedures for participation by the European Parliament in the conclusion of trade agreements between the Community and third countries (Doc. 300/72). The resolution adopted on this matter by the European Parliament apprises the Council of its desire to involve Parliament in the conclusion of trade agreements concluded with third countries by a system under which the responsible parliamentary committees receive relevant information before the agreements in question are actually signed. However, the European Parliament feels that, since the entry into force of the common trade policy on 1 January 1973, the 'Luns procedure' has become obsolete and that it ought to be more closely involved in the Council's decisions when trade negotiations are being conducted with third countries.

10. Consequently, within the framework of its recent proposals for improving relations between the Council and the European Parliament, the President-in-Office of the Council proposed to Parliament at its session of 17 October 1973 and further to the resolution adopted on

13 February 1973 (see preceding paragraph) that the European Parliament should participate more extensively in the sphere of trade agreements. In the opinion of the President-in-Office of the Council, this more extensive participation could be envisaged in the following manner (see the Council's note to the European Parliament on the improvement of relations between the Council and the European Parliament dated 16 October 1973 and published in the Bulletin of 19 October 1973, No. 34/73):

- before negotiations start on a trade agreement with a third country and in the light of information provided by the Council to the responsible parliamentary committees, a debate may, in appropriate cases, be held in the House;
- at the end of the negotiations but before the agreement is signed, the President of the Council or his representative shall inform confidentially and unofficially the responsible parliamentary committees of the substance of the agreement;
- bearing in mind the interest which the European Parliament has in trade agreements to be signed by the Community, the Council shall, after the signature of such agreements and before their conclusion, inform Parliament of their substance.

11. Members will find in the report of proceedings for the sitting of 17 October 1973 the text of the first reactions - generally favourable despite the too limited nature of the improvements proposed - by members of the European Parliament to the proposals which had just been made to them by the Council's President-in-Office (Official Journal, proceedings of the European Parliament - part-session from 15 to 19 October 1973 - No. 167).