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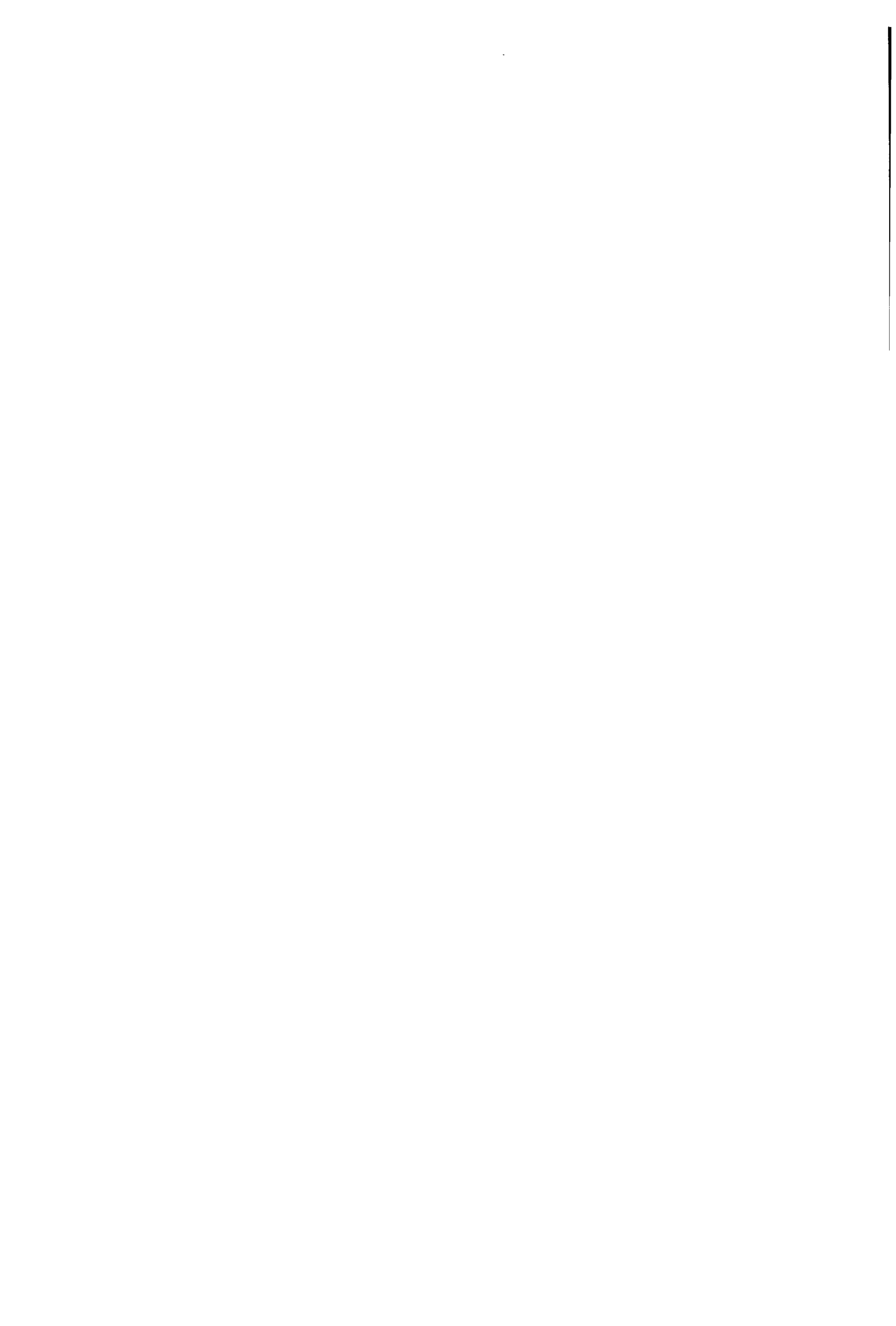
REPORT

drawn up on behalf of the Legal Affairs Committee

on Committees for the Adaptation of Directives  
to Technical and Scientific Progress

Rapporteur: Mr Alan R. TYRRELL

PE 89.463/fin.  
OR. EN



At its sitting of 13 February 1984, the European Parliament referred the motion for a resolution by Mr Collins on behalf of the Committee on the Environment, Public Health and Consumer Protection on "technical adaptation committees" (Doc. 1-1392/83) to the Legal Affairs Committee.

At its meeting of 2 March 1984, the committee appointed Mr Tyrrell rapporteur.

The committee considered the draft report at its meeting of 24 and 25 April 1984, and adopted it unanimously at this meeting.

The following were present at the vote: Mrs Veil, Chairman; Messrs Luster, Turner and Chambeiron, Vice-Chairmen; Mr Tyrrell, rapporteur; Messrs Enright, Bruno Friedrich, Geurtsen, Gontikas, Sieglerschmidt and Vié.

This report was tabled on 27 April 1984.

The deadline for the tabling of amendments to this report appears in the draft agenda for the part-session at which it will be debated.

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

MOTION FOR A RESOLUTION

on

Committees for the Adaptation of Directives  
to Technical and Scientific Progress

The European Parliament,

- having regard to the motion for a resolution on "technical adaptation committees" (Doc. 1-1392/83),
  - having regard to the general principle common to the laws of the Member States that the delegator should not interfere with the exercise of delegated powers,
  - having regard to the report of the Legal Affairs Committee (Doc. 1-205/84),
- A. whereas there is a large number of Committees for the Adaptation to Technical and Scientific Progress of Directives on a wide variety of subjects ("technical adaptation committees") whose legislative and consultative powers enable them to play an essential part in the legislative process and which are not answerable to any democratically elected body at either Community or national level,
- B. whereas the Commission should be able to exercise the powers delegated to it by the Council under Article 155, fourth indent, EEC Treaty, untrammelled by the necessity to submit its draft measures to such committees,
- C. whereas the powers exercised by such committees substitute in effect for the powers conferred by the Treaties on the European Parliament,
- D. whereas the Commission is ultimately responsible to the European Parliament in respect of its proposals for secondary as well as for primary legislation, whether the legislation in question is eventually adopted by the Commission itself or by the Council,
1. Calls upon the Commission to transmit to the European Parliament all those draft measures which it would currently send to the committees for the adaptation of directives to technical and scientific progress.

2. Undertakes
  - to notify the Commission within a period of two months or two part-sessions — whichever period is the longer — where it wishes to deliver an opinion on the proposed measures, and
  - to adopt any such opinion within a period of three months of its decision to draw up an opinion, which deadline may, however, in special cases be extended with the Commission's<sup>1</sup> assent;
3. Calls upon the Commission to transmit the opinion of the European Parliament along with the draft measures where existing legislation obliges it to submit these to the Council;
4. Requests the Commission to abstain from proposing the setting up of any further "technical adaptation committees" and the conferring of competences in new fields on existing committees of this type, and further to abstain from proposing measures which would deprive Parliament of the rôle in the legislative process conferred on it by the Treaties;
5. Requests the Commission to report to it by June 1985 on the action taken on the foregoing demands, and instructs its competent committee to examine this information in view of possible future action by Parliament to bring the procedure of other regulatory committees into line with that envisaged in the present resolution;
6. Calls on the Council to respect the spirit of the Treaties and to refuse to adopt any proposals which would set up any further such committees or confer on existing committees competences in new fields;
7. Reiterates the request contained in its resolution of 16 September 1983<sup>1</sup> to the Commission to secure a rationalization of the operation and financing of management, advisory and consultative committees and groups of experts;
8. Instructs its committees to have particular regard to the present resolution in examining future Commission proposals for legislative measures;
9. Instructs its President to forward this resolution to the Council and the Commission of the European Communities.

<sup>1</sup>-----  
OJ C 277, 17 October 1983, page 195

## EXPLANATORY STATEMENT

### Introduction

1. The 'technical adaptation committees' to which the motion for a resolution (Doc. 1-1392/83) tabled by Mr Collins refers are a sub-group (more correctly known as Committees for the Adaptation to Technical and Scientific Progress of Directives on a wide variety of subjects) of the larger category of regulatory committees which have been set up by Community legislation in such areas as customs matters, agriculture, commerce and many others. Like management committees in the field of agriculture, regulatory committees are composed of officials of the ten Member States presided over by an official from the relevant department of the Commission, though the procedure followed for each category is somewhat different.

As Mr Collins points out in recital G of his motion for a resolution, a favourable opinion of such a committees allows the Commission to enact "measures of considerable economic and political importance without Parliament's being given any opportunity to exercise its Treaty-enshrined duty of supervision"; in effect, the committees exercise powers which in the general scheme of the Treaties are conferred on the European Parliament.

2. For regulatory committees, including 'technical adaptation committees', the Commission transmits a draft measure to the committee and fixes a deadline for the latter to adopt its opinion. The votes of the representatives of each Member State are weighted as provided for the Council in Article 148(2) of the EEC Treaty.

3. Should the committee's opinion be favourable, the Commission must adopt the measures envisaged. Where the committee either produces a negative opinion or no opinion within the fixed deadline, the Commission must submit its proposal to the Council, which has three months in which to decide. Should it fail to do so, the Commission is once again obliged to adopt the measures it had proposed.

4. The setting up of 'technical adaptation committees' by directives on such subjects as motor vehicles, dangerous substances and preparations, cosmetic products and so forth (a more complete list is to be found in Supplement 2/80, Bulletin of the European Communities, pages 22 and 23;

situation as of 31 October 1980) can be seen, along with other regulatory committees, as a manifestation of a certain unwillingness on the part of the Council to devolve decision-making power on the Commission, even as regards the amending of the technical annexes to these measures to take account of developments in the relevant field since their adoption.

5. In the institutional structure set up by the EEC Treaty, it is for the European Parliament, and not a collectivity of national civil servants whose work is conducted in secret, to supervise the work of the Commission. While "technical adaptation committees" cannot themselves adopt legislative measures, they can veto their adoption by the Commission, and that simply by failing to reach a decision within the deadline fixed by the latter. Whatever about its conformity with the letter of Article 155, fourth indent, of the EEC Treaty, the technical adaptation committee system is contrary to the spirit of this provision, to the Treaty system and to the general principle common to the laws of the Member States that the delegator must not interfere with the exercise of delegated power.

The secrecy surrounding the work of such committees gives rise to graver doubts as to their actual role in practice in the legislative process, such as whether the Commission formulates its proposals so as to get a favourable opinion from the committee rather than proposing the measure which is most in the Communities' interests.

6. It might also be noted that the Commission is responsible to Parliament in respect of its proposals for secondary as well as for primary legislation, and whether the legislation in question is eventually adopted by the Commission itself or by the Council. This is particularly true in the case of amendments to the annexes attached to measures on which the European Parliament has already been consulted. Similar considerations of the ultimate responsibility of the Commission to Parliament also apply to other regulatory committees, though this is not examined here.

#### The Case of Council Directive 83/851/EEC

7. The problem of technical adaptation committees was recently adverted to in an opinion drawn up by the Legal Affairs Committee on the proposal for a directive amending Council Directive 70/220/EEC on the approximation of the laws of the Member States relating to measures to be taken against



air pollution by gases from positive ignition engines of motor vehicles, which opinion was adopted by the committee unanimously at its meeting of 15 and 16 February 1983<sup>1</sup>. The case is a clear illustration of the potential dangers of leaving the Commission to make the necessary adaptations to technical progress to a Council directive; a technical adaptation committee, composed of officials more concerned with narrow national and sectoral interests, is no safeguard for the wider interests of the consumer, the environment, the effect on energy policy and even the cost of amendments to technical annexes: such matters fall more properly within the purview of the European Parliament, with its more extensive outlook.

8. The proposal in question sought to achieve two ends: a wider definition of the term 'motor vehicle' was proposed in order to cover those powered by diesel engines, and the technical annexes to Directive 70/220/EEC were to be amended once again to bring them into line with current technical advancement. Had only this second objective been envisaged, the European Parliament would not have been consulted on the proposed amendments, and indeed on three previous occasions directives amending the technical annexes had been adopted without the consultation of the European Parliament. It was only the somewhat fortuitous inclusion of these proposed amendments to the technical annexes along with the proposed amendment to a substantive provision, which thus required to be proposed under Article 100 of the EEC Treaty, which led to the Parliament's being consulted on them.

9. The Legal Affairs Committee observed that the reductions in the limit values which the amendments to the technical annexes would bring about would cause an increase in fuel consumption of the order of 5%. The issues to which the proposing of such amendments gave rise are obviously of some considerable political importance - yet normally such draft measures would only be considered by the Committee on the Adaptation to Technical Progress of the Directives on the Removal of Trade Barriers to Trade in the Motor Vehicles Sector.

10. It was in this perspective that the Legal Affairs Committee adopted an amendment which would have required the Commission to transmit any proposed amendments to the technical annexes to the European Parliament, which was then obliged to inform the Commission within a fixed deadline

<sup>1</sup>-----  
Annexed to the COLLINS report, Doc. 1-82/83

whether or not it wished to express an opinion on the proposed amendments and to adopt any such opinion within another fixed deadline. The Legal Affairs Committee amendment was taken over by the committee responsible and later adopted by the European Parliament in plenary sitting<sup>1</sup>.

11. Though parliamentary support for this amendment was widespread, Mr Narjes, speaking on behalf of the Commission, did not welcome the European Parliament's initiative<sup>2</sup>. Mr Narjes informed the Parliament that it was mistaken to think of such adjustment to technical progress in the same terms as legislation; that a procedure which could, he said, delay the adoption of amendments by up to nine months would not be "helpful"; and the acceptance by the Commission of such a procedure "would not help us in our stubborn attempts to wrest a more flexible and practical interpretation of Article 155(4) from the Council ... but would only give those who do not want it a pretext for saying that we do not need any speeding up, since it is precisely here that we have accepted a delay of nine to twelve months."

12. The Parliament's amendment, however, did not seek to equate proposals for the adaptation to technical progress with proposed legislation; the amendment proposed a special procedure for this type of delegated legislation, distinguished by two features

- a decision by the European Parliament on whether or not to draw up an opinion (which could be devolved on the committee responsible under Rule 33 of the Rules of Procedure) within a fixed deadline of three months,
- a deadline fixed by the Community measure for submission of the European Parliament's opinion.

13. In dismissing the Parliament's amendment as "unhelpful" Mr Narjes has rather missed the point of the amendment, which is to help the cause of democratic supervision of Community legislation, the importance of which has been mentioned above; any delay caused by the Commission's waiting for the Parliament to adopt its opinion (which should, in any case, not exceed six months<sup>3</sup>) would surely be compensated by the knowledge that the measures adopted are acceptable to the Community's directly elected institution.

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<sup>1</sup> OJ C 161, 20 June 1983, page 181; the Legal Affairs Committee has proposed a similar amendment to the proposal for a directive on extraction solvents in foodstuffs (see PE 90.030/fin., pages 6-7)

<sup>2</sup> Annex to the Official Journal, No. 1-299/308-310

<sup>3</sup> Reduced to five months in the present motion for a resolution, paragraph 2: see also the amendment cited in footnote 1 above

14. Given the Commission's unwillingness to accept even the modest amendment proposed by the European Parliament, it is not surprising that the Council in adopting Directive 83/851/EEC<sup>1</sup> did not make any effort to respond to Parliament's preoccupations as to the democratic legitimacy of the technical adaptation committee procedure. Under this measure amendments to the technical annexes to Directive 70/220/EEC can in future as in the past be proposed and adopted without any possible intervention by the Parliament<sup>2</sup>.

#### The Solution Proposed

15. The motion for a resolution contained in this report calls upon the Commission to transmit all future draft measures which it sends to technical adaptation committees to the European Parliament and to await the opinion of the latter before either adopting the measures or submitting the proposals to the Council. This would permit the European Parliament to exercise its "supervisory [and advisory]" function in one field of delegated legislation at least; the details of the procedure to be followed in Parliament are a matter which falls within the competence of that institution, the Rules of Procedure of which provide the possibility for the Commission to request urgent consideration of the measures proposed.

16. The motion for a resolution also takes account of the fact that there are a large number of such committees and that their abolition overnight, however desirable, is somewhat unlikely. Nonetheless, the Commission should not propose either the setting up of any more of these committees nor the conferring of new competences on existing committees and should embark on a programme of proposing amendments to the directives in question in order to eliminate such committees.

17. The problem of management advisory and consultative committees in general has also been examined recently by the Parliament on the basis of an interim report drawn up for the Committee on Budgetary Control by Mrs Boserup (Doc. 1-446/83). In its resolution of 16 September 1983, following examination of this report the European Parliament observed "with concern ... that the Commission has no effective centralized system for monitoring the activities of those committees" and noted that "this situation has led to shortcomings, where consultation activities are to some extent autonomous and no longer fully under the Commission's supervision"<sup>3</sup>.

<sup>1</sup> OJ L 197, 20 July 1983, page 1

<sup>2</sup> In answer to Written Question No. 940/83 by Mr TYRRELL, Mr NARJES has indicated that "subsequent provisions" following Directive 83/851/EEC would be based on A. 100 EEC (OJ C 335, 12 December 1983, page 26): this does not of course affect what has been said on technical adaptation committees

<sup>3</sup> OJ C 277, 17 October 1983, pages 195-6

18. Such remarks apply to technical adaptation committees; however it is in the nature of such a secretive procedure that the extent to which these committees can act autonomously or quasi-autonomously is next to impossible to discern. The Commission's reply to paragraph 9 of the Parliament's resolution, a communication entitled "Report on Committees and Groups of Experts"<sup>1</sup>, deals largely with the financial and budgetary measures it has taken to control these committees, without examining the institutional aspects of their work.

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<sup>1</sup> COM(84)83 final, 17 February 1984; see also the BOSERUP report (Doc. 1-40/84) and Parliament's resolution of 10 April 1984

MOTION FOR A RESOLUTION

tabled by Mr COLLINS  
on behalf of the Committee on the Environment,  
Public Health and Consumer Protection

pursuant to Rule 47 of the Rules of Procedure

on 'technical adaptation committees'

The European Parliament,

- A - having regard to the judgement of the Court of Justice of 29 October 1980 which confirms the fundamental importance of the consultation of the European Parliament in the legislative process;
- B - having regard to the large and increasing number of so-called 'technical adaptation committees' which effectively deprive Parliament of its Treaty-given legal right to be consulted on certain types of proposed legislation,
- C - having regard to the reservations regarding this procedure expressed by the European Parliament in its resolution on the proposal for a directive on the approximation of the laws of the Member States relating to the type approval of motor vehicles and their trailers<sup>1</sup>,
- D - having regard to the amendments adopted on 20 May 1983 by the European Parliament<sup>2</sup> to the proposal for a directive amending Council Directive 70/220/EEC on the approximation of the laws of the Member States relating to measures to be taken against air pollution by gases from positive ignition engines of motor vehicles<sup>3</sup> to restore to Parliament the option of giving its opinion on proposed amendments to the annexes of the directive deemed necessary to take account of technical progress,
- E - having regard to the statement made on that occasion by Mr NARJES, member of the Commission<sup>4</sup>,

- F - having regard to Council Directive 83/851/EEC of 16 June 1983<sup>5</sup> which amends Directive 70/220/EEC without giving effect to the amendments of the European Parliament,
- G - having regard to the legal situation which results, whereby the Commission, following a favourable opinion of the Advisory Committee concerned, is empowered to enact measures of considerable economic and political importance without the Parliament's being given any opportunity to exercise its Treaty-enshrined duty of supervision,
- H - having regard to its resolution of 16 September 1983 on the cost to the European Community budget and the effectiveness of committees of management, advisory and consultative nature, and in particular paragraphs 2 and 3 thereof,
- I - whereas the Commission continues to propose the setting up of such committees<sup>1</sup>,
1. Requests its competent committee to examine the possible effects on the exercise of Parliament's powers in relation to consultation of the proliferation of committees of the type referred to, and to report back thereon to Parliament as soon as practicable;
  2. Instructs its President to forward this resolution to the Council and the Commission.

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<sup>1</sup> OJ C 160, 18.12.1969, p.9

<sup>2</sup> OJ C 161, 20.06.1983, p.181

<sup>3</sup> OJ C 181, 19.07.1982, p.30

<sup>4</sup> Debate of the European Parliament, 20 May 1983, p.308

<sup>5</sup> L 196, 20.07.1983, p.1

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<sup>1</sup> See for example Article 12 of the Proposal for a Council Directive on air quality standards for nitrogen dioxide (COM(83) 498 final)