

Bulletin

OF THE EUROPEAN
COMMUNITIES

Supplement 3/82



The institutional system of the Community

Restoring the balance

Commission
of the European Communities

Supplements 1982

- 1/82 A new Community action programme on the promotion of equal opportunities for women, 1982-85
- 2/82 Draft of a convention on Bankruptcy, winding-up, arrangements compositions and similar proceedings – Draft Convention and report
- 3/82 *The institutional system of the Community – Restoring the balance*

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of the European Communities

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The institutional system
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Relations between the institutions of the Community

(Commission communication of 14 October 1981 to the Council and Parliament)

Introduction

1. During Parliament's debate on the Programme Address in February 1981 the Commission undertook to produce a comprehensive paper on interinstitutional relations. However, the paper must be read in the broader context of the further political and institutional development of the Community.

There are three reasons for this.

The first is implementation of the May mandate. In the report which the Commission produced at the end of June 1981¹ we put forward an overall strategy to preserve the common market, adapt and amplify existing policies and develop new ones. Further development of European policy calls not only for a political willingness on the part of the Member States to embark on new policies, but also for institutions capable of taking the necessary decisions. It is essential, therefore, that the Community be given the institutional machinery it needs. The Commission regards this paper as a logical addition to its report on the May mandate.

Secondly, the Commission feels that this paper echoes the institutional debate held in Parliament in July 1981.² That debate was not confined to institutional relations as they now stand. Speakers went beyond these to consider how the Community should develop institutionally in the years ahead, with an eye in particular to the European elections due in 1984. The Commission wants to be involved in this debate. It believes that the time is ripe for it to present its view of possible developments outside the framework of the present Treaties.

Thirdly and lastly, the Commission welcomes the reopening of the political debate on European Union. Ten years have gone by since the idea was launched at the first Paris Summit, making it all the more urgent to encourage new initiatives now. The Commission has every intention of playing its part and making a constructive contribution to the discussion.

For these various reasons the Commission has expanded this paper beyond what it promised Parliament in February 1981.

2. The continued development of common policies – the main objective of the mandate report – will be a dead letter unless the

Community's institutions can rediscover their powers of decision. The Commission has no wish to rehash all the reports which have been produced on the Community's decision-making mechanism, to vanish without trace. We would simply make the point that the mechanism must recover its true Community form and work effectively again. Even now, with the present decision-making process, the Community is unable to deal with the problems facing it, a state of affairs which will grow only worse when the Community is enlarged to include two new Member States. Yet the institutions' credibility will always depend on their effectiveness. It is therefore of paramount importance for the Community to restore the institutional balance that the authors of the Treaties had in mind. This means that the Council must increase its efficiency by resorting, if need be, to majority voting. The second part of the paper goes into this in more detail.

3. The Commission believes that, if the Community is to develop, Parliament must be given a bigger role to play. Indeed, any strengthening of Parliament's position widens the Community's democratic base. As the Community's only directly elected institution, Parliament constitutes a unique public rostrum for the citizens of Europe.

If we are to revitalize European policy, it must be given more citizen-appeal. Parliament could serve as a platform for this, but to do so it must become the scene of major political events. Parliament itself must have a hand in political events. The third part of the paper considers ways and means of strengthening Parliament's role within the framework of the present Treaties.

The Commission has no wish to interfere in any way with Parliament's role and responsibilities; its suggestions merely point to ways in which Parliament could extend its influence rapidly to an area where it is noticeably absent, namely legislation. The last part of the paper looks at the role Parliament might play at a later stage of the Community's institutional development.

4. European integration is initially a wholly political concept, whose implementation proceeds

¹ Supplement 1/81 – Bull. EC.

² OJ C 234, 14.9.1981; Bull. EC 7/8-1981, points 2.3.4 to 2.3.9.

by the formulation of economic policies and decisions. Accordingly, if new policies are to be launched and successfully implemented, a broadening of the political consensus which underpins the Community is more important than ever. Our 25-year experiment has forced us to admit that the pursuit of the objectives laid down in the Treaties will not, by itself, lead to genuine European integration. The Community must go further and the Commission welcomes recent moves to strengthen political cooperation and full Commission participation therein. It regards this as a precondition for progress, especially progress towards European Union. The last part of the paper also discusses this aspect of European cooperation.

5. At all events the Commission would stress that care must be taken to ensure that closer political cooperation does not reinforce the intergovernmental nature of the Community's decision-making mechanism. That would weaken rather than strengthen the Community. Economic integration calls for a different mechanism to political cooperation.

Any new internal development presupposes stronger institutions. But this would not preclude the further development of European cooperation in fields where it has always been purely intergovernmental. As soon as convergence of political ideas is achieved, Member States should find it easier to bow to a truly Community decision-making mechanism.

The institutions' powers of decision must be increased as the Community grows in political maturity. It would be as well to bear this in mind as we embark on our political and institutional debate.

Development of Community policy, strengthening of the institutions and broadening of the political consensus underpinning cooperation are the three prongs of future action. As guardian of the Treaties, the Commission, fully aware of the original responsibilities it shoulders in the Community's institutional set-up, intends to be and stay in the foreground of the debate.

This paper, which constitutes the Commission's contribution to Parliament's discussion, sets out the guidelines on which the Commission proposes to base its consultations with the other institutions.

The interinstitutional balance

6. There is no doubt that the decline in Member States' political commitment has strengthened intergovernmental factors within the Community. A prime example of this is the decision-making process within the Council. Reference has been made on a number of occasions – in the Vedel Report¹ for instance – to the unhealthy consequences of the 'Luxembourg compromise' for decision-making. Its influence has been threefold: it is resorted to by all Member States, it is used on virtually all issues and it is invoked at all levels of decision-making. The 'Three Wise Men' in their report² suggested, quite logically, that in cases where the Treaty did not call for unanimity and where no Member State's vital interests were at stake, a vote should be taken after a certain amount of time had been devoted to the search for a generally acceptable solution. Any Member State which wanted to avert a vote because of an important national interest would have to say so clearly and explicitly and take responsibility for the consequences on behalf of its Government. The Commission had already suggested a similar approach in the section of its communication on enlargement (the 'Fresco')³ dealing with the transitional period and the institutional consequences.

7. The Commission would like to make two further comments. Firstly, it would like to clarify the intrinsic nature of majority voting. Majority voting does not mean that a vote is taken in every case where majority voting is possible, for the simple reason that it is always preferable for Council decisions to be acceptable to all Council members. However, even if unanimity is out of the question, it should be possible to avoid deadlock. Majority decisions should therefore be seen as a last resort, but one which cannot be abandoned without seriously jeopardizing the workings of the Community.

Secondly, routine insistence on unanimity has eroded the Commission's status in relation to the first paragraph of Article 149 of the EEC Treaty, in that it has made it easier for the Council to depart from its proposals: the most it can do is withdraw its proposal. The practice has also upset

¹ Supplement 4/72 – Bull. EC.

² Bull. EC 11-1979, points 1.5.1 and 1.5.2.

³ Supplement 2/78 – Bull. EC.

arrangements for parliamentary responsibility as envisaged by the Treaty.

8. Another spin-off from the strengthening of intergovernmental factors within the Community is the Council's refusal to delegate important administrative and managerial functions unconditionally to the Commission, even when the Treaties explicitly state that the Commission is to perform such functions, as, for example, under Article 205 of the EEC Treaty with reference to the budget.

The fourth indent of Article 155 of the EEC Treaty specifies that the Commission 'exercises the powers conferred on it by the Council for the implementation of the rules laid down by the latter', confirming that the Commission is the Community's supreme executive body. At the Paris Summit in December 1974, the Heads of State or Government agreed 'on the advantage of making use of the provisions of the Treaty of Rome whereby the powers of implementation and management arising out of Community rules may be conferred on the Commission'. The Council, however, has consistently acted otherwise. The 'Three Wise Men' in their report and the Commission in its communication on the problems posed by enlargement ('Fresco') made a number of useful suggestions for lightening the Council's perpetual burden and restoring one of its key functions to the Commission.

9. The developments discussed above have led to a shift in the balance of powers from the Commission to the Council. An early as 1972 the Vedel Report pointed out that this shift had led to Council predominance growing 'to such a point that the Council, acting in some instances as a Community body and in some others as the States in concert, has become the sole effective centre of power in the system'. The Commission's political function has been heavily compromised, as regards both its involvement in the legislative process and its executive and management functions. The Council must, of course, play the leading role in decision-making. But the Commission cannot be excluded from this 'political' function. The Commission for its part is anxious to preserve its political function, by both its power to propose and its power to mediate.

10. The Commission is absolutely convinced that the first step towards strengthening Parliament's position must be the restoration of mutual

trust between Member States and a return to observance of the letter and spirit of the Treaties. Restoration of mutual trust would automatically mean that the Community's political institutions were once again in a position to exercise their integrating function. In the case of the Council, the view expressed by the Heads of State or Government, namely that 'it is necessary to renounce the practice which consists of making agreement on all questions conditional on the unanimous consent of the Member States' (point 6 of the final communiqué of their Paris meeting, 9 and 10 December 1974), must be put into practice. Only in this way will the Commission be able to play its rightful role in the legislative process. But it must also be allowed to exercise its management powers to the full. If this is done, Parliament will win back the responsibilities conferred on it by the Treaties, namely to keep a watch on the Commission and provide a democratic base for the Community's legislative process.

11. The Commission is aware that there are other shortcomings in the workings of all the institutions – the Commission itself included. It is not going into them in detail, but simply referring back to the various reports mentioned above and to the many institutional resolutions passed by Parliament.

In this paper the Commission's only intention is to highlight the two most essential aspects for all interinstitutional relations. As soon as substantial improvements are made there, solutions to the other problems could be found more easily.

12. The European Council would then no longer have to take the decisions that the various Councils had failed to take and could fully concentrate on its prime role as the political dynamo – the role sketched out for it at the Paris Summit in December 1974.

Parliament's role in the decision-making process

13. The Commission has stressed the importance of Parliament's role in the Community's decision-making process on numerous occasions. Clearly, Parliament's full potential as a democratic power can only be realized in a climate of open cooperation between the three institutions.

If it is to be truly productive, three-way cooperation – and cooperation between Commission and Parliament in particular – must not be allowed to interfere with the responsibilities assigned specifically to the Commission by the Treaties. The Commission's right to initiate Community legislation is one of the original and cardinal features of the Community structure. The Commission recognizes and supports Parliament's aspirations, but it is also anxious to discharge the function assigned it by the Treaties to the best of its ability. It goes without saying that it is politically accountable to Parliament for the way in which it performs this task.

While it is accordingly keen that Parliament should engage in moves of its own, and fully intends to give these every possible support (see point 18), the Commission feels it must also state forthrightly that parliamentary participation in the actual decision-making process cannot be other than at the expense of the Council's quasi-monopoly of this. Parliament's very right and proper aspirations should initially materialize through, in particular, extension of the conciliation procedure (see point 19).

This said, the Commission is determined to do all it can to facilitate interinstitutional cooperation, making full use of existing procedures and proposing ways of strengthening them, so as to create a genuine political platform to serve the Community.

On this point the Commission is really taking up Parliament's debate on institutional relations of July 1981. Many of the ideas on the functions of Parliament discussed below are, in fact, simply a rewording of suggestions it has made earlier.

14. For the Community's decision-making machinery to operate efficiently, each of the three institutions involved must be in good running order. The Commission would like to stress here that it could only play a greater part in Parliament's political debates if certain improvements were made in the way in which parliamentary proceedings are organized.

15. It is not for the Commission to tell Parliament how to perform its watchdog role. Parliament has the means and knows how to use them. The Commission for its part recognizes this role and is prepared to ensure that Parliament is able to perform it fully.

The Commission feels that it is essential that Parliament should vet action taken on its amendments, resolutions and so forth. Parliament's committees provide an ideal forum for this, and the Commission hopes that the agreements reached in this matter can be extended. The present procedure for informing the full House of follow-ups to Parliament's opinions must be improved too. Similarly, better preparation for debates, either in writing or at committee level, could well give them more political bite.

16. Against this background, it is hardly surprising that Parliament's main interest in the institutional debate is to put its case for a say in legislative matters. As things now stand, Parliament's powers in this area are very limited. It is therefore perfectly understandable that it is trying to expand and exploit its consultative function.

The Commission feels that, on the whole, existing procedures provide Parliament with the means of acquiring a fair measure of influence, provided that they are consistently and rigorously applied in a spirit of mutual cooperation.

This is why the Commission understands the real significance of the recent changes to Parliament's rules of procedure. It is aware that they make provision for conciliation between the Commission and Parliament and is ready to act accordingly without, moreover, jeopardizing its own institutional responsibilities or needlessly blocking the decisions which are needed for the development of the Community.

17. As things now stand, Parliament's involvement in the decision-making process begins, as a general rule, when procedures are fairly well advanced. The Commission feels that it would be useful to know where Parliament stands at a much earlier stage.

It therefore intends to consult the House and Committees in advance more frequently on important issues, such as decisions affecting the future of the Community, before it makes formal proposals. In the case of major on-going initiatives with political implications, the Commission normally sends Parliament and the Council communications setting out the main issues involved. It intends to step up this practice and to draw on the views expressed by Parliament in the ensuing preliminary political debate when the time comes to shape its proposals.

18. The Commission considers it quite legitimate for a directly elected Parliament to discuss initiatives to develop the Community and press for implementation of its findings. After the debates in the House the Commission takes a careful look at the suggestions but by Parliament with a view to seeing if and how it can act on them.

It attaches the utmost importance to the ideas adopted by Parliament and incorporated into formal proposals and is more than willing to draw on them provided that there are no objections of substance. If there are, it will give Parliament a detailed and timely explanation of the reasons for its reservations.

19. In the Commission's view the conciliation procedure, introduced on its initiative and enshrined in the Joint Declaration of 4 March 1975,¹ was designed to give Parliament an opportunity, in specific cases, to add weight to its opinions and play an effective role in the decision-making process by means of direct dialogue with the Council. Had things gone as planned, the conciliation procedure might have been a first step towards genuine powers of co-decision for Parliament.

It must be admitted, however, that the procedure failed to satisfy Parliament for a variety of reasons. Parliament never felt that it was involved in real dialogue with Council members, although this was the *raison d'être* of the declaration in the Commission's view.

The Commission therefore proposes that the other parties to the declaration should review the procedure with a view to making it really effective.²

Conciliation should take place at an early stage before national positions have become entrenched, and all Council members should be free to participate, as originally intended. Better preparation in the form of preliminary contacts between institutions (which the Commission would actively assist) could increase the chances of agreement being reached.

If the conciliation procedure is to produce results, three-way discussions must be initiated in which the Commission would do all in its power to promote political *entente* between the institutions. The Commission for its part advocates extension of the conciliation procedure and intends to raise

this in connection with review of the Joint Declaration. It feels, however, that there is little point in extending the procedure until the content is brought into line with the objective.

20. Legislative conciliation covers a very broad field already, namely 'Community acts of general application which have appreciable financial implications, and of which the adoption is not required by virtue of acts already in existence'. Very often, decisions to implement new policies or develop existing ones have substantial budgetary and financial repercussions. There is therefore no apparent reason why the legislative conciliation procedure could not be used extensively. For instance, the Commission considers that most of the decisions following on from the mandate report would qualify, the object being to ensure that they are consistent with any action which Parliament takes later under its budgetary powers, when the financial consequences of the mandate are incorporated into the budget.

It should be borne in mind that so far legislative conciliation has run up against a series of general problems in which Parliament's budgetary powers have been at stake. They include the classification of expenditure as compulsory or non-compulsory³ (which determines the respective powers of the institutions with regard to the budget), the indication of figures, whether binding or for purposes of evaluation, to restrict the budgetary implications of the action proposed, the question whether or not the budget by itself is an adequate legal basis for expenditure and the part to be played by the committees in taking individual financing decisions.

It is therefore essential – and this would also serve to revitalize legislative conciliation – that the interinstitutional dialogue on budgetary matters should produce a genuine convergence of the views of the institutions.

21. It is in the budgetary field above all others that Parliament possesses real powers, although recent years have shown that using them can lead to confrontations between the two arms of the budgetary authority, both when the budget is

¹ OJ C 89, 22.4.1975.

² See p. 16 *et seq.* of this Supplement.

³ 'Compulsory' expenditure is 'expenditure necessarily resulting from [the] Treaty or from acts adopted in accordance therewith' (Art. 203 EEC).

being established and when it is being implemented. On a number of occasions the Commission has called for a real interinstitutional dialogue and Parliament has fought for this for a number of years. Although some initial progress has been made, now is the time for it to begin in earnest. It is true that agreement has been reached on some budgetary principles, but Parliament has expressed the desire to go further along this road and deal with all the points listed in its resolution of 10 April 1981¹ as well as any other matters which the Council might wish to raise. The Commission fully supports this approach by Parliament.

On these points, as on others where the positions of the institutions are still far apart, the interinstitutional dialogue must lead to solutions which are acceptable to all the parties concerned and in conformity with the Treaties.

With respect to the content of the budget, where Parliament's most extensive powers concern non-compulsory expenditure, the Commission, together with Parliament, will continue to seek a better balance between compulsory and non-compulsory expenditure. Tangible evidence of this determination could be seen in recent budgets, but more will be possible in the restructuring exercise under the mandate. The Commission's objective approach to the classification of expenditure is not far removed from that of Parliament.

22. The Treaty of 22 July 1975 gives Parliament the power to grant the Commission a discharge in respect of the implementation of the Community budget. Parliament has interpreted this right extensively and has made political use of its power of control by examining both the utilization of appropriations and the implementation of the various policies. The Commission can confirm that it accepts this form of parliamentary control.

23. The Commission is aware that the conclusion of international agreements is a Community activity of major political importance and understands Parliament's growing, legitimate interest.² It is also aware that Parliament considers its powers in this respect less than satisfactory – when compared with those of some national parliaments – despite the fact that the Luns and Westerterp procedures, which have not always been exploited to the full, represent an improvement on the legal situation deriving from the Treaties.

The Commission is prepared to collaborate with Parliament and the Council in the search for an agreement on practical improvements to existing procedures so that Parliament can be more closely involved in the preparation of international agreements, without eroding the competences of the individual institutions.

In practice the Luns and Westerterp procedures apply to association agreements and bilateral trade agreements only. The Commission feels that they could readily be extended to other Community agreements, in other words, to multilateral trade agreements (such as commodity agreements on cereals, sugar, cocoa, etc.) and agreements in other fields (such as the environment). This has indeed already been done, as witness for instance Parliament's action in holding a debate on the Multifibre Arrangement.

Moreover, the content of the procedures could be improved to provide Parliament with more information, thereby strengthening its advisory and supervisory roles.

There is nothing to prevent Parliament from organizing a policy debate in plenary session before major negotiations begin. If Parliament were to do so, the Commission would be only too pleased to take part.

As far as negotiating mandates are concerned, it is hard to see how the matter could be debated in public without jeopardizing Community interests. However, the Commission has no objection to briefing the appropriate parliamentary committee on the general political and economic factors on which the negotiating mandate is based.

The Commission is already in the habit of briefing parliamentary committees on the progress of negotiations. It is quite prepared to do more in this respect on the understanding that contacts remain unofficial and confidential.

Taken together, these improvements should enable Parliament to achieve the desired objective, namely to play a larger part in negotiations with non-member countries.

24. Finally, the Commission considers that, even in the short term, Parliament has the means to extend its influence.

¹ OJ C 101, 4.5.1981.

² See p. 20 *et seq.* of this Supplement.

The Commission feels that the proposals and suggestions made in this section of the paper could make for better and more balanced relations between Parliament and the Commission. It is aware that relations between Parliament and the Council have also tended increasingly towards a direct and sometimes profitable dialogue and considers that such relations help to enhance Parliament's political standing in the Community. It is pleased to note in this respect that the President of the European Council has announced that she will address the House on the work of the European Council.

Some of the suggestions regarding relations between the three institutions made in this document will have to be given shape in interinstitutional agreements. The Commission will take the necessary steps in this regard.

Beyond the Treaties

25. Our suggestions for strengthening Parliament's position, although significant, must be seen in the current context of the Community. With European Union in prospect, Parliament's powers should perhaps be extended further. European Union is, after all, a dynamic process and, as the 'Three Wise Men' so rightly said, it must lead to a Community prepared to display increasing solidarity. The basis for this could be a new treaty, which would respect the fundamental principles of the existing Treaties and supplement them to establish a European Union.

26. The idea of a Treaty on European Union is not new, since it was launched some years ago by Mr Tindemans in his report on European Union.¹ It was taken up by Mr Genscher in January 1981. And the German and Italian Governments have proposed to their partners the adoption by solemn declaration of a 'European Act' covering the European Community, political cooperation and the European Council.² In other words, it would confirm the role of the Community as the cornerstone of European integration and the role of the European Council as the political body responsible for laying down guidelines for European cooperation. An Act along these lines would not create European Union but would provide a framework for achieving it.

The Commission considers that this suggestion merits reflection. As the dividing line between the

Community and political cooperation becomes increasingly blurred, the time is ripe for putting forward concrete ideas. The major issues facing the Community (the economic crisis, energy problems and relations with developing countries) can no longer be solved without reference to foreign policy decisions. The Commission believes that the subject should be pursued further. It intends to make an active contribution by submitting its own suggestions to Parliament and the Member States in the near future.

27. Parliament's views on this cannot be ignored. It endorsed the idea of a new treaty in July 1981³ and would like to draft it itself. The Commission feels that any new treaty should define the direction in which Parliament's powers should be extended, providing in particular for Parliament to be given certain legislative powers in line with the undertaking given at the first Paris Summit in 1972. It considers it quite natural therefore that Parliament should be involved in drafting the text and welcomes Parliament's decision to set up a standing committee on institutional affairs.

The Commission is well aware that these ideas, including the suggestion for Parliament to be given a say in the appointment and investiture of the Commission, cannot be put into practice overnight, that it will take time and, above all, political will.

28. European Union is not a matter for the Member States' governments alone. Its success depends in large measure on the support of the people of Europe. In the Declaration on European Identity issued on 15 December 1973,⁴ the Heads of State or Government recognized that the European identity is one of the fundamental ingredients for a united Europe.

The Commission feels sure that Parliament, as the voice of the spirit of Europe, will do all in its power to help create a comprehensive and effective institutional structure for the Community.

¹ Supplement 1/76 – Bull. EC.

² Bull. EC 11-1981, points 3.4.1 and 3.4.2.

³ Bull. EC 7/8-1981, point 2.3.5.

⁴ Seventh General Report, Annex 2 to Chapter II.

The conciliation procedure

(Commission communication of 16 December 1981 to the Council and Parliament)

Introduction

29. By their joint declaration of 4 March 1975¹ the European Parliament, the Council and the Commission established a procedure for conciliation between the three institutions aimed at involving Parliament more effectively in the adoption of 'Community acts of general application which have appreciable financial implications, and of which the adoption is not required by virtue of acts already in existence'.

Although the procedure has sometimes made it possible to bring the Parliament's and the Council's positions closer together, it is generally agreed that in most cases it has not operated satisfactorily. In their report on the European institutions in October 1979 the 'Three Wise Men' analysed admirably the procedure's drawbacks and made a number of suggestions for improving it.²

At the meeting in Strasbourg on 17 November 1981 between Foreign Ministers, the enlarged Bureau of Parliament and the Commission,³ the then President of the Council had the following to say about the unsatisfactory nature of the procedure: 'It can prove difficult to reconcile the two institutions' conflicting positions; the procedure is quite lengthy and the steps involved have not been defined in detail'.

More generally, the procedure has not come up to parliamentary expectations, in that it 'has not given it the feeling that it is taking part in a real dialogue with the members of the Council, which, in the eyes of the Commission, was what it was set up for'.

Lastly, the directly elected Parliament has called for an extension of the procedure to cover all important Community acts, whether they have major financial implications or not, and has criticized the present arrangements under which, in practice, the procedure is initiated only if both the two parties agree that it is applicable.

30. This is why in its communication of 14 October 1981 the Commission proposed to the European Parliament and the Council that they 'should review the procedure with a view to making it really effective'.⁴ The draft second joint declaration, attached, has been drawn up with this end in view.

It aims, firstly, at extending the procedure to cover all important Community acts, as desired by Parliament.

Secondly, it provides for the procedure to be initiated at the request of any one of the three institutions.

It describes the normal, two-stage, procedure, to which exceptions can be made in special cases by the Presidents of the three institutions, and to which they can add special provisions.

It is intended that the first meeting of the Conciliation Committee should be held after work has progressed as far as possible, as soon as the members of the Council have studied a Commission proposal sufficiently to be able to discuss it to some purpose with parliamentary and Commission representatives. Even at the second and last meeting of the Conciliation Committee (if such a meeting is needed), the joint approach established by the Council should leave room for a number of options and thus enable discussion to be profitable and fruitful.

After the last meeting Parliament will have a certain time in which to deliver a new opinion, after which the Council will be entitled to take definitive action.

The Commission considers that these improvements should enable the Parliament's institutional role to be strengthened, without this making the process of Community decision-taking more cumbersome.

31. As stated by the President of the Commission and the Member of the Commission with responsibility for relations with the European Parliament at the meeting in Strasbourg on 17 November, the Commission feels that a special procedure should be used for considering its draft new joint declaration. The three institutions could agree to designate high-level representatives to consider the Commission draft, to try to reach agreement on proposed amendments and to report back to them. Naturally, the creation of this *ad hoc* working party holds no implications for future decisions, each institution remaining

¹ OJ C 89, 22.4.1975.

² Bull. EC 11-1979, points 1.5.1 and 1.5.2.

³ Bull. EC 11-1981, point 2.3.1.

⁴ See pp. 10 and 11 of this Supplement.

free to define its position on the basis of the working party's report.

The Commission thinks that this suggested procedure should permit satisfactory agreement to be reached rapidly on the improvements that, in the view of three institutions, need to be made to the conciliation procedure.

Draft second joint declaration of the European Parliament, the Council and the Commission on the conciliation procedure

The European Parliament, the Council and the Commission,

Whereas by their joint declaration of 4 March 1975¹ the three institutions established a conciliation procedure to ensure that the European Parliament was effectively involved in the preparation and adoption of decisions giving rise to major expenditure out of or revenue accruing to the budget of the European Communities ;

Whereas following the direct election of Members of the European Parliament the part played by that institution in the Community's legislative process should be heightened ; whereas to this end the conciliation procedure should be extended to cover further important decisions other than those for which it was originally intended ;

Whereas advantage should be taken of past experience to improve the way in which the procedure operates,

Have agreed as follows :

1. The conciliation procedure shall be used for Community legislative acts which are of general application and of considerable importance for the Community and whose adoption is not required by acts already existing.

2. The procedure shall be initiated at the request of the European Parliament, the Council or the Commission.

3. The purpose of the procedure shall be to seek agreement between the European Parliament and the Council.

4. Conciliation shall be effected within a Conciliation Committee composed of representatives of the European Parliament, the Council and the Commission.

5. Unless the Presidents of the three institutions concerned decide otherwise, laying down schedules and special arrangements for the conciliation procedure in particular cases, the conciliation procedure shall be as follows :

(a) a first meeting of the Conciliation Committee may be held as soon as, after receiving an opinion from the European Parliament, the Council has determined what the main problems posed by a Commission proposal are and how they might be settled ;

(b) on the basis of the work of the Conciliation Committee, the Council may either take definitive action on or may establish a joint approach, possibly including various options, to the proposal under discussion ;

(c) this joint approach shall be submitted to the Conciliation Committee ;

(d) the European Parliament shall, within a maximum period of three months following the second meeting of the Conciliation Committee, deliver a new opinion on the Commission proposal ;

(e) on expiry of this period or as soon as it has received a new opinion from Parliament, the Council shall be entitled to act definitively.

6. During the course of the conciliation procedure the Presidents of the three institutions concerned shall take all requisite steps to facilitate proceedings and to enable it to fulfil the purpose specified in paragraph 3. They may, in particular, convene additional meetings of the Conciliation Committee.

7. This joint declaration replaces the joint declaration of 4 March 1975.

Done at Brussels,

For the European Parliament
For the Council
For the Commission

¹ OJ C 89, 22.4.1975.

The role of the European Parliament in the preparation and conclusion of international agreements and accession treaties

(Commission communication of 13 May 1982 to Parliament and the Council)

Introduction

32. For a considerable time, the European Parliament has been demanding a greater say in the negotiation and conclusion of international agreements to which the Community is to be a party and of treaties on the accession of new Member States. These demands, which carry added weight now that Parliament is directly elected, were most recently and most comprehensively spelt out in the Blumenfeld resolution adopted on 18 February 1982.¹

The Commission has always considered increased involvement of Parliament in these procedures both desirable and feasible without upsetting the division of powers between the institutions laid down in the Treaties.

Within the bounds of its own responsibilities, the Commission in fact already works in close liaison with Parliament and maintains a constant interchange of information with it.

However, the Commission has recently undertaken, in its communication of 14 October 1981 entitled 'Relations between the institutions of the Community',² 'to collaborate with Parliament and the Council in the search for an agreement on practical improvements to existing procedures so that Parliament can be more closely involved in the preparation of international agreements, without eroding the competences of the individual institutions'.

The following ideas and suggestions are submitted to Parliament and the Council with the aim of fulfilling that undertaking.

Allowing Parliament a greater say in the preparation and conclusion of international agreements

Present situation – Differences from role of national parliaments

33. Under the Treaties, Parliament is consulted on agreements in cases where consultation of it is required by the article with forms the legal basis for the agreement. The Commission proposes that negotiations be held and conducts the negotiations. The Council authorizes the opening of

negotiations, gives the Commission any instructions which might be required, and concludes the agreement.

In February 1964 and November 1973 the Council adopted two procedures known as the 'Luns' and 'Westerterp' procedure for association and trade agreements respectively. Their main purpose is to ensure that Parliament is kept fully informed throughout the negotiation of such agreements.

The role of the European Parliament in the system set up by the Treaties is thus different from that played by national parliaments in Member States. The national parliaments, although unable to amend agreements negotiated and signed by their governments, have the power, in important cases at least, to approve or reject the agreement *in toto*. Under some constitutions, however, certain types of agreement escape parliamentary scrutiny, such as those of an administrative or technical nature, those concluded under existing legislation or for a limited period, and those with only minor financial implications.

Measures proposed

Objective

34. ● The objective of the suggestions the Commission has to make cannot be to introduce into the Community legal order a system similar to those in force in the Member States. That would require amendment of the Treaties. It is desirable, however, as Parliament recognizes, that a practice should be adopted that is as close as possible to those systems.

● The Commission believes that to attain this objective it is necessary to increase Parliament's say in the preparation and conclusion of treaties and agreements that are of significance for the formulation and application of Community policies.

It is in relation to instruments of this type that the proposed measures are intended to apply.

It is not proposed that Parliament should have to consider agreements or arrangements of an administrative or technical nature or which are

¹ OJ C 66, 15.3.1982; Bull. EC 2-1982, point 2.4.4.

² Page 12 of this Supplement.

adopted within the framework of earlier agreements.

- Adoption of the above objective also means that, although Parliament would certainly not be left out of the negotiation stage (it would in fact be kept regularly informed throughout), its involvement would be greatest at the stage of the conclusion of the agreement.

It appears from the Blumenfeld resolution that Parliament agrees with this approach.

Preparation and negotiation stage

- The Commission is prepared to inform Parliament (for reasons of confidentiality, through the appropriate parliamentary committees) of projected negotiations as early as the stage of preparation of a draft negotiating brief for submission to the Council. The information given would cover the main points of the negotiations. Parliament would thus be informed of the basis of the negotiations before they were actually opened.

- The Luns/Westerterp procedures should be extended to all treaties and agreements which the Community proposes to conclude and which are important for the formulation or application of Community policies.

This would mean that, in addition to the information provided by the Commission on a routine basis through the parliamentary committees and the attendance of Council representatives at any debates Parliament might hold, the appropriate committees of Parliament would also be acquainted by the Council, on a confidential and unofficial basis, of the substance of agreements before they are signed.¹ This would apply not only to agreements based on Articles 238 and 113 but also to those based on other articles.

In this way Parliament would keep in close touch – much closer than is possible for national parliaments – with the progress of important international agreements at all stages in their preparation.

By judicious use of the information it received, Parliament would be able to exert an increased influence on the direction of the negotiations.

Conclusion stage

As regards Parliament's involvement in the conclusion of agreements, the Commission consi-

ders that the following two practical measures would, without altering the existing legal framework, allow Parliament to play a greater role.

- First, the Council would, except in emergencies, consult Parliament after signing an agreement not only, as at present, in cases where consultation is required by the Treaties, but also even where it is not bound to do so, in relation to all treaties and agreements of importance for the formulation and application of Community policies.

This extension of consultation of Parliament would chiefly concern important agreements concluded under Article 113 (with Article 238, which provides for mandatory consultation, the most frequent legal basis for agreements), but it would also cover important agreements based on other articles of the Treaties which do not provide for consultation of Parliament.

It would, of course, be necessary for Parliament to deliver its opinion within the time-limit dictated by the urgency of the case.

- Secondly, it would be agreed that if Parliament voted by a large majority against the conclusion of an agreement on which it was consulted, there would be a political debate between the three institutions concerned before the agreement was concluded.

The Commission firmly believes that through such a debate, conducted in an open and frank atmosphere at an appropriate political level, Parliament would be able to exert a definite influence on the decision concerning the treaties and agreements which were important for the formulation and application of Community policies.

Accession treaties

1. Unlike agreements concluded by the Community, treaties of accession to the EEC or Euratom are negotiated and concluded by the Member States and not by the Community institutions.²

¹ The formal notification of Parliament after signing, which is provided for in respect of trade agreements under the Westerterp procedure, would become unnecessary if consultation of Parliament became the rule, as is suggested. The notification would be replaced by consultation.

² In the case of the ECSC, terms of accession are determined by the Council, acting unanimously.

The Community institutions have a say only in that the decision on the principle of accession is taken by the Council, after consulting the Commission.

It is true, however, that the negotiations are held under Council auspices and that the Commission is involved in them and in practice does a large part of the preparatory work.

2. This being so, the involvement of Parliament in accession procedures is really possible only where the Community itself plays a role in such procedures, and within the limits imposed on that role.

It is suggested, therefore, that before taking a decision on the principle of an accession the Council, as well as obtaining the opinion of the Commission, should also encourage a political debate in Parliament.

3. Secondly, the Commission is prepared to keep Parliament informed of the progress of negotia-

tions in so far as it is free to disclose such information.

4. Finally, of course, there is no reason why Parliament should not bring influence to bear on the various national governments and parliaments by drawing their attention to the results of the debates it holds before the opening of negotiations and after the signing of an accession treaty.

The suggestions outlined above represent, in the Commission's opinion, the rudiments of a pragmatic and effective procedure which would increase Parliament's say to the greatest possible extent, in the interests of wider democratic control, without upsetting the division of powers between the institutions laid down in the Treaties.

When these suggestions have been considered by Parliament and the Council, detailed arrangements could, if necessary, be worked out for implementing the procedure.

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The institutional system of the Community – Restoring the balance

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On 14 October 1981 the Commission sent the Council and Parliament a communication on relations between the institutions of the Community. In two further papers it developed more specific themes : the conciliation procedure and Parliament's role in preparing and concluding international agreements and accession treaties.

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