MAASTRICHT AND THE CODECISION PROCEDURE: A SUCCESS STORY

SOPHIE BOYRON*

THE Maastricht Treaty aimed partly to close the democratic deficit that exists in the European decision-making process. Accordingly, the role and the powers of the European Parliament were increased: a right of initiative was created,[1] committees of inquiry were reinforced,[2] the right of petition[3] was recognised, an Ombudsman was created[4] and a new legislative procedure,[5] which attempted to put the Parliament on an equal footing with the Council, was also included in the Treaty.

There is no doubt that the codecision procedure created by the Treaty on European Union increased the legislative powers of the European Parliament. However, the procedure set out in a new Article 189b of the EC Treaty was condemned by most commentators on the Treaty: it was complex, confusing and completely lacking in transparency.[6] The procedure was also accused of giving purely negative powers to the European Parliament.

In fact, these defects become obvious when a summary of the procedure is attempted. The Commission sets the wheels in motion by forwarding a proposal to both the Council and the European Parliament. The Parliament adopts an opinion and sends it to the Council, so that it can adopt a common position. Once the Parliament has received the common position, it has three months to decide between four possible courses of action:

(1) it can agree to the common position and the Council adopts the act finally;
(2) it can refuse to act and the Council is then entitled to adopt the text as it stands;

* Lecturer in Law, University of Birmingham. I am grateful to the staff of the Secretariat of the Committee on Institutional Affairs and the Conciliations Secretariat of the European Parliament without whose help this article could not have been written. I thank Anthony Arnull and Gary Miller for their valuable comments on an earlier draft of this article. Responsibility for errors is entirely my own.

1. Art.138b(2) of the EC Treaty.
2. *Idem*, Art.138c.
3. *Idem*, Art.138d.
4. *Idem*, Art.138e.
5. *Idem*, Art.189b.
6. See the opinion of Jean-Claude Piris, "After Maastricht, Are the Community Institutions more Efficacious, more Democratic and more Transparent?" (1994) 19 E.L.Rev. 449, 469–470.

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(3) it can propose amendments to the common position;
(4) it can show an intention to reject the common position by absolute majority; the Council can then convene a conciliation committee in order to explain its position; the Parliament can subsequently reject the text or propose amendments to the common position.

If amendments are made they are forwarded to the Commission and the Council. If they are approved by the Council within three months, the text is finally adopted by the Council. If the text does not meet with the approval of the Council, the conciliation committee must be convened; it has six weeks to agree to a joint text. If a joint text is drawn, both the Council and the European Parliament have to approve it within three months. If no text is reached, the Council can adopt its common position incorporating the parliamentary amendments if it wishes. The European Parliament can reject this text by absolute majority only.

The complexity of the procedure is fully uncovered by this short description. If specialists are at a loss to comprehend it, small wonder it cannot be understood by the public at large.

In short, first impressions were far from positive. It is therefore interesting to take a closer look now that Article 189b has entered into force: first, to provide an in-depth legal study of Article 189b; second, to analyse its working in practice; and, lastly, to propose changes and reforms which might usefully be made at the Inter-Governmental Conference of 1996.

I. A HIGH DEGREE OF LEGAL UNCERTAINTY

WHEN all the questions over legal interpretation are aired, one understands better the criticisms that were heard as soon as the final drafting was made public. In fact, questions and loopholes in Article 189b abound, and they could well have compromised the proper functioning of the new legislative procedure. It is necessary therefore to examine them.

To underline the internal contradictions that some of these difficulties of interpretation create, they will not be presented in the form of a simple list but, rather, organised around three main themes. These themes are central to the procedure itself and problems connected with them might jeopardise its functioning.

A. The Length of the Procedure

Lack of precision in its drafting might make the Article 189b procedure much more lengthy than was originally planned. The efficiency of the Community legislative decision-making process might be at stake.

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1. The need for reconsultation: adding an extra reading

Once the Commission's proposal has been received by both institutions, the European Parliament forwards its opinion to the Council, which will in turn adopt a common position.[7] Since an opinion is given by the European Parliament, the question arises whether this opinion constitutes a consultation of the European Parliament by the Council.

If the answer to that question is "yes", the European Court of Justice has created through its case law the obligation to reconsult when the amendments put forward by the Council are too far from the text adopted by the European Parliament in its opinion.[8] This case law should therefore be extended to the consultation stage included in the codecision procedure. The analysis of the decisions shows that the Court does not seem to consider the matter differently for each legislative procedure and that the obligation concerns all consultations included in any legislative procedure.[9]

On the other hand, it has been argued that this does not constitute a proper consultation of the Parliament by the Council since the text is sent directly by the Commission to them both. The situation would therefore be drastically different from the one found in the consultation procedure.[10] The legal services of the various institutions seem to believe that this first stage does not consist of a consultation of the European Parliament by the Council but a simple participation by the Parliament in a complex legislative procedure.

The European Court might be persuaded by the argument above: creating a reconsultation obligation would in fact increase the number of readings to four. It is therefore not an advisable solution, even if the European Parliament's prerogatives are threatened.[11]

7. See Art.189b(2): "The Commission shall submit a proposal to the European Parliament and the Council. The Council, acting by a qualified majority after obtaining the opinion of the European Parliament, shall adopt a common position. The common position shall be communicated to the European Parliament."

8. See recently Case C-65/90 *Parliament* v. *Council* [1992] E.C.R. I-4593.

9. See *idem*, para.16, which is drafted in an all-embracing manner: "Il résulte de la jurisprudence de la Cour que l'exigence de consulter le Parlement européen au cours de la procédure législative, dans les cas prévus par le traité, implique l'exigence d'une nouvelle consultation à chaque fois que le texte finalement adopté, considéré dans son ensemble, s'écarte dans sa substance même de celui sur lequel le Parlement a déjà été consulté, à l'exception des cas où les amendements correspondent, pour l'essentiel, au souhait exprimé par le Parlement lui-même."

10. See the text of Art.189b(2), *supra* n.7, and compare with the text of Art.189c(a): "The Council, acting by a qualified majority on a proposal from the Commission and after obtaining the opinion of the European Parliament, shall adopt a common position."

11. It is true that the European Parliament has ample opportunity to express its views at later stages. However, a further opinion after reconsultation would be adopted by simple majority while amendments adopted during the second reading require absolute majority.

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2. The time limits

For a procedure which relies heavily on time limits[12] because of its complexity, the drafting of the time limits in Article 189b is too vague. Most of the stages of the procedure are to be completed within a strict deadline so that legislation can be adopted quickly and no institution can block the legislative process. In reality, the text suffers from two main defects: the time limits are either not precise enough or not specified at all.

If one looks through the various stages, a number of unspecific time limits are found: first, at paragraph 2, the European Parliament acts on the common position "within three months of such communication". What is the exact date to be taken into account, the one of despatch by the Council or that of receipt by the Parliament? Second, at paragraph 3, the Council has to act on the European Parliament's amendments "within three months of the matter being referred to it". Again, no exact date is mentioned.

On the other hand, no time limit at all is imposed on the Commission delivering its opinion on the amendments during the second reading. The European Court is likely to apply the standard of "reasonable delay", but the matter should have been mentioned in the text of the Treaty.

Also, the time limits included in paragraphs 2 and 3 leave a gap between successive stages of the procedure: the deadline forcing the European Parliament to act on the common position does not run from the date of its adoption by the Council, but from its communication to the European Parliament; some extra delay might be incurred "in transit" between the dates of the decision of the Council and of communication. The same comment applies to the time limit in paragraph 3.

These uncertainties in relation to the time limits could lengthen the procedure considerably.

B. The Organisation of Negotiations

The whole area of negotiations is vital since the codecision procedure relies heavily on compromise and mediation. A number of points need to be resolved in order that negotiations are successful. These relate to the two main actors concerned with mediation: the conciliation committees and the Commission.

12. See Art.189b, para.2 (the three-month time limit for the Parliament to decide on the common position), para.3 (the three-month time limit for the Council to act on the Parliament's amendments), para.5 (the six-week time limits for the conciliation committee to approve a joint text and then for the Council and the Parliament to approve it) and finally para.6 (the six-week time limits for the Council to confirm its common position and for the European Parliament to reject it).

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1. The conciliation committees

Questions arise on the subject of both conciliation committees: that provided for in paragraph 2 and that in paragraph 4.

(a) The optional conciliation: any negotiation powers? There is strong disagreement between the Council and the European Parliament on the conciliation mentioned in paragraph 2(c):[13] this conciliation takes place (if at all) during the second reading and is optional;[14] the Council argues that the object is simply to exchange information on the respective positions of each institution, but not to begin negotiations or even to engage in the search for a compromise. According to the Council this conciliation process is there solely to explain orally information already communicated in writing.[15]

On the other hand, the European Parliament has expressed the wish to begin negotiations at this stage. It takes the view that the organisation of a meeting of the conciliation committee should consist of more than a simple information session.

However, the text of the Treaty on European Union is particularly ambiguous and confused. It mentions "the Conciliation Committee referred to in paragraph 4"; this might indicate therefore that the provisions contained in paragraph 4 are imported into paragraph 2. But the role of the committee is strictly defined since the Council convenes this meeting in the exercise of its discretion in order "to explain further its position".

One can imagine that, in practice, it might be tempting to reach some form of agreement (even if informal) during this meeting of the conciliation committee. However, no such result is mentioned anywhere and therefore no continuation is organised by the Treaty once the normal procedure is resumed. After the first conciliation, the text debated in the European Parliament is still the common position: there is no place for the discussion of a potential compromise. This militates in favour of the Council's arguments.

These difficulties have had a real impact on the use of this optional

13. See Art.189b(2): "If within three months of such communication, the European Parliament ... (c) indicates, by an absolute majority of its component members, that it intends to reject the common position, it shall immediately inform the Council. The Council may convene a meeting of the Conciliation Committee referred to in paragraph 4 to explain further its position."

14. This is to distinguish it from the conciliation committee mentioned in para.4, which takes place at the end of the second reading and must be convened systematically if no agreement is reached.

15. In fact, it could even be argued that it is there to provide information for the European Parliament only and not reciprocal information.

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conciliation since it has so far been convened only once;[16] and in that case the Council refused to start any negotiations.[17]

(b) Negotiations in the conciliation committee. The text of the Treaty does not specify the range to be covered by the negotiations in the conciliation committee and this has become a subject for controversy. First, a decision had to be made on the texts to be used as a basis for the discussions in the conciliation committee. This was covered successfully by an inter-institutional agreement negotiated so as to facilitate the working of Article 189b.[18] Point 4 of the agreement specifies that the committee has at its disposal the Commission's proposal, the Council's common position and the amendments approved by the European Parliament.

However, the question of the range of the negotiations was not really resolved by this provision: it was still necessary to establish whether the committee could negotiate on the entirety of the common position, even on those parts which had not been amended by the European Parliament. In other words, has the committee autonomous powers of negotiation or is it restricted by earlier proceedings? The text of paragraph 4 does not contain a direct answer to that question. However, the duty devolved to the conciliation committee to reach an agreement on a joint text argues in favour of freedom of negotiations. This was accepted by the legal service of the Council but, in many instances, opposed at the political level.

2. *A confusing role for the Commission*

The Commission should have a central place in the procedure as it has solid experience in negotiation. For instance, Article 189a(2) empowers the Commission to alter its proposal at any time during the legislative procedure; in this manner the Commission can negotiate with both the Council and the European Parliament and incorporate the results of these negotiations in the proposal. The Commission should therefore be the driving force of the codecision procedure and it seems that it was cast in

16. This optional conciliation was convened during the discussion of the text regulating the power of motorbikes. See the Commission's proposal (1992) O.J. C93/116 and the common position (1993) O.J. C193/1.

17. An inter-institutional agreement which was negotiated in order to organise the meetings of the conciliation committee seems to support the views of the Council: point 14 specifies that the present agreement is applicable to the optional conciliation with due regard to the provisions of the Treaty. This recognises that the optional conciliation is different from the conciliation of para.4 and that the inter-institutional agreement can apply only in so far as the rules contained therein conform with the specificity of the optional conciliation (for instance, its role).

18. (1993) O.J. C329/141.

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this role by the drafters of the Treaty.[19] In reality a number of problems of interpretation of the Commission's powers arise from the text of Article 189b. These blur the clear role which is normally held by this institution.

(a) Modification or withdrawal of a proposal by the Commission. If such difficulties are encountered that agreement on a text seems improbable, the question arises whether the Commission can amend or withdraw its text at any time during the codecision procedure: before or after the first conciliation, before or after the second conciliation, during the third reading, etc.

The question of the powers of the Commission during the legislative procedure has never been the subject of a European Court decision. In academic writings authors[20] tend to agree that in principle the Commission is free to amend or withdraw its proposal during the whole of the legislative procedure. However, in the particular context of Article 189b the Council's legal service takes the view that these Commission powers cease once the common position is adopted by the Council.[21]

This interpretation does not seem right. The Commission, because of its function and role, needs to be able to adapt its proposal: it ensures initiative and mediation between the other two institutions—European Parliament and Council—and it is fundamental that its right to withdraw a proposal before a total failure, or to amend it to reach a compromise, should be recognised. In addition, the drafting of Article 189b itself supports this interpretation as the role described above is recalled in paragraph 4.

Moreover, the common position is not a definitive text from the time of its adoption; it is only a starting point for further negotiations. It is therefore difficult to consider this text the one on which the Council has "acted" (see Article 189a(2): "As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to

19. See Art.189b(4), where the role of the Commission is emphasised as regards the conciliation committee: "The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council."

20. See Mégret *et al.*, *Le droit de la CEE* (1979), Vol.9, pp.135–136 and Wyatt and Dashwood, *European Community Law* (1993), pp.47–48.

21. See point 3 of the non-paper of the legal service of the Council SN 1404/94: "La doctrine développée par le Service juridique à propos du paragraphe 3 de l'ancien article 149, doit être confirmée en ce qui concerne la portée de l'article 189 A, paragraphe 2 relatif aux modifications de la proposition de la Commission. Ce pouvoir est ouvert à la Commission 'tant que le Conseil n'a pas statué': or, celui-ci 'statue' dès lors qu'il adopte une position commune. Aussi, toute modification de la proposition après l'adoption d'une position commune est sans incidence sur la procédure qui se poursuit sur la seule base de la position commune 'acte du Conseil' (cf. ci-dessus). Les mêmes considérations doivent également continuer à s'appliquer au droit de retrait de la Commission, qui ne subsiste en tout cas plus après l'adoption de la position commune, conformément à la doctrine constante du Service juridique à propos de la procédure de coopération."

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the adoption of a Community act."). It is clear that paragraph 2 of Article 189a protects the right to amend until the adoption or the rejection of the definitive text by the Council, and not just until the adoption of its common position.

(b) The Commission and the optional conciliation. The text of Article 189b does not mention the Commission in relation to the optional conciliation in paragraph 2(c). Does this mean that the Commission does not take part in the optional conciliation at all? A superficial reading of the text suggests that the Council faces the European Parliament alone. However, in relation to the conciliation committee mentioned in paragraph 4, the Commission is required to take part in conciliation meetings and is given a clear role of mediation between the institutions. This would mitigate in favour of the presence of the Commission during optional conciliation meetings.

However, if the Commission is to participate in optional conciliation meetings, its role is not defined in the Treaty: since it is argued that this conciliation does not aim at starting negotiations, it seems that the Commission's role of mediation is to be momentarily abandoned, a rather incongruous situation. Also, one wonders whether the Commission can explain to the committee more fully its proposal or its opinion on the European Parliament amendments. If not, it is questionable whether the Commission should participate at all.

(c) Adoption of the European Parliament's amendments (paragraph 6). If no agreement is reached during the conciliation committee referred to in paragraph 4, the Council can adopt its common position and include amendments put forward by the European Parliament. These are adopted by qualified majority. However, it is not specified whether this provision applies indiscriminately to those amendments which were not accepted by the Commission, the rule being that unanimity is normally required. Moreover, this general principle is recalled in Article 189a(1), and although two exceptions to the rule are made for paragraphs 4 and 5 of Article 189b, curiously no mention is made of paragraph 6. One therefore wonders whether paragraph 6 was omitted on purpose.

If no exclusion was planned, however, why was not the general principle restated as it was in paragraph 3 of the same Article? Was this simply overlooked? Or would this mean that the Commission is pushed aside at this stage of the procedure? This might be conceivable since negotiations have failed; the need for mediation is not felt any more. Hopefully, it would also increase the chances of the European Parliament seeing some of its amendments adopted.[22]

22. See the argument based on the *effet utile* developed by Dashwood, "Community Legislative Procedures in the Era of the Treaty on European Union" (1994) 19 E.L.Rev. 343.

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There are strong arguments on both sides and it is difficult to predict what the European Court would choose to say, but it is questionable whether a solution which ultimately does not respect the powers of the Commission is to be advocated. Such a solution would add to the contradictions as regards the role and place of this institution in the codecision procedure and might hamper its work as a result.

C. The Adoption of a Final Text

It might be surprising that the text of Article 189b contains at least two areas where the provisions as they stand do not provide enough guidance as regards the adoption of a final text.

1. Can the optional conciliation result in a text?

The strong disagreement which exists between Council and European Parliament on the subject of the optional conciliation has been presented above. However, a legal problem stems from these considerations: what would happen if the European Parliament was convinced by the information put forward by the Council? No provision is made for this case. Even if it wished to the European Parliament could not adopt the common position as it stood after a meeting of the optional conciliation committee. At this stage, the Treaty gives only two options: the Parliament can propose amendments or reject the text definitively. The possibility that an agreement might intervene was obviously not foreseen.

In order to circumvent this problem, it might be possible to apply paragraph 2(a)[23] by analogy.[24] It would be inefficient to continue with the procedure while a text is finalised. The European Court might support this approach.

2. In case of failure, what text can the Council adopt?

If during the second conciliation committee no compromise is reached on a text, the Treaty gives the Council power to adopt the common position, with the possibility of including certain amendments of the European Parliament. However, the Treaty refers to this power in the following terms: "possibly with amendments proposed by the European Parliament". This raises two main areas of concern.

First, there is imprecision as regards the type of amendment: at which stage of the legislative procedure should these amendments have been adopted? Could amendments passed by the Parliament during the first

23. Art.189b(2): "If within three months of such communication, the European Parliament: (a) approves the common position, the Council shall definitively adopt the act in question in accordance with that common position."

24. See Dashwood, *op. cit. supra* n.22.

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reading, but abandoned later, be included in the common position? The problem is even more acute in the case of an amendment being added on its own although it was originally part of a whole package of measures. Following the same logic, one might wonder whether this expression also includes amendments submitted by the Parliament's delegation to the conciliation committee. The Parliament and its delegation to the committee are not the same institution and the text of the Treaty does not refer to the delegation. However, if one considers that the delegation is in fact invested with the Parliament's powers, one could well justify this extension.

Second, the Treaty does not use the term "adopted" but "proposed" and one should ponder the reason for such an imprecise word. The term "adopted" implies a formal vote by the European Parliament on the amendment. On the other hand, the vaguer expression "proposed" could cover simple suggestions put forward by the European Parliament during negotiations. A great deal of freedom is given to the Council when deciding on the drafting of the final text.

It is worth noting that the only time this situation occurred the Council confirmed its common position without adopting the Parliament's amendments. It was later rejected by the Parliament.[25]

II. THE WORKING OF THE PROCEDURE: ALL IS WELL

BEYOND all the difficulties linked to the interpretation of the provision, the codecision procedure has so far produced encouraging results. By focusing on some aspects of codecision, the real impact of the procedure can be assessed. First, a comparative study of the use of codecision as against the other legislative procedures will reveal its real weight. Second, the number of acts which have necessitated the involvement of the conciliation committee will show whether the legislative process is running smoothly. Third, the analysis of the Parliament's amendments accepted by the Council during the codecision procedure will determine the influence that the European Parliament has in the decision-making process.

A. The Use of the Procedure

One of the most virulent criticisms made at the time of the ratification of the Maastricht Treaty was that codecision covered a rather limited number of subject areas. This criticism must be looked into and it is therefore necessary to establish the frequency with which the codecision procedure is used.

25. This was the directive on the application of open network provision to voice telephony; see the common position (1993) O.J. C193/1.

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Statistics[26] show that since the Maastricht Treaty came into effect codecision has arisen in about 25 per cent of the legislation in relation to which the Parliament intervenes. This finding is only an indication since the choice of areas and therefore of legislative procedures is dictated to some extent by the policy priorities and the legislative programme of the Commission. However, this threshold of 25 per cent has been stable since the procedure has been in force:

Consultation procedure: 168 texts.
Co-operation procedure: 52 texts.
Assent procedure: 19 texts.
Codecision procedure: 97 texts.

These figures reveal two relatively surprising things: first, that the consultation procedure is still the most frequent, although it gives no real power to the European Parliament; second, that the codecision procedure takes second place, quite a long way ahead of the co-operation procedure. Those statistics are rather positive since codecision is the latest legislative procedure.

A close analysis of the working of the procedure will determine if the other criticisms of length and complexity have been borne out in practice.

B. Length of the Procedure

One way of assessing the efficiency of a legislative procedure is to study the length of time needed to adopt the final text. The codecision procedure is in itself a rather lengthy procedure since Article 189b allows up to three readings. Calculations based on the texts introduced since the entry into force of the Maastricht Treaty show that, on average, a text takes 300 days to be adopted.[27] This period is likely to be reduced since a number of problems had to be resolved in the first year of the procedure and these slowed the decision-making process considerably.[28]

In order to look more closely at the practice, the interventions of the conciliation committee will be examined since they increase the length of the whole procedure. If the committee is resorted to frequently, one should query the length and heaviness of the procedure.

26. See "Rapport d'activités du 2ème semestre de 1994" of the parliamentary delegation to the conciliation committee, unpublished.

27. See the report of the Commission on the functioning of the Treaty on European Union SEC(95)731, p.19: "Si l'on s'en tient aux seules propositions de la Commission présentées depuis l'entrée en vigueur du Traité, la durée moyenne de la procédure est inférieure à 300 jours. Cependant, il sera nécessaire d'affiner cette appréciation sur une période plus longue."

28. See *infra* Sections III.A and B on the problems of comitology and amounts deemed necessary.

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Since the introduction of codecision the European Parliament has received 34 common positions, 18 of which have not needed the intervention of the conciliation committee:

(a) in seven cases the Parliament did not amend the common position of the Council;
(b) in four cases all amendments put forward by the Parliament were accepted by the Council;
(c) in the seven remaining cases a little more negotiation was needed: for instance, the regulation on spirits and aromatised wines[29] was adopted because of a declaration issued by the relevant parliamentary committee on the *modus vivendi* on comitology.

In the majority of cases, therefore, the legislative process was short: not only was a conciliation committee not convened but no negotiations were necessary in some cases. This finding is rather encouraging.

It is a narrow majority, however, since in 16 cases the need for a conciliation committee was felt. This is a rather high figure: nearly 46 per cent of the texts necessitated the use of this cumbersome machinery; a worrying trend as it slows down the decision-making process.

In order to decide whether this aspect of the procedure imposes an excessive burden, it is worth analysing the number of conciliation meetings needed to reach agreement. For four texts, two conciliation meetings were needed and, for three others, three meetings took place.[30] In fact only nine texts have been agreed through a single conciliation meeting.[31] This tendency to multiply the meetings of the conciliation committee is serious, especially when one considers that each of those meetings is preceded by a number of meetings of each delegation and of informal contacts in order to get the negotiations going.[32] On the other hand, the six-week time limit has only four times been extended for two further weeks as allowed in paragraph 7 of Article 189b.[33]

29. Reg.3378 of 22 Dec. 1994 amending Reg.1576/89/EEC laying down general rules on the definition, description and presentation of spirit drinks, and Reg.1601/94/EEC laying down general rules on the definition, description and presentation of aromatised wines, wine-based drinks and wine product cocktails following the Uruguay Round of the multilateral trade negotiations (1994) O.J. L366/1.

30. It is worth noting also that in this last category can be found the text on legal protection of biotechnological inventions which was ultimately rejected by the European Parliament.

31. This might not even be a useful test since for the directive on the approximation of the laws of the member States relating to lifts, one conciliation meeting was convened but the six-week time limit was extended for two more weeks while informal negotiations were under way. A provision guaranteeing the use of lifts by handicapped people was at the centre of the negotiations. The agreement on the final drafting of the article was formalised by the written procedure (the exchange of the agreement of both institutions is done in writing; no formal meeting of the conciliation committee is then necessary).

32. Some compromises have in fact taken place right at the end of the time limit.

33. For the conciliation committees on the directives on volatile organic compounds emis-

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The need for conciliation is likely to be reduced in the future since some of the early negotiations were particularly difficult because of problems, common to most of the proposals, which have now been settled.[34]

C. *Success of the Conciliation Committee*

Although the conciliation committee has been convened too often, its intervention reveals a high degree of success. Agreement was reached on nearly all the texts which have been subject to conciliation: out of the 16 texts mentioned, 15 joint texts were adopted. The only failure to reach an agreement concerned voice telephony.[35] In that case the Council did adopt its common position, which the European Parliament rejected with the required absolute majority.[36] It is worth noting that the Commission has since reintroduced a proposal on this matter which includes all the changes advocated by the European Parliament during the previous procedure.

However, on 1 March 1995 a directive on the legal protection of biotechnological inventions[37] which had been agreed to in conciliation committee was rejected by the European Parliament. For the first time, the Parliament in plenary declined to endorse the joint text negotiated by its delegation. However, there are two reasons for regarding this as an exceptional case. Firstly, the text had been under discussion for the last six years:[38] agreement was inevitably going to be difficult. Biotechnology raises controversial questions of ethics and it seems that MEPs opposed to the joint text found that the ethical dimension had not been sufficiently taken into account.[39] Secondly, the Parliament may have been sending a warning that it would not automatically endorse a joint text approved by the conciliation committee, a point which it was important to make clear both to its own delegation and to the Council. However, if such a drastic step were taken too often, the bargaining power of the Parliament's delegation would be significantly weakened.

sions, on packaging and packaging waste, and on harmonisation of norms for lifts, and on the "Socrates" and "Youth for Europe" programmes.

34. See *infra* Section III.

35. See the amended proposal COM/94/48 final—COD 437 and the common position (1993) O.J. C193/1.

36. The delegation of the Parliament to the conciliation committee has expressed the wish for a new constitutional convention entailing the systematic rejection of the common position in such a case. However, no such practice has yet had time to develop. See also Rules of Procedure, Art.78(4): "Parliament shall vote on a motion to reject the Council text."

37. See the Commission's proposal (1989) O.J. C10/3, the amended proposal (1993) O.J. C44/36, the common position (1994) O.J. C101/65 and the rejection by the European Parliament.

38. The Commission's proposal was first published in 1989.

39. Also ecologist associations such as Greenpeace lobbied and campaigned efficiently in order to win over MEPs to their views about the text.

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D. The European Parliament's Negotiating Strength

One way of measuring the impact of an institution on a legislative procedure is to survey the amendments adopted during the decision-making process. As a matter of fact, beyond the positive findings on the number of texts agreed to through codecision, one wishes to know to what extent the European Parliament, as new legislative actor, has succeeded in having its opinion accepted.

We have found it easier and more revealing to report on the impact of the European Parliament when looking at a text which has been the subject of conciliation, since differences of opinion are made clear through this exercise. To illustrate this, three representative texts will be discussed: the directive on time-sharing property, the one on volatile organic compounds emissions and, finally, the "Socrates" and "Youth for Europe" programmes.

1. The directive on time-sharing property

This directive aimed at regulating the growing phenomenon of time-sharing property: a property which belongs to many different owners, each having ownership for a definite period of the year.[40] Considering the scope for potential abuses, the European Parliament had voted in favour of a whole set of amendments strengthening consumers' protection.[41] During the second reading the Council had already approved some of the Parliament's amendments in order to take some of these demands into account. However, the text went to conciliation since three amendments were still under discussion: one allowed the buyer ten days to pull out of the contract after having signed it, and increased the time limit when certain information was not included in the contract; another decided that the time limit started to run from the reception of the contract; and lastly, the date for the implementation of the directive. The European Parliament won on the first amendment and each institution moved in the other's direction in order to arrive at a compromise as regards the implementation deadline. But the beginning of the time limit to pull out of the contract was the one sponsored by the Council: the date of despatch.[42]

2. The directive on volatile organic compounds emissions

This directive aimed to reduce the emissions of petrol in the air while being stocked and distributed.[43] A number of parliamentary amendments

40. See the Commission's proposal (1993) O.J. C222/5.
41. See the Parliament's opinion (1993) O.J. C176/95 and the common position (1994) O.J. C137/42.
42. See the final text (1994) O.J. L280/83.
43. See the Commission's proposal (1992) O.J. C227/3.

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had already been accepted by the Council during the first reading.[44] However, the European Parliament argued, first, that the directive should extend to mobile tanks and, second, that a European regulation should be drawn up to deal with tankers and harbour installations if the negotiations for an international convention in this area were unsuccessful. The Parliament obtained nearly everything: the directive was extended to mobile tanks, with the exception of tank-wagons.[45]

In fact, on the three amendments which were rejected by the conciliation committee, one lapsed and another was not considered a priority by the delegation or by the parliamentary committee on the environment.

3. *The "Socrates" and "Youth for Europe" programmes*

Both these programmes were negotiated together since similar problems were encountered during the negotiations: "Socrates"[46] is the new action programme which fuses and replaces the "Erasmus", "Lingua" and "Comenius" programmes, while "Youth for Europe"[47] aims at promoting mobility of young people within the Community.

The procedure which led to the adoption of both education programmes underlines the real co-legislative role of the European Parliament. Concessions were made all through the legislative procedure: for "Socrates"[48] the Council accepted amendments reinforcing the evaluation and the continuation of the programme, encouraging inter-cultural education in primary and secondary schools, and promoting partnership between schools;[49] for the "Youth for Europe" programme[50] the Council adopted measures encouraging young people's awareness of their European citizenship, promoting equal opportunities and guaranteeing the level of social protection for young people participating in it.

For the conciliations, identical questions for the two programmes had still to be addressed. On the financial side, the conciliation committee reached an agreement on the following figures for the period 1995–99: 850 million ecus for "Socrates" (with provision for review after two years) and

44. See the opinion of the European Parliament (1993) O.J. C194/325 and the common position (1994) O.J. C91/82.

45. See the final text (1994) O.J. L365/24.

46. See the Commission's proposal COM/93/708 final (1994) O.J. C66.

47. See the Commission's proposal COM/93/523 final (1994) O.J. C160.

48. E.g. the Council accepted 18 of the 22 amendments put forward during the second reading. See EPdocA4–14/94 for the position of the European Parliament after the second reading. See also the opinion delivered by the European Parliament (1994) O.J. C217/18 and the common position (1994) O.J. C244/51.

49. This recognition did not go as far as the European Parliament wished: it had hoped that equal opportunities would also be protected in this context.

50. See e.g. the opinion of the European Parliament (1994) O.J. C217/24, the common position (1994) O.J. C232/57, the amendments of the European Parliament for the second reading EPdocA4–13/94 and (1994) O.J. C323/17.

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126 million ecus for "Youth for Europe" (the Council had started from 760 million and 106 million respectively). Also, to answer a demand expressed by the European Parliament, the Council agreed to all the amendments passed during the second reading: first, the two programmes were opened to Eastern European and Mediterranean countries which have applied to join the EU; second, access to these programmes must be made easier for disadvantaged groups in order to fight social exclusion.

III. A SUCCESS BEYOND THE PROCEDURE

BEYOND the small number of failures, the success of the procedure can be also judged by the impact it had on collateral issues. From the very beginning, two major transversal problems slowed down or even blocked the negotiations in several conciliation committee meetings: the questions of comitology and of the amounts deemed necessary[51] created difficulties on a great number of occasions. The situation reached such a critical point that the Council, which had refused to tackle these matters before the 1996 Inter-Governmental Conference, agreed to sign a "*modus vivendi*" on comitology and a declaration on the amounts deemed necessary. Both agreements specify that they should be re-examined during the 1996 conference.

A. Comitology

From the very first texts discussed under codecision, comitology[52] questions arose in a new fashion. It is well known that the 1987 Council decision on comitology[53] never had the support of the European Parliament:[54] it thought rightly that its control on implementation measures would be restricted and that executive powers would slide back from the Commission to the Council.

Once the Treaty on European Union entered into force, the codecision procedure put the question of comitology at the top of the agenda. The European Parliament claimed that being now a co-legislator, it should also become so for all implementation measures. This principle was proclaimed in the "De Giovanni" resolution of 16 December 1993.[55] At first,

51. In French the "*Montants Estimés Nécessaires*" or MEN.

52. The term "comitology" refers to the various committees controlling the measures taken by the Commission to implement primary legislation. There are three main categories of committee procedures—consultative, management and regulatory—but the last two give large powers of control to the Council.

53. See Decision 87/373 (1987) O.J. L197/33.

54. See Case 302/87 *Parliament* v. *Council* [1988] E.C.R. 5615. The European Parliament tried to have the decision annulled but the ECJ considered that the Parliament did not have *locus standi* under Art.173 and rejected the claim on this basis. Nothing was said on the merits.

55. See (1993) O.J. C20/175.

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ad hoc provisions were drawn for each act in order to settle the comitology question. It was soon found to be very time-consuming and when it became obvious that most conciliations were complicated with such questions, the Council agreed to negotiate a *modus vivendi*.[56]

Although this *modus vivendi* is limited to codecision, it represents a step in the right direction and sets standards for implementing legislation under all other procedures. First, all measures are sent to the European Parliament at the same time as to the committee, regardless of previous arrangements. Second, as far as acts of general application are concerned, the Council must consult the European Parliament before adopting them and must hold a trilogue[57] to hear the reasons the European Parliament intends to adopt a negative opinion.

In practice, it is too early to tell if the European Parliament is satisfied with the application of the *modus vivendi*. The information transmitted, the sheer number of measures and the need to prepare the relevant parliamentary committees for this new work have been the main preoccupations so far. It is clear that some time will be needed for all the institutions to adapt to the changes.

B. The Amounts Deemed Necessary

Here again, the problem was not new but gained a new dimension with the new codecision procedure. In order to circumvent the budgetary powers of the European Parliament, the Council sometimes included in the body of the legislative texts a maximum figure for the relevant expenditure; the European Parliament was therefore limited by these amounts when it came to adopt the budget. In 1982 the Council took a commitment never to use them, but they reappeared as "amounts deemed necessary". The name had changed but the practice remained the same.

The European Parliament sought therefore to protect its budgetary powers. A common declaration of all the three institutions established that, in pluriannual programmes within the jurisdiction of codecision, the amounts deemed necessary would be decided by the budgetary authority, while in relation to pluriannual programmes under other legislative procedures amounts estimated necessary would be totally prohibited.

IV. SOME DYSFUNCTIONS

ALTHOUGH the overall impression given by the procedure is positive, there are a number of dysfunctions which need to be tackled to improve

56. It was impossible to agree to a joint text on voice telephony partly because of comitology. If the *modus vivendi* had been in force then an agreement would probably have been reached.

57. See *infra* n.62.

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the efficiency of the decision-making process. Most of the difficulties concern the conciliation committee, a central element in the codecision procedure.

A. The Composition of the Conciliation Committee

The Treaty is relatively clear so far as the composition of both delegations to the conciliation committee is concerned. The 15 members of the Council face 15 parliamentarians so as to respect the principle of parity. One might think that a figure of 30 was rather high for compromises to be possible in delicate negotiations.[58] In fact a sitting of the conciliation committee comprises over 100 people on average.

In the Council delegation alone each of the 15 ministers or permanent representatives may bring at least three civil servants to advise them during the discussions.[59] The parliamentary delegation is smaller, but each MEP may often choose to have his or her parliamentary assistant present, and will also be assisted by the civil servants attached to the political group he or she belongs to. Also, the Commission is represented by the relevant commissioner, who comes with at least another five civil servants.[60]

The Council delegation is by far the most numerous (around 60 people altogether); but once all the delegations are put together and the civil servants advising the co-presidents are added, a total of 100 or more persons is reached. The composition in itself is a brake to any decision-making mechanism. In reality, numerous informal meetings take place before any sitting of the conciliation committee.[61] Also, in order to by-pass this decisional mastodon a number of tricks are resorted to during conciliation meetings. Sittings are frequently suspended temporarily to make place for trilogue[62] and delegation meetings[63] so as to discuss and negotiate more easily.

58. E.g. under Art.45 of the French Constitution of 1958 the "*commission mixte paritaire*", the institution which draws up compromise texts between the Sénat and the Assemblée Nationale consists of 14 MPs (seven from each chamber).

59. Sometimes this number goes up to four when more than one topic is on the agenda.

60. The number is inevitably increased when e.g. the agenda covers more than one text: more commissioners will be present.

61. Contacts between civil servants in the various institutions are established early in the procedure.

62. The trilogue is a reduced negotiation forum where each institution is represented. It can meet at various hierarchical levels: the president of COREPER, the chairman and the relator of the parliamentary committee and the Commission member in charge of the dossier, or the President of the Council, the president of the Parliament delegation, and the commissioner in charge.

63. According to the European Parliament, the Council delegation takes too long and requires too many suspensions to reach an agreement between the various member States. Informal negotiations have also taken place with a specific member State delegation rather than the whole Council delegation. This was the case with the German delegation for the "Socrates" and "Youth for Europe" programmes.

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Experience has shown that little is really negotiated during conciliation committees as compromises formalised then are often reached during previous informal meetings. On the other hand, when no agreement is at hand, conciliation committees are used to clarify the position of each institution, show the ground already covered towards a compromise and indicate the way forward for future informal negotiations. The conciliation meetings really play the role of a stage or a landmark in the negotiation process. But real negotiations take place elsewhere.

B. The Delegations to the Conciliation Committee

Both delegations have specific problems that need to be isolated and addressed in order to improve the working of the procedure.

1. The Council delegation

The Council is often represented at the level of COREPER and not at ministerial level. When figures are analysed, one notices that after the first two conciliations[64] member States are represented in the Council delegation by their permanent representatives or even by their deputy permanent representatives; in most cases the only Council member who has ministerial status is the President of the Council as he is also co-president of the conciliation committee.[65]

This level of representation does not constitute a legal problem; it is allowed by the Treaty as "representatives" are mentioned in Article 189b (4). However, in practice this choice leads to a real dysfunction. Permanent representatives or their deputies have no decisional freedom. They have no mandate to negotiate during conciliation meetings and cannot commit their ministers without referring the matter to them. If no compromise has been reached before the sitting of the conciliation committee, it will be difficult to achieve one in those circumstances. If proposals are put forward by the co-presidents, the permanent representatives must contact the relevant ministers for their decision or in exceptional cases accept the compromise subject to later confirmation. In these conditions it is very difficult to negotiate.[66]

64. There were nine ministers for the meeting of 4 Mar. 1994 and ten for that of 21 Mar. 1994.

65. There was an exception to this situation during the meeting of 5 Dec. 1994 for the deliberation on the "Socrates" and "Youth for Europe" programmes; seven ministers and six permanent representatives were present. As both programmes were discussed during the same conciliation meeting, there were two ministers presiding in turn.

66. Dashwood, *op. cit. supra* n.22, at p.357, seems to think that it is unrealistic to expect ministers to attend these lengthy deliberations. However, conciliation meetings would be considerably shorter if ministers were systematically present.

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2. *The parliamentary delegation*

Unlike the Council,[67] the parliamentary delegation is composed of only some members of the Parliament. It is appointed in order to reproduce the balance between the political groups and tries to be a miniature version of the larger institution. However, the parliamentary delegation is recruited principally among the MEPs of the relevant parliamentary committees.[68] This sometimes creates a loyalty to the positions of the committees dealing with the legislation which cuts across party lines.

Although the parliamentary delegation to the conciliation committee negotiates on the basis of the second reading amendments, it is accepted that the conciliation committee can consider other proposals for amendments; a certain independence from the plenary results from this situation. It might be difficult sometimes to know exactly how the plenary will greet a compromise agreed to in conciliation. In fact, only once so far has a joint text been rejected by the plenary: the directive on biotechnological inventions on 1 March 1995.[69] This is unlikely to happen again soon; but it is certain that, in the Council's view, the clout of the parliamentary delegation has suffered as a result. It is suggested that the European Parliament should adopt the convention of supporting systematically the text arrived at by its delegation. To do so, the composition of the delegation should perhaps be slightly altered in order to be more representative of the chamber as a whole.

C. *The Role of the Commission*

On the one hand, the European Parliament has complained repeatedly about the role played by the Commission throughout the codecision procedure and, on the other, the Commission has expressed unhappiness about the part it is left to take. In effect, the Treaty has always reserved a power of mediation to the Commission and this function is recalled in paragraph 4 of Article 189b.

In reality, it seems that the Commission has found it difficult to adapt to the new procedure. The Commission is used to working with the Council early in the legislative procedure since the position of the Council was fundamental to the chances of any proposal being adopted. The Com-

67. There is an identity of organs between the Council and the Council delegation to the conciliation committee.

68. In fact the composition of the parliamentary delegation changes with each conciliation exercise and includes three permanent members only.

69. However, it is worth noting that the qualified majority required for any rejection of a text might be a serious obstacle for the European Parliament. E.g. it attempted to reject the directive on engine power of motorcycles after the optional conciliation which would have put an end to the whole legislative procedure. The Parliament failed to reach the required majority. It was forced to negotiate as a result.

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mission has always had a representative at all COREPER and working group meetings.

The Commission does not participate to the same extent in the European Parliament's deliberations. It needs to mediate with the Parliament as early as the report stage. For instance, the Commission participates in the meetings of the Council delegation, but it is not always present at the meetings of the parliamentary delegation. From this situation stems a number of misunderstandings: the Commission seems to take more notice of the Council's position and the parliamentary delegation is often under the impression that the Commission has made it its own.

Moreover, on two occasions the Commission was not represented by a commissioner during conciliation meetings. The parliamentary delegation was concerned by the absence of the commissioner responsible, and declared that such a situation would not be accepted again. Subsequently, if a commissioner could not attend the conciliation meeting falling within his jurisdiction, another commissioner came to take his place.[70] However, this is not ideal since the substitute commissioner is unlikely to be as familiar with the subject under discussion.

Also, the Commission's strategy on one occasion created serious problems in the conciliation committee. During the negotiations on the directive regulating the power of motorbikes,[71] the Commission wanted a strict limit on their power to be adopted. The parliamentary delegation was totally opposed to such a provision, but the Commission seemed to be so set on it that Parliament and Council decided to negotiate directly. A number of "trilogues" are said to have taken place without the Commission present and a deal was struck.

It is clear that the Commission has had difficulties in adapting to this new type of double negotiations. It might be that working habits and culture have to be modified radically. It might be also that the contradictions and the legal uncertainties contained in Article 189b are creating a difficult environment for the Commission to work in.

D. The Lack of Transparency

Codecision was created in order to reduce the democratic deficit. The participation of the European Parliament in the legislative procedure on an equal footing with the Council realises this democratisation. However, the functioning of the procedure as described above reveals a drawback.

The legislative procedure is relatively transparent up to the end of the

70. Because of a national election campaign, Mr Bangemann could not attend the first conciliation committee on the directive on harmonisation of lifts. He was replaced by Mr Flynn.

71. See the final text (1995) O.J. C52/1.

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second reading, that is to say, until the intervention of the conciliation committee when convened. As the texts go through Parliament, the mechanism is as open as possible and information on the position of each institution is accessible.

However, once the conciliation committee is convened, negotiations are conducted in secret, behind closed doors. The public is not admitted. One cannot deny that the codecision procedure has increased the power of the European Parliament, but it has also the disadvantage of transmitting the greatest drawback of the Council, its lack of transparency. This question is particularly relevant to a system which aspires to democracy. Any parliament relies on public opinion for its legitimacy, but public opinion must be kept informed. By negotiating *in camera*, the European Parliament cuts itself off from public opinion, endangers its legitimacy and plays directly into the hands of the Council. This is a development which must be kept under control. Public opinion is only starting to realise the new role of the European Parliament, which must not lose its newly acquired credibility or forfeit its institutional growth. The Parliament could rectify this flaw by sending clear messages aimed at the public. It could reveal on a regular basis the reasons blocking the adoption of legislation facing difficulties in the codecision procedure and therefore be carried more by public opinion. By doing this it would expose the Council at last.[72]

One is concerned that codecision could in the long term isolate the European Parliament from public opinion, which is the only basis for a solid democratic development. This is all the more important since the field of codecision could be extended at the Inter-Governmental Conference of 1996.

V. SOME PROPOSALS FOR REFORM

ALTHOUGH the Maastricht Treaty has not long been in force, the European Parliament, the Council and the Commission are preparing their first proposals for its revision at the 1996 Inter-Governmental Conference. It is therefore appropriate, on the basis of the above analysis of the codecision procedure, to suggest some useful reforms.

A. Rationalising the Procedure

On the whole, codecision has been relatively successful even though some of the criticisms highlighted when the procedure was introduced have proved to be well founded.

72. E.g. in the negotiations which took place on harmonisation of technical norms for lifts, agreement was delayed since the Council rejected for a while the drafting of a provision creating an obligation for all new lifts to be adapted to the needs of handicapped people. It is

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The procedure will be examined step by step and changes will be put forward at each stage.

Having received the Commission's proposal, the Council should not be required to obtain the opinion of the Parliament. It should simply adopt a position on the proposal and forward that position to the Parliament.

The Council should be required to adopt its common position within a time limit of three months. If it fails to do so, the proposal should be deemed to have lapsed. A number of proposals take too long to go through the first stage. A time limit would put pressure on the Council to act more quickly.

A better balance needs to be struck between the Council and the Parliament. Where the Parliament does not take a decision within three months of the Council's common position having been communicated to it, the proposal should be deemed to have lapsed. At present, the Council is required to adopt the act in question in accordance with its common position (see Article 189b(2)(b)). In a real codecision procedure, it is difficult to accept that one institution should take precedence over the other.

The (paragraph 2) time limit referred to in the preceding paragraph should run from the date of reception by the Parliament of the Council's position.

Recourse to conciliation during the second reading should be retained only if real negotiations are allowed. The conciliation committee should be convened by a joint decision of the Presidents of the Council and of the Parliament. Provision should be made for a joint text to be adopted by the conciliation committee.

The paragraph 3 time limit[73] should run from the date of receipt by the Council of the amendments to the common position proposed by the Parliament.

Where the Council rejects the Parliament's amendments, the Council should be required to inform the Parliament of the amendments rejected and of its reasons for doing so. Often the Council does not provide this information before the first meeting of the conciliation committee is convened.

Article 189b(5) gives the conciliation committee six weeks from the time it was convened to approve a joint text. It is suggested that the six-week time limit should run from the date of the first committee meeting rather than the date on which the meeting is convened. It takes some time to convene such an important body and valuable negotiation time may be lost as a result.[74]

worth noting that the unions of lifts manufacturers were not opposed to such a provision in the least.

73. See *supra* n.12.

74. In practice the meeting is formally convened on the same day that it is held, so as not to

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Conciliation meetings should be held in public. This would help make the procedure more transparent.

The Commission should be given the express right to submit a compromise proposal to the committee. Although the last sentence of Article 189b(4) empowers the Commission to "take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council", it is not clear what precise steps the Commission is entitled to take. An amendment along the lines suggested here might help the Commission to find a role for itself in the new procedure and to strengthen its function as mediator. Such a right would not exclude similar initiatives by the Council or the Parliament.

The words "or their representatives" in Article 189b(4) should be removed. The Council needs to be represented at ministerial level, so that negotiations can be conducted more easily.

Where the conciliation committee approves a joint text, the third reading is often simply a formality. The joint text could be deemed to have been adopted after six weeks if neither the Council nor the Parliament in plenary expressly rejects it. Such a reform would serve to lighten the procedure whilst still protecting the prerogatives of both institutions.

The right of the Council to confirm its common position when no joint text has been approved (see Article 189b(6)) should be abolished. This would put both institutions on a more equal footing.

B. Generalising the Procedure

Article 189b(8) contemplates the extension of the procedure to other areas of the Treaty. In its resolution of 17 May 1995 on the functioning of the Treaty on European Union (point 29), the Parliament suggests that:

(i) There should only be three decision-making procedures, the codecision, assent, and consultation procedures. The existing cooperation procedure should be abolished.
(ii) The assent procedure should be restricted to Treaty revision, international agreements, enlargement and adjustments to own resource[s].
(iii) The consultation procedure should be restricted to decisions in the field of common foreign policy and security.
(iv) In all other areas, the codecision procedure should apply.

If this suggestion proves unacceptable, a less ambitious alternative might be simply to replace the co-operation procedure with the codecision procedure.[75] This would extend the latter to the following areas: rules

lose time. However, an informal notice is circulated beforehand to inform participants of the date of the conciliation meeting.

75. For a similar proposal see Justus Lipsius, "The 1996 Intergovernmental Conference" (1995) 20 E.L.Rev. 235: "The European Parliament should always be able to participate in the adoption of legislative acts, either on a consultative basis, or through a new 'co-decision

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designed to prohibit discrimination on grounds of nationality (Article 6 of the EC Treaty), transport (Articles 75(1) and 84), implementation of the framework for economic policy (Articles 103(5), 104a(2), 105a(2)), health and safety of workers (Article 118a), the social fund (Article 125), vocational training (Article 127), trans-European networks (Article 129d, third paragraph), economic and social cohesion (Article 130e), research (Article 130o), the environment (Article 130s), and development co-operation (Article 130w).

This list might seem random, but there are at least two reasons for bringing these areas within the scope of the codecision procedure. First, in the areas of the environment and research, the framework legislation is at present laid down through the codecision procedure, while its implementation is decided on through the co-operation procedure. Rationalisation would be desirable. Second, the areas concerned have a clear political importance and should be subject to the most democratic legislative procedure available.

However, the generalisation or extension of the codecision procedure would in turn create a great number of problems and could slow down drastically the whole legislative process of the European Community. It was pointed out above that the number of texts requiring recourse to the conciliation committee was high. If the figures remain stable, nearly half the entire legislative effort will require such recourse. The decision-making process of the European Community could as a result grind to a complete halt. The procedure may have to be transformed more radically than suggested above.

Moreover, in order to lighten the workload, it might prove necessary to adopt a hierarchy of norms.[76] Only the texts dealing with important legislation or basic principles would be subjected to the codecision procedure. Other texts, often implementation measures, would have to follow a faster route under the control of the Commission. This implies that the comitology solution as it stands would have to be abandoned or at least radically reformed in order to fit in with the legislative prerogatives of the European Parliament.[77]

VI. CONCLUSION

IT is surprising that the codecision procedure, so complex and ridden with legal uncertainty, should have achieved such positive results. It is in the

procedure' which would give it larger powers; the co-operation procedure should disappear; the assent procedure for legislative acts, which is completely inadequate, should also disappear."

76. This was already considered during the negotiations of the TEU. No decision was made then but the matter was added to the list of those to be examined at the IGC of 1996.

77. On this point see Piris, *op. cit. supra* n.6, at pp.478–479, and Lipsius, *op. cit. supra* n.75, at p.263.

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interest of the European Parliament to show that the procedure works, since it will be difficult to refuse its extension to other areas in 1996. This strategy is starting to bear fruit.

However, it is noticeable that a strategy along the same lines was not adopted as regards the powers of control of the European Parliament: internal political difficulties have until now prevented the appointment of the Ombudsman, the strengthening of the Committee of Inquiry effected by the Treaty on European Union has not yet been reflected in the Rules of Procedure of the Parliament and, during the investiture of the Commission in January 1995, the Parliament voiced empty threats against a number of commissioners. It is clear that a definite choice has been exercised by the European Parliament to make the most of its legislative powers; but such a focus seems to have been detrimental to its function of control.

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