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NOTE

from : Presidency and General Secretariat

to : Permanent Representatives Committee (Part 1)

Subject : Report from the Presidency and the General Secretariat of the Council to the European Council on making the co-decision procedure more effective

Delegations will find attached a draft report from the Presidency and from the General Secretariat of the Council to the European Council on making the co-decision procedure more effective.

Introduction

1. The Amsterdam Treaty introduces profound changes to the co-decision procedure affecting both the various stages of that legislative procedure and its scope. Aware of the implications for interinstitutional relations and the impact on work within the Council which these changes will have, the European Council, in the guidelines for reform and in its recommendations adopted at Helsinki ("an effective Council for an enlarged Union"), stressed the need to make the co-decision procedure more effective (point 18) and called on the Presidency and the General Secretariat to propose amendments to the Council's working methods under that procedure (point 19).

"Making the co-decision procedure more effective"

18. *The Presidency shall, as an integral part of its programming, take due account of the requirement to schedule conciliation and preparatory meetings, bearing in mind the deadlines applicable for co-decision procedures. Contacts with the European Parliament at the first and second reading stages must be undertaken with the aim of bringing the procedure to a successful conclusion as swiftly as possible.*
 19. *The Presidency and the General Secretariat are invited to propose by the end of 2000 further changes in the Council's working methods in dealing with co-decided acts in the light of experience acquired in implementing the Joint Declaration of 4 May 1999."*
2. A joint seminar of the European Parliament, the Commission and the Council on the functioning of the co-decision procedure after the entry into force of the Amsterdam Treaty took place on 6 and 7 November 2000 in the same format as for the seminar held on 25 September 1997. The discussions of this seminar highlighted points which the three institutions thought worthy of improvement and development.

3. This report has been drawn up, with the Council General Secretariat, on the basis of the experience gained during the Finnish, Portuguese and French Presidencies in applying the co-decision procedure post-Amsterdam and in implementing the joint declaration of 4 May 1999 on practical arrangements for the new co-decision procedure. It takes account of points discussed at the joint seminar on 6 and 7 November 2000 and is also intended to show how the institutions function in accordance with a particular legislative procedure and thus to shed light on certain questions being discussed at the Intergovernmental Conference.

Initial review
of the new co-decision procedure

The impact of the new co-decision procedure

4. *The Amsterdam innovations both affect the scope and simplicity of the co-decision procedure.*
5. *This procedure now applies to 39 areas under the Articles of the Treaty, as opposed to only 15 in the Maastricht Treaty. Since the entry into force of the Amsterdam Treaty, several dossiers relating to these new areas have been or are now directly concerned, such as, for example, the social chapter (Directive on the adaptation of working time), energy (SAVE and ALTENER programmes), development policy (Regulation on the environmental dimension of development) and transport (negotiations on the rail package in particular).*
6. *Simplification of the procedure, with the omission of the third Council reading and the introduction of the possibility of agreement as from the first reading, has appreciably altered relations between and the habits of three institutions but more particularly those of the European Parliament and the Council. Implementation of the new possibilities opened up by Article 251 TEC for the swift adoption of co-decision acts has made it necessary for new contact and negotiation procedures to be developed and changes to be made to the Council's working methods.*
7. *Henceforth agreement is possible throughout the duration of the co-decision procedure, i.e. at first and second readings and during conciliation. The idea of a virtually continuous process is supported by the fact that there is agreement on many dossiers after the second reading and before the formal meeting of the Conciliation Committee and agreement on several dossiers between the first and second EP readings, on the basis of a Council common position negotiated beforehand with the relevant parliamentary committee.*

8. *All of this has meant far greater use being made of the co-decision procedure in all areas of legislative activity. Not only has the number of legislative proposals to be dealt with every year more than doubled but the number of meetings and contacts at every level which are essential to the follow-up to and success of the procedure has also risen sharply. The Parliament, the Commission and the Council have had to cope with a sizeable new workload. In the case of the Council, it is basically the Presidency, Coreper (in the main, Part 1) and the General Secretariat (in particular, the "Backbone") which have shouldered this burden.*
9. *Openness and trust between institutions, flexible and pragmatic problem-handling and enhanced interinstitutional cooperation have made it possible to cope with the new situation and to ensure that co-decision acts are adopted at the earliest opportunity.*
10. *After less than eighteen months' experience, the overall review of the co-decision procedure is clearly positive.*

Some statistics

11. *Statistics available since the entry into force of the new procedure are very revealing, even if they must be regarded with caution in view of the still limited number of dossiers on which the calculation is based.*
12. *The number of dossiers dealt with under the co-decision procedure has increased by a factor of 2.5 in a full year. Nearly 25% of dossiers were concluded at first reading. A little over 50% were concluded at second reading following EP approval of the Council's common position or after Council approval of the EP's amendments to the common position. Finally, 25% were concluded during conciliation. It should be noted that nearly 50% of dossiers in this latter category were concluded without a meeting of the Conciliation Committee. In other words, in 75% of cases agreement is reached before the conciliation stage and in 85% of cases without a conciliation meeting.*

13. *The co-decision procedure under Maastricht produced radically different percentage figures, since over 60% of dossiers ended up at the conciliation stage. This development is a decisive one and has enabled the institutions to cope with the increase in the total number of co-decision dossiers. Given the slow pace of conciliation, had there been no change of attitude on the part of the main parties concerned, we should today be unable to convene the twenty or so meetings of the Conciliation Committee, not to say more, during a Presidency where experience shows the maximum number to be in the region of five to seven. Despite this favourable trend, the total number of dossiers in conciliation has risen by nearly 50% on average.*

14. *Dossiers dealt with by Coreper Part I continue to account for nearly all co-decision dossiers for the Council. However, it should be noted that, over the reference period, 4 dossiers emerged from Coreper II, whereas during the five and a half years of the Maastricht procedure only 3 did so. While we cannot anticipate the effect of the implementation of Article 67 of Title IV, this fact should be remembered.*

15. *In the case of the European Parliament, the Committee on Legal Affairs and the Internal Market (18%) and the Committee on the Environment, Health and Consumer Protection (23%), with 42% of the dossiers dealt with (as opposed to 54% for the Maastricht period), continue to be the two main committees concerned. Now all the parliamentary committees are involved, with the exception of the Committee on Petitions, the Committee on Constitutional Affairs and the Committee on Fisheries.*

16. *The processing of EP amendments is a pointer to how interinstitutional relations have developed. If we look only at amendments voted on a second reading and discussed during conciliation, we find that, at the end of negotiations, only 12% are rejected and 20% are accepted as they stand, i.e. almost 70% of amendments are subject to a compromise in one form or another. The respective figures under the Maastricht arrangements were 20, 30 and 50%. This finding is most impressive: a culture of negotiation and compromise is being introduced between the two co-legislators, with the support of the Commission in its role as mediator.*

The main lessons

1. The success of the first and second readings

17. *One statistic stands out: agreement on 50% of dossiers was reached at first or second reading on the basis of the passage of the common position without amendment. This statistic is perhaps the most indicative of the effect of the Amsterdam innovations on the co-decision procedure and is particularly notable since it is not always technical dossiers which are involved.*
18. *The logic of the procedure should mean in practice that the most politically sensitive dossiers will reach the conciliation stage, while more strictly technical dossiers could be adopted at first reading. This is frequently the case. Dossiers end up in conciliation owing to political difficulties (framework Directive on water, rail package), disagreement at the time of first reading (end-of-life vehicles) or budget implications (Socrates programme, Youth programme), while agreement on more technical dossiers (codification of foodstuffs labelling and presentation, Directive on units of measurement) is reached at first reading.*
19. *However, this is not a hard and fast rule. Some relatively technical dossiers may end up at the conciliation stage owing to failures at the follow-up stage or misunderstandings between the European Parliament and the Council. Nevertheless, particularly on the basis of a shared approach, agreement at first reading may be sought on even a sensitive dossier on grounds for example, of, political priority or timetable constraints.*
20. *This entails swift identification of the problems and smooth work planning. Inasmuch as the first reading is not beset by time considerations, parallel discussions within the EP and the Council are a prerequisite of any agreement at this stage in the procedure. To that end, prior to their respective terms of office, the Finnish, Portuguese and French Presidencies met the Chairmen of the Parliamentary Committees concerned to agree on a timetable of work for dossiers at first reading. This indicative planning has had to be adjusted in line with the progress of discussions in both the Parliament and the Council.*

21. *On this basis, the Commission proposal may be examined at Council Working Party level at the same time as any necessary referrals to Coreper, and within the competent Parliamentary Committee, with the Council Working Party being kept informed of the progress of Committee discussions, in particular through the Commission. Once the main lines of the Council's position have been established, tripartite meetings are organised to clarify positions, identify areas of difference and discuss compromises.*
22. *The Presidency has proposed holding "enlarged dialogues" on certain dossiers involving, on the European Parliament side, both the Chairman and the rapporteur of the relevant Committee and political group coordinators, in order that an overall agreement may be approved.*
23. *One case involved finalisation by the Legal/Linguistic Experts of the agreed text in the various languages prior to the plenary vote. This method enables the European Parliament and the Council to take a decision on a legally correct text reflecting the undertakings entered into by the parties. It also facilitates consultations in the national capitals, particularly in national parliaments.*
24. *Where an act is not adopted, in particular where the plenary meeting adopts amendments which are unacceptable to the Council, the contacts established prove useful insofar as such amendments are generally few in number and positions are often sufficiently close for the Parliament's adoption of the Council's common position to be envisaged. It has been possible for this to happen through prenegotiation of the common position with the Parliament.*
25. *Faster adoption of co-decision acts may not be at the expense of the quality of the procedure. This requires that the Council and the European Parliament be as closely involved at first and second readings as during conciliation. In this respect, the quality of drafting of draft acts and the drawing up of a clear agreement are decisive factors, particularly since they determine the smooth course of consultations with national parliaments. This last point is of major political importance inasmuch as it guarantees the transparency of the legislative preparation process at Community level.*

2. The increase in the number of conciliation proceedings

26. Conciliation remains a key factor in the co-decision procedure. It is bounded by a legal constraint – success or failure – and by a practical limitation: it is virtually impossible to convene the Conciliation Committee more than five or six times every six months, on average. Despite the drop in the number of dossiers in conciliation in relation to the total number of co-decision dossiers, there has been an increase in the overall number of such dossiers, and particularly in the number of Conciliation Committee meetings.
27. To improve preparation for conciliation, before the Council notes that not all EP amendments can be accepted and thereby formally opens the conciliation stage, every Presidency has used part of the second reading slot to hold trialogues.
28. The practical arrangements for preparing for conciliation and the staging of Conciliation Committee meetings are well established. The practice of exchanging compromise proposals prior to meetings and of working on the basis of a joint document has proved its effectiveness.
29. The timetable still remains the main problem. In some cases, the Presidency has been able to agree on a timeframe for the conciliation stages, which considerably facilitates the whole process.
30. Many dossiers continue to require at least one Conciliation Committee meeting. The number of such meetings must be reduced, or at least controlled, in order to obviate the risk that the whole co-decision procedure will seize up. The solution needs to be sought in greater effectiveness at first and second readings. It is also possible for the proportion of dossiers at the conciliation stage which go before the Conciliation Committee (half, at present) to be reduced. This is a matter for effective trialogues.

3. Tripartite meetings and dialogues

31. *Tripartite meetings attended by the Council, European Parliament and Commission are needed throughout the procedure. For the Council, the Chairman of Coreper or of the Working Party is assisted by the General Secretariat (relevant DG, "Backbone" and, where appropriate, Legal Service). It is now customary, in accordance with the spirit of the Helsinki conclusions, for the incoming Presidency to be invited to these meetings.*
32. *These meetings include technical meetings, at which the Council delegation is led by the Working Party Chairman and which permit exchanges with the parliamentary committee rapporteur. There has been a major development in the number of such meetings over the last eighteen months.*
33. *"Dialogues" are, however, the major factor in the equation. It has become customary for all tripartite meetings, irrespective of format, at which the Council delegation is led by the Chairman of Coreper or, at the conciliation stage, by the Council President, to be so described. A timetable for these dialogues is now regularly drawn up by the "Backbone" of the General Secretariat.*
34. *No provision for dialogues is made in the Treaty or the joint declaration of 4 May 1999. The joint declaration simply speaks of "appropriate contacts". The original aim of "informal dialogues" was to prepare for Conciliation Committee meetings. This innovation of the Spanish Presidency in the second half of 1995, at the time of the Maastricht co-decision procedure, has naturally been extended under the new procedure to include the other co-decision stages.*
35. *The dialogue system has demonstrated its vitality and flexibility, to judge by the reduction in the number of dossiers requiring a meeting of the Conciliation Committee. This term actually covers several types of meeting: "dialogue", "restricted dialogue", "enlarged dialogue", "political dialogue" or "technical dialogue", depending on the situation. While there is no need for these instruments to be formalised, the pragmatic approach demonstrated thus far must be preserved by guaranteeing a constant flow of information to delegations.*

4. *The role of the Commission*

36. *The Commission occupies a special place in the co-decision procedure. By participating in Council discussions and attending those of the European Parliament, it ensures follow-up in both institutions. From this standpoint, it represents a most important carrier of information, particularly at the very start of the procedure.*
37. *Furthermore, in accordance with Article 251(4) TEC, the Commission takes all the necessary initiatives at the conciliation stage with a view to reconciling the positions of the European Parliament and the Council. Pursuant to the joint declaration of 4 May 1999, it takes initiatives to help reconcile the positions of the European Parliament and the Council as from the first and second readings. This role is decisive and is played to the full by the Commission in all dossiers. In the case of certain dossiers, the Commission, without foregoing its prerogatives, has chosen to adopt a more flexible position so as not to inhibit agreement between the European Parliament and the Council at second or even first reading.*
38. *However, the position of the Commission is not the same at the various stages of the co-decision procedure. At first and second readings, the Commission has at its disposal the means conferred on it by Articles 250 and 251(1) to (3) for defending its original proposal. Consequently, its attitude may be dictated by different considerations, depending on the stage in the procedure which a dossier has reached. In order to prevent difficulties, to say nothing of conflict, the Council, and in particular its Presidency, has always endeavoured to keep the Commission informed and to involve it closely in the various contacts established with the European Parliament from the initial stages of the procedure.*

5. *The role of the Presidency and the General Secretariat of the Council*

39. *The Presidency, assisted by the General Secretariat of the Council, has had a predominant role in the co-decision procedure. This constitutes a considerable additional workload and, above all, a new political responsibility.*
40. *The work programming which successive Presidencies have endeavoured to establish with the European Parliament since the entry into force of the Amsterdam Treaty represents a legitimate response to their political priorities. The effect of this power of initiative by the Presidency is now strengthened thanks to the increasing possibility of reaching agreement at first reading, i.e. during a Presidency's six-month term of office.*
41. *Moreover, it is the Presidency which establishes contact with the European Parliament on the Council's behalf and which conducts negotiations for the Council. During trilogues, the Presidency is the single voice of the Council and during plenary meetings of the Conciliation Committee the Presidency Minister is the sole spokesman of the Council. It is the Presidency which, in agreement with the Parliament, sets the dates for convening the Conciliation Committee and determines the timetable for triologue meetings.*
42. *The support provided by the General Secretariat of the Council and, in particular, by its "Backbone" goes beyond the traditional role of assistance for the Presidency. Daily contacts with the EP and the Commission are maintained by the General Secretariat.*
43. *Since the entry into force of the Amsterdam Treaty, this new burden on the Presidency under the co-decision procedure has called for a new climate of trust, particularly within Coreper, in the form of the best possible information for and the closest possible involvement of all delegations. Objectives are set forth and discussed, trilogues are announced, a timetable of triologue meetings is regularly drawn up, negotiating briefs are fixed and meetings with the European Parliament are systematically minuted. The assistance of the General Secretariat of the Council, the attendance of the incoming Presidency and the participation of the Commission in all trilogues form part of this climate of trust.*

Making the co-decision procedure more effective

That the co-decision procedure works is undeniable. The provisions of new Article 251 TEC have been properly implemented. The joint declaration of 4 May 1999 on practical arrangements for the co-decision procedure has provided a satisfactory framework in both letter and spirit.

With the practice of co-decision, a new legislative culture has gradually become established; it has undergone considerable development since the entry into force of the Amsterdam Treaty. The holding of an interinstitutional seminar on the matter on 6 and 7 November 2000 bears witness to this fact. The new climate surrounding the co-legislators, Parliament and Council, which now, in partnership with the Commission, take their respective positions and constraints into account in the course of their work, is a good omen for the future.

It now remains to consolidate, develop and refine the new tools and procedures in order to derive maximum gain from the opportunities afforded for speedier adoption of co-decision acts. Examination of the functioning of the procedure throughout its various stages enables points crucial to the success of co-decision and the likely difficulties to be identified.

The establishment of parallel timetables continues to pose a problem. Deadlines are often tight.

Furthermore, Member State capitals and particularly national parliaments, and doubtless the European Parliament itself, may well experience difficulty in coping with the sustained pace of new practices where agreement is reached at a first or second reading.

The answer lies in clarity and organisation: settling on an agreed pace, ensuring sound drafting quality, having texts available in the various languages, revised by the legal/linguistic experts, and staying in command of timetables and deadlines.

The total number of dossiers in conciliation and of Conciliation Committee meetings continues to be high, and we are likely to have to cope with a further increase in the number of such dossiers if the co-decision procedure is extended. The solution lies in the development of dialogues and technical meetings, which have already experienced impressive growth and diversification.

Finally, it is most important that a common communications strategy be introduced. Little has been done to date and at present the situation is one of complete fragmentation. However, it would be in the interests of the Union to respond to the citizens' need for information and to develop efforts in that direction.

The list below puts forward recommendations for making the co-decision procedure more effective. The proposals are neither exhaustive nor final, since the new procedure is not yet eighteen months old and it is not certain that the potential of Article 251 TEC has been wholly realised. They relate to the problem of scheduling and deadlines, to the various stages of the procedure and to common communications. Many reflect existing practice or have at least been the subject of experimentation.

Some, numbered I to II, refer to Council bodies, others, numbered i to xiii, come within the framework of the joint declaration and the rest, numbered a to d, are proposals which will need to be discussed in another interinstitutional framework.

Timetables and deadlines

Establishing timetables and observing deadlines are vital to the effectiveness and success of the co-decision procedure. Where no deadline is set for the first reading, an agreement on the programming of work is the first condition for the act's adoption at this stage of the procedure.

In the framework of the joint declaration of 4 May 1999:

- i. The timetable of the Presidency, published seven months before the start of the latter, indicates the days set aside for any conciliation meetings.
In this timetable, the Presidency endeavours to reserve regular meeting dates (approximately two days a month) for meetings and dialogues necessary for co-decision proceedings, in particular for meetings to prepare conciliation.**
- ii. The Presidency, assisted by the General Secretariat of the Council, establishes the programming of work so as to permit examination of first reading dossiers in parallel by the Council and the European Parliament.**
- iii. The Presidency proposes, wherever necessary and possible, an adjustment of the deadline periods between voting in committee and voting in plenary session.**
- iv. For each dossier in conciliation, the Presidency endeavours to draw up a provisional schedule of the technical meetings, preparatory dialogues and even conciliation meetings necessary to the processing of the dossier, prior to the start of the conciliation stage.**
- v. The inclusion of periods when the activities of the institutions are interrupted calls for an adjustment to work programming, which the Presidency-in-office establishes in coordination with the incoming Presidency.**
- vi. Adjustments to work programming at the end of a Presidency which involve the incoming Presidency are established in coordination between the two Presidencies.**

For the Council:

1. **At the start of its six-month period of office, the Presidency informs Coreper of all programming for co-decision dossiers, in particular first reading dossiers; it refers any amendments and necessary adjustments to this programming to Coreper.**
2. **The General Secretariat of the Council circulates a regularly updated schedule of tripartite meetings.**
3. **On the basis of the Commission's legislative programme and the programming of European Parliament proceedings, the General Secretariat of the Council establishes a provisional document on co-decision dossiers for Coreper twice in the course of each Presidency.**

Council proceedings

Deadline constraints and the proliferation of contacts with the European Parliament require the Council to exercise a disciplined approach and the Council Presidency to conduct proceedings in as speedy and organised a fashion as possible.

4. **To that end, the Presidency may, in accordance with the guidelines for reform and the operational recommendations of Helsinki, call on delegations to submit their comments and positions in writing. This is particularly useful for first reading dossiers to identify the Council's approach at the earliest possible stage.**
5. **With a view to agreement or conciliation, the Presidency ensures that EP 2nd reading amendments are exhaustively examined by the relevant Working Party. This examination provides the material for a full Working Party report to Coreper stating the acceptable amendments and any compromise formulae.**
6. **Delegations ensure the quality of the drafting of amendment proposals, in particular those tabled by the Council, from the commencement of the first reading through to the end of the procedure.**

7. **The General Secretariat ensures that the various language versions are drawn up as soon as possible. This is an essential feature for the Member States in view of the pace of the co-decision procedure, in particular for relations with national parliaments.**
8. **Throughout the negotiations, the Presidency refers its proposals for approval to Coreper, which determines its terms of reference. It reports back systematically on its contacts with the European Parliament.**
9. **The incoming Presidency is present at all tripartite meetings. The Council delegation at these meetings is generally led by the Council Presidency (or by the Chairman of Coreper or of the Working Party), assisted by the General Secretariat of the Council, in the presence of the incoming Presidency.**
10. **The Presidency, assisted by the General Secretariat of the Council, provides a continuous flow of information to delegations at Coreper and Working Party level. In particular, the General Secretariat of the Council draws up a written report every week on the progress of co-decision dossiers which is circulated to the Mertens Group.**
11. **The Presidency ensures a balanced spread of the workload in the subordinate bodies of the Council (Coreper, Working Party, Working Party of Counsellors/Attachés).**

Negotiations with the European Parliament

"Appropriate contacts" with the European Parliament throughout the co-decision procedure are essential to an exchange and better understanding of positions, to the airing of difficulties and to the identification of areas of disagreement, for the purposes of the negotiations and in order to ensure the fastest possible conclusion of the legislative procedure. The principal mechanism available under these "appropriate contacts" is the tripartite meeting. Depending on the stage of the procedure and on the dossier being processed, the constraints are not the same. The established pragmatic approach must be preserved.

In the context of the joint declaration of 4 May 1999:

- vii. **The Presidency ensures that the Commission, through its General Secretariat, is kept systematically informed of all tripartite meetings and is closely associated with each stage of the negotiations, in accordance with Article 251 TEC. The General Secretariat of the Council also ensures that Commission proposals are properly and speedily circulated throughout the procedure, with a view to reconciling positions.**
- viii. **(Tripartite) technical meetings are encouraged, particularly at first reading, in the interests of a clearer understanding of the respective positions and a more precise identification of areas of difficulty. The Chairman of the Working Party briefs the Working Party and draws up a report.**
- ix. **The Presidency, which informs Coreper, proposes the most appropriate dialogue format. In order, in particular, to reach overall agreement at first or second reading, it proposes the holding of an enlarged dialogue with the participation of the coordinators of the main European Parliament political groups.**
- x. **The Presidency proposes finalisation of the text in the various languages by the legal/linguistic experts of the European Parliament and the Council at first reading, prior to the EP vote in plenary session.**
- xi. **During conciliation, the Council proposes issuing the exchange of letters procedure to reach agreement.**
- xii. **Compliance with the guidelines of the interinstitutional agreement of 22 December 1998 on the quality of drafting of Community legislation is of special importance for good quality drafting and the readability of acts adopted under the co-decision procedure. In this connection, the Council emphasises the contribution which the Legal Services of the three institutions can make to this process.**
- xiii. **The Council stresses the need to reinforce the coordination and communication of the General Secretariat of the Council with the corresponding structures of the European Parliament and the Commission in order to improve day-to-day follow-up and preparation of the various contacts.**

