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Delegations to the Conciliation Committee

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CONCILIATIONS AND CODECISION ACTIVITY REPORT

July 2004 to December 2006

(6th parliamentary term. first half-term)

of the delegations to the Conciliation Committee
presented by

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SUMMARY

Conciliation

- Parliament secured improvements to environmental and employment legislation in conciliation
- Enlargement has diminished neither the effectiveness nor the transparency with which Parliament negotiates in conciliation
- The ECJ ruling in the IATA case sets no limits to the conciliation committee's work
- Codecision before conciliation:
 - the distribution of work between committees is broadly unchanged, but LIBE has an important new role
 - there has been a big shift towards first-reading agreements
 - a new practice - 'early' second-reading agreements - has developed.

The revision of the Joint Declaration on practical arrangements for the codecision procedure

- The 1999 Joint Declaration proved its worth, but stood in need of revision. A new Joint Declaration was agreed in December 2006.

The 2006 Comitology Decision

- Introduces a new type of procedure - regulatory procedure with scrutiny - where quasi-legislative measures may add, delete or amend non-essential elements in the main text.
- The EP gains, for the first time, an effective blocking right: it has three months in which to exercise this right.
- Existing legislation must be brought into line with the new Decision.

Introduction

This activity report looks back over the first half of the sixth (2004-2009) legislature. It examines some general trends in law-making under the codecision procedure, paying particular attention to conciliation procedures; the conclusion of a new Joint Declaration on practical arrangements for the codecision procedure; and a new Comitology Decision.

It should be stressed that this is an interim report. It does not present firm conclusions since these can most helpfully be drawn when it is possible to compare one whole legislature with another. A full report on the sixth legislature will accordingly be presented in 2009.

Nevertheless, even at this stage of the legislature it is worth highlighting four points:

- Conciliation continues to work well. The ruling of the Court of Justice in the IATA case has confirmed that the Treaty confers a wide discretion on the Conciliation Committee; and underlined the transparency of the procedure. And, as things have turned out, enlargement has diminished neither the effectiveness nor the transparency with which the Parliament negotiates.
- The practice of codecision is evolving. There has been a significant shift towards first reading conclusions to procedures: these accounted for almost two-thirds (63%) of all legislative dossiers in 2004-2006. 'Early' second reading agreements - unknown before 2004 - are now common.
- The Institutions work together well. The revision of the 1999 Joint Declaration on practical arrangements for the codecision procedure incorporates best practice developed over the past seven years, especially in the case of first- and second-reading agreements.
- The 2006 Comitology Decision for the first time places Parliament on an equal footing with the Council in its right of scrutiny of implementing measures adopted under codecided laws.

I. Conciliation

This section of the report looks at:

- Parliament's key achievements in conciliation
- the practice of conciliation in an enlarged EU
- the ECJ ruling in the IATA case
- codecision before conciliation: some general trends

1. Conciliation: an overview

Because so many dossiers have been concluded in first- or 'early' second-reading agreements, the share concluded in second readings or in conciliation has inevitably fallen. However, almost one-third of all those dossiers where Parliament and Council have been unable to reach a political agreement before the Council adopts its common position have ended-up in conciliation. Conciliation remains necessary as a means of reaching agreement on many difficult and contentious legislative dossiers.

Conciliation has, moreover, a wider significance. The negotiating practices developed in conciliation, the expertise which has been built up in the secretariat, and even the vocabulary used (negotiation meetings at first- and second-reading stages are commonly referred to as 'trilogues'), have shaped the way in which agreements are reached at first and second reading stage. As one authority noted in a recent survey of the Parliament's legislative powers, *'Conciliation casts a backward shadow over the whole codecision procedure'*.

At the beginning of the legislature, two whole Council presidencies passed without a conciliation procedure being opened: the co-legislators had made every effort to conclude all pending procedures before the interruption in legislative activity which would accompany a parliamentary election and before enlargement radically altered the composition of the Parliament. In the past eighteen months, eleven conciliation procedures have been successfully concluded. Detailed summaries of these are attached as Annex A. It is very likely that the number of conciliation procedures opened will rise over the remainder of the legislature: five procedures are foreseen for the first half of 2007.

In the period under review, as in the course of the fifth legislature, ENVI was by far the largest 'customer' for conciliation, being responsible for 8 of the 11 dossiers dealt with at third-reading stage (TRAN was responsible for two, EMPL for one). This reflects the large share of all codecision dossiers dealt with by ENVI. But it may also reflect the context in which second-reading negotiations on environmental dossiers take place.

The political culture of the committee probably plays a role: in the past, ENVI has proved reluctant to abandon positions of principle and to compromise early in the legislative procedure. But so does the approach of Council: evidently, it is not always easy to find the necessary majorities for concessions to the Parliament position in second-reading negotiations. Noting the slender majorities by which second-reading amendments are sometimes adopted in ENVI, and regarding the committee as 'greener' than the Parliament as a whole, delegations may sometimes gamble that a rapporteur will not be able to carry the committee with him; or that, if he does, the committee's position will not be supported

by the plenary. Sometimes, such an assessment will prove to be correct. But, sometimes, it will prove to be mistaken: and in this situation there is then no alternative but conciliation.

What does the Parliament achieve in conciliation? One - rather crude - indication is provided by the fate in conciliation of the amendments adopted by the EP at second reading stage. Thus, the EP adopted in total 311 amendments at second reading in the case of the eleven dossiers which were then subject to conciliation. Of these, just under one quarter (24%) were subsequently accepted by the Council as they stood; just over half (54%) were incorporated, in part or in spirit, in compromise amendments adopted by the Conciliation Committee; and just over one fifth (21%) were withdrawn. This means that almost four-fifths of EP second reading amendments were subsequently adopted in whole, in part, or in spirit, in the course of conciliation. (These figures are broadly in line with those for the fifth legislature as a whole).

A qualitative analysis of what the Parliament achieves in conciliation is more revealing. In the case of the eight conciliations on dossiers for which ENVI had been responsible, where the Parliament consistently supported higher environmental standards, its key achievements were:

- higher standards of bathing water (Directive on bathing waters)
- compulsory checks and maintenance work to prevent contamination of soil and water; adequate financial guarantees for the clean-up of land affected by waste facilities (Directive on mining waste)
- maintenance of the right of Member States to introduce tougher restrictions on emissions of fluorinated gases if they so wished (Regulation on fluorinated gases & Directive on motor vehicle air conditioning systems)
- capacity labelling to help consumers consume in a more environmentally-friendly way, distributor take-back free of charge of spent batteries, limited exemptions for small producers, producer support for research into less environmentally harmful batteries (Directive on batteries and accumulators)
- a single regime for access to all kinds of environmental information held by EC bodies and institutions (Regulation on application of the Aarhus convention)
- prioritising environmental concerns in references to pollution of groundwater by nitrates and avoidance of any delay in attaining environmental objectives (Directive on groundwater)
- the general principle of access to geographical information free of charge (INSPIRE Directive).

In the related conciliations on working conditions in road transport, and in that on protection of workers from artificial radiation, the Parliament sought pragmatic solutions which nevertheless safeguarded or improved working conditions. Its main achievements were:

- earlier introduction of stricter checks and of digital tachographs (Directive & Regulation on social legislation relating to road transport activities)
- Community laws will protect workers from exposure to radiation from artificial sources: national laws will protect them from exposure to radiation from natural sources (Directive on exposure of workers to risks from exposure to physical agents).

2. Conciliation in an enlarged EU

Article 251(4) of the Treaty stipulates that the Conciliation Committee is composed of *'the Members of the Council ... and an equal number of representatives of the European Parliament'*. Enlargement of the EU on 1 May 2004 to encompass 25 Member States therefore led to a significant change in the composition of the Conciliation Committee, with the number of members (and an equal number of substitutes) being raised from 15 to 25. However, contrary to the fears expressed in some quarters, enlargement has neither compromised the effectiveness of the Parliament negotiating team; nor has it reduced the importance of the delegation as the ultimate decision-maker on the Parliament side in the conciliation procedure.

The structure of the negotiating process has ensured this. At the outset of the legislature, the three Vice-Presidents took a clear decision to try to keep the EP negotiating team small. Typically, it has been a troika made up of the Chair of the EP delegation, the Chair of the responsible parliamentary committee, and the rapporteur: occasionally, one or more shadow rapporteurs have joined the team. As a consequence, the EP negotiating teams have remained cohesive and effective.

At the same time, however, the negotiating team has continued to receive its mandate from the delegation before every trilogue, and to report back to the delegation after each trilogue. Thus, it has been the delegation which has taken all important procedural decisions (e.g. whether another trilogue meeting should be arranged, or whether the Conciliation Committee should be convened). And it has remained the delegation which has determined the strategy vis-a-vis the Council position at every stage of the procedure; which has approved or rejected compromise proposals; and which, at the end of the conciliation procedure, and always by a vote in which the support of an absolute majority of members of the delegation (i.e. at least 13 votes) has been required, has formally approved or rejected the agreement reached.

Given the central role played by the delegation, it is, of course, important that its meetings are well-attended. But it is not essential that every one of its members attend every one of its meetings; and the political groups are able to appoint substitutes. The delegation aims to act by consensus and the key point is that the views of the individual political groups are expressed and that proper account is taken of these.

In general, therefore, enlargement has not reduced the efficiency or transparency with which the Parliament acts in conciliation: there is no reason therefore to fear that the January 2007 enlargement, when the size of the delegation will increase from 25 to 27, will prove problematic.

However, one practical problem, which can only continue to become more acute, should be noted. Provision of full interpretation in all of the languages used by the members of the delegation is expensive and has become more difficult to arrange. On average, it costs EUR 800 to provide one interpreter for a delegation meeting, and interpretation teams normally consist of two or three interpreters: in full meetings of the Conciliation Committee, two full sets of teams of interpreters are required. Enlargement has led to a dramatic increase in the number of official languages and, in a relatively small meeting such as a conciliation delegation meeting, an interpretation team may in reality be working

for a single MEP. Pressure on meeting rooms with adequate interpretation facilities has made arranging delegation meetings more difficult. However, given the Parliament's commitment to the principle of multilingualism, it is not obvious how economies can be made.

3. The European Court of Justice and conciliation: the IATA ruling

On 10 January 2006 the European Court of Justice delivered a ruling on the interpretation of Article 251 of the EC Treaty, dealing with the conciliation procedure for the first time and defining the powers of the Conciliation Committee.

The background to the ruling was as follows. On 14 October 2003, the delegations of the Parliament and the Council reached agreement in the Conciliation Committee on a proposal for a Regulation on passengers' rights regarding compensation and assistance in the event of denied boarding (e.g. because of overbooking) and of cancellation or long delay of flights¹.

The International Air Transport Association (IATA) and the European Low Fares Airlines Association (ELFAA) subsequently contested its validity in the UK before the High Court on several grounds, one of which was that the Conciliation Committee had exceeded its powers by amending provisions that were not subject to EP second reading amendments². The British High Court referred the case to the European Court of Justice (ECJ) for a preliminary ruling.

The ECJ set out to examine the powers of the Conciliation Committee and thus to define the limits of the conciliation procedure, in particular to examine whether the Conciliation Committee had the right - for reasons of consistency and internal coherence of the act - to amend a provision that was not subject to a second reading amendment. It had also to consider whether the whole procedure was sufficiently transparent and democratic.

In its judgement, the ECJ fully upheld the validity of the Regulation and dismissed all the arguments put forward by IATA and ELFAA.

As far as the powers of the Conciliation Committee are concerned, the Court ruled that the Conciliation Committee *'has the task not of coming to an agreement on the amendments proposed by the Parliament, but (...) of reaching an agreement on a joint text. The wording of Article 251 EC does not therefore include any restriction as to the content of the measures chosen that enable agreement to be reached on a joint text'*.

¹ Report by Giorgio LISI (COD/2001/305); EP third reading vote on 18.12.2003 (T5-0591/2003).

² Article 251(4) of the EC Treaty stipulates that *'... the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament'*. This led to a widespread assumption that only amendments adopted by the EP in second reading could be examined in the Conciliation Committee. In this particular case, the EP and the Council reached agreement in the Conciliation Committee to exclude *'extraordinary circumstances'* from Article 6 of the Regulation on long delays as an excuse for air carriers to be exempted from their care obligations. As a result of this, and *'in order to ensure a coherent and symmetrical approach'*, the two institutions, with the consent of the Commission, felt obliged to remove *'extraordinary circumstances'* from the Regulation altogether; and thus also from Article 5 on cancellation of flights, which had not been the subject of a second-reading amendment.

Moreover the Court acknowledged that *'in using the term 'conciliation', the authors of the Treaty intended to make the procedure adopted effective and to confer a wide discretion on the Conciliation Committee. In adopting such a method for resolving disagreements, their very aim was that the points of view of the Parliament and the Council should be reconciled on the basis of examination of all the aspects of the disagreement ...'*.

In layman's terms, the Court ruled that the EP second reading amendments are only the starting point for negotiations with the Council and that, in order to reach agreement and in the interest of good law-making, the two co-legislators might need to change provisions that had not been subject to previous disagreement. In short, no part of the common position is sacrosanct: Parliament and Council may agree to amend it as necessary in order to reach an agreement.

As far as the transparency of the conciliation procedure was concerned, the Court also dismissed the plaintiff's claim that, since meetings of the Conciliation Committee are not public in nature, the principles of representative democracy are undermined. The Court ruled that *'genuine participation of the Parliament in the legislative process of the Community... represents an essential factor in the institutional balance intended by the Treaty. However, it is not in dispute that the Parliament is itself represented on the Conciliation Committee and that this representation is indeed made up in accordance with the relative size of each political group in the Parliament'*.

Furthermore *'under Article 251(5) EC the joint text adopted by the Conciliation Committee must still be examined by the Parliament itself with a view to its approval. This examination, which necessarily takes place in the conditions of transparency normal for the proceedings of that assembly, thus ensures in any event the genuine participation of the Parliament in the legislative process in compliance with the principles of representative democracy'*.

The IATA ruling is thus something of a landmark: it underlines the democratic and transparent character of conciliation, and confirms that the Conciliation Committee has a wide remit.

4. Codecision before conciliation

Between July 2004 and December 2006, 169 legislative acts were adopted under the codecision procedure. An analysis of these shows that the practice of codecision continues to evolve. Three broad generalisations can be made about codecision during the first half of the current legislature:

- the distribution of dossiers by parliamentary committee has remained relatively stable
- there has been a dramatic increase in the proportion of dossiers concluded at first reading
- about half of all dossiers agreed at second reading have been concluded, in a new development, by 'early' second-reading agreements.

a) The distribution by parliamentary committee of legislative proposals in codecision has remained broadly unchanged, although LIBE has an important new role.

Within the Parliament, the committee structure was reorganised after the June 2004 elections for the sixth legislature. One consequence was that the former Legal Affairs and Internal Market committee disappeared, to be replaced by two separate committees - Legal Affairs (JURI) and Internal Market and Consumer Protection (IMCO). Another was the division of the responsibilities of the former Regional Affairs, Transport and Tourism (RETT) committee between the new Transport and Tourism (TRAN) and Regional Development (REGI) committees. But, by and large, there was a considerable continuity of committee responsibilities despite the reorganisation.

More significant than any redistribution of responsibilities has been the entry on to the stage of a new actor. The Nice Treaty provided for the extension of codecision in future to some areas of Justice and Home Affairs (notably to the legal bases covering border controls, asylum measures and immigration): the Parliament's committee on Civil Liberties, Justice and Home Affairs (LIBE) consequently came to deal for the first time with legislation in codecision. (And, of course, within the Council, COREPER II now has a more prominent role in codecision).

Six committees have been responsible for three-quarters of dossiers dealt with under the codecision procedure during the period under review. ENVI has been the responsible committee for about one-fifth (21%), and TRAN for one-seventh (14%); while four other committees (JURI, LIBE, ITRE and CULT) have each been responsible for about one-tenth. With the exception of the new role of LIBE, this picture is broadly in line with what happened during the fifth legislature.

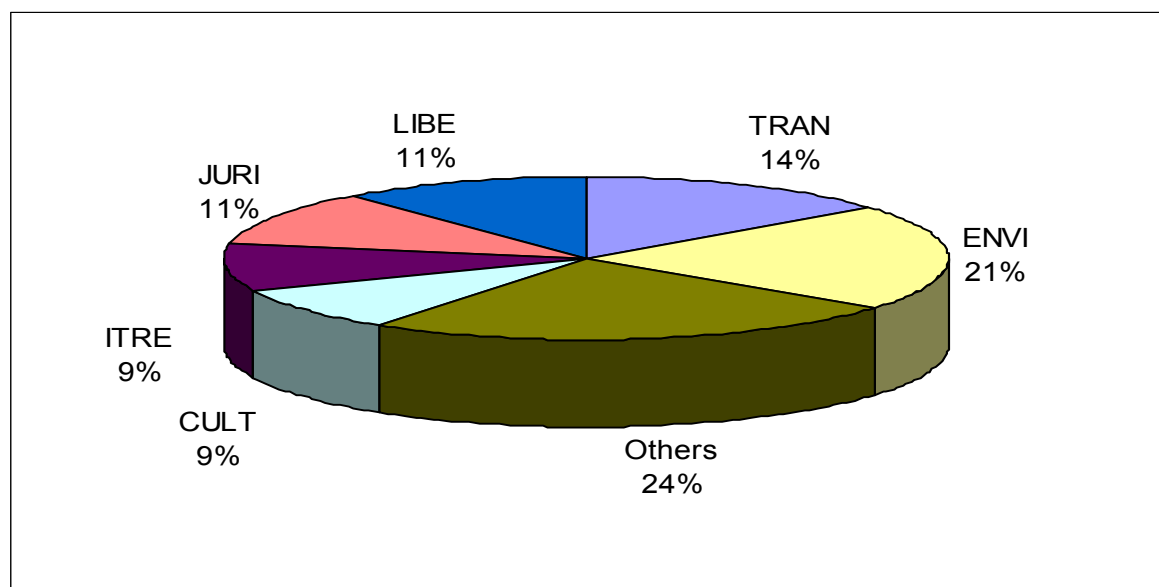


Figure 1: Distribution of legislative dossiers in codecision in the first half-term of the sixth legislature by parliamentary committee.

It is also worth noting that the different parliamentary committees tend to conclude their legislative dossiers at different stages in the codecision procedure. Thus, JURI and LIBE have concluded their codecision dossiers overwhelmingly at first reading; while TRAN and CULT have concluded a substantial proportion of theirs in 'early' second readings: ENVI,

ITRE and IMCO, by contrast, have tended to conclude dossiers either in first reading or in 'classic' second readings. In part, these differences might be explained by the different 'cultures' of the major codecision committees, perhaps reflecting the smoothness of their working relationships with their counterparts in the Council formations and Commission Directorates-General. However, in part, such differences can only be explained by reference to the substantive points of disagreement between Parliament and Council on specific legislative dossiers.

b) There has been a significant trend towards conclusion of dossiers at first reading. Under the Maastricht Treaty (1993), conclusion at first reading was not possible. Between 1 May 1999 (when Amsterdam entered into force) and 30 April 2004, 28% of legislative acts in codecision were concluded at first reading. During the first half of the current legislature, this figure has increased to no less than 63% of dossiers.

Part of the explanation for the changing pattern of conclusions lies in the submission by the Commission of a significant number of proposals 'recasting' or codifying existing legislation i.e. proposals consolidating a number of existing laws into a single act. These proposals were in line with the provisions in the 2003 Interinstitutional Agreement on Better Lawmaking and were uncontroversial.

Part of the explanation also lies in the greater familiarity with the codecision procedure of Parliament, Council and Commission. Negotiations between the Institutions begin at an earlier stage in the procedure, and they often make faster progress, than was the case in the past. Greater trust and more flexibility in working together have enabled the Institutions to reach more quickly mutually satisfactory agreements on a growing number of legislative dossiers.

So, there is nothing intrinsically problematic about this development. Indeed, it is in keeping with the 1999 Joint Declaration on practical arrangements for the codecision procedure (discussed at greater length in section II below), which allows the institutions to establish '*appropriate contacts (...) with a view to (...) bringing the legislative procedure to a conclusion as quickly as possible*'.

However, some concerns have been expressed, within the Parliament and beyond, about the potential lack of transparency inherent in first and second reading negotiations and the lack of clarity and coordination as to the procedures to be applied. Thus, while the procedures to be followed at the conciliation stage are clearly set out in Article 251 of the Treaty and in Parliament's Rules of Procedure (Rules 63-65), the procedures to be followed when seeking agreement at first and second reading are less clear.

In order to address these concerns, a set of guidelines on how to conduct negotiations and conclude agreements at first and second reading was approved by the Conference of Presidents and confirmed by the Conference of Committee Chairs in November 2004 (see [Annex B](#) for the full text of the guidelines). The purpose of these guidelines is to establish a uniform way of proceeding within Parliament when seeking an agreement at first or second reading, while at the same time ensuring maximum flexibility, transparency, effectiveness and legitimacy of the whole procedure.

How well do these guidelines work in practice? It is difficult to generalise. Different committees adopt different approaches to first- and second-reading agreements. And, sometimes, different rapporteurs within the same committee will conduct negotiations in rather different ways. But, at the very least, the guidelines appear to have widened the circle of those on the EP side involved in negotiations; and to have provided a clear statement of the Parliament's commitment to the maximum of transparency in first- and second-reading agreements. In any case, the ultimate safeguard of transparency and democratic legitimacy remains: any agreement with Council proposed by a rapporteur must be acceptable to his committee, and then to Parliament as a whole in plenary session.

Recognition of the growing importance of first-reading agreements is reflected in the attention given to them in the revised Joint Declaration on practical arrangements for the codecision procedure (see Part II of this report). And this is a guarantee that the practice of the Council and Commission will be in line with the Parliament's internal guidelines on first- and second-reading agreements.

Finally, and in parenthesis, one other development at first reading stage should be noted. On three separate occasions - on the Port Services dossier (TRAN: Jarzembowski), on the Rail Freight Services proposal (TRAN: Zile report) and on the Humane Trapping Standards (ENVI: Scheele report) - the Parliament has rejected, rather than amended, a Commission proposal. The rejection of the Port Services proposal followed hard on the heels of the Parliament's rejection at third reading of the outcome of a conciliation procedure on an essentially similar proposal. In the case of the rail freight proposal, the TRAN committee accepted the view of the rapporteur that existing international law imposed strict enough obligations on rail operators; and that the proposed law would distort competition between rail and road freight operators. The Humane Trapping standards proposal was rejected when the committee responsible and plenary agreed with the rapporteur's view of the Commission proposal as so flawed that it was impossible to improve by means of amendment.

From an institutional point of view the interesting point about this development is that, while it does not explicitly prohibit this, nor does the EC Treaty actually provide for rejection of a Commission proposal by the Parliament in first reading - a possibility which is explicitly foreseen at second reading (Article 251 (2)(b) EC Treaty). According to Article 251(2) EC Treaty, the Parliament is entitled only to deliver an opinion, in which it may or may not propose amendments to the Commission proposal. The Parliament, however, has proved itself reluctant to accept this limitation on its freedom of action at first reading stage. Indeed, its Rules of Procedure explicitly take account of the possibility of rejection of a legislative proposal at first reading (Rule 52).

c) The first half of the legislature has also seen the development of a new practice in codecision - that of reaching 'early' second reading agreements. These accounted for 15% of all dossiers concluded.

An 'early' second reading agreement is the product of successful negotiations between the Institutions after the Parliament has adopted its first reading position but before the Council has reached its common position. When such negotiations are at an end, the Chair of the parliamentary committee responsible gives an assurance (usually in the form of a letter to the chair of the relevant formation of COREPER) that, if the Council adopts the agreement

reached in its common position, he will recommend to his committee, and to Parliament in plenary session, that the common position be adopted without amendment in Parliament's second reading. While, formally speaking, procedures concluded in this way are concluded at second reading stage, in reality a political agreement has already been reached before Council completes its first reading.

The attraction of early second reading agreements from the Parliament's point of view is that it is sometimes easier to reach a satisfactory agreement before the Council has finalised its common position. More generally, they offer a new opportunity for the Institutions to reach agreement. The fact that the Council is nowadays often able to agree its 'general approach' before Parliament's first reading means that both institutions have well-defined positions earlier than used to be the case. Provided that these positions are not too far apart, Parliament and Council can now often reach agreement in negotiations before common position stage. As a consequence, there has been a reduction in what might be called classic second reading agreements i.e. second readings in which the Parliament adopts amendments to the Council's common position which have been agreed in advance with the Council.

'Early' second reading agreements were particularly important in the period under review because this was also the period during which the negotiations which led to the agreement of a new Interinstitutional Agreement (IIA) containing a Multi-annual Financial Framework (MFF) for all Community expenditure during the period 2007-2013. The MFF (formerly known as the 'Financial Perspective') sets annual ceilings for each of the headings and sub-headings into which the Community budget is divided.

In July 2004, the Commission published its proposal for a new IIA. It also adopted a package of proposals for multi-annual (2007-2013) Community programmes in line with this.

On 15 September 2004, the Parliament set up a 'Temporary Committee on Policy Challenges and Budgetary Means of the Enlarged Union 2007-2013' (FINP). Its remit asked it to *'propose an indicative allocation of resources between and within the different headings of the financial perspective in line with the priorities and proposed structure'*. The Chair of the Temporary Committee (the President of Parliament) asked the standing committees responsible for legislative dossiers with budgetary implications not to report to plenary until after the Temporary Committee had reported.

The Parliament adopted the final report from FINP on 8 June 2005 and the EP held its first readings on the majority of FINP-related legislative proposals in the autumn of 2005. However, it was not until an overall agreement on the new IIA had been reached (4 April 2006) that the Commission was able to adopt revised proposals for the budgets of the multi-annual programmes (24 May 2006). The legislative procedure was thereby unblocked and the way was open for the Council to adopt its common positions.

Once this had happened, there was considerable pressure to conclude the legislative procedures quickly, since the great majority of the dossiers concerned programmes which were due to begin in January 2007. Moreover, since duration of the multi-annual programmes had been coordinated with that of the MFF, one of the key issues - namely, the size of the programme budget - had in every case been settled before the legislative procedures were advanced. (By contrast, while the 2000-2006 IIA negotiations fixed

budgetary ceilings for headings and sub-headings, it remained the responsibility of the legislative committees to agree with the Council the budgets for individual programmes under these ceilings: in many cases, agreement was possible only in conciliation.)

In these circumstances, it is understandable that such a high proportion of procedures were concluded at an early stage. Of 31 FINP-related dossiers, 3 remain outstanding. Of the 28 which have been concluded, no fewer than 26 were concluded at first- or early second reading stage (13 at first reading; 13 in early-second-reading agreements). One dossier was agreed at second reading (the DAPHNE programme to combat violence against women). Only one of the dossiers in the 'Prodi package' - LIFE+ (ENVI: Mrs. Isler-Béguin) - went to conciliation: the central question was whether the programme should be managed centrally or by the Member States.

II. Revision of the Joint Declaration

1. The 1999 Joint Declaration

After the introduction of the codecision procedure by the Maastricht Treaty, an interinstitutional agreement was negotiated in 1993 which spelled out in greater detail the working of the Conciliation Committee³. A second such agreement, the Joint Declaration on Practical Arrangements for the Codecision Procedure, which was adopted by Parliament, Council and Commission in May 1999⁴, covered the whole of the codecision procedure from the first reading up to final co-signature of the act. In particular, it included:

- a preamble setting out the principles underlying the procedure
- arrangements for closer coordination between the Institutions at first reading stage
- an undertaking by the Council to give the clearest possible explanation of the reasons underlying its common position
- a clarification of the role of the Commission after the adoption of the Common Position
- changes to the practical arrangements for conciliation (e.g. timetabling) arising from several years' experience
- concluding general provisions for the revision of texts in close cooperation and by common consent between the lawyer-linguists of Parliament and Council; for the speedy publication in the Official Journal of co-signed texts; and for the correction of materials errors in texts.

2. The revision process

The Joint Declaration has played a useful role in facilitating the working of the codecision procedure. However, the practice of codecision has evolved significantly in the past six years and, in addition to the Joint Declaration, a number of other agreements have been reached which affect its practical operation and application. Moreover, the trend towards conclusion of dossiers at an earlier stage of the legislative procedure has reinforced the need for clear arrangements for first or second reading agreements. Such considerations led the Conference of Presidents to conclude that it would be appropriate to seek to review and update the Declaration.

The negotiating team appointed by the Conference of Presidents on 30 June 2005 consisted of the three Vice-Presidents responsible for conciliation, the Chairman of the Conference of Committee Chairmen (Mr. Daul) and the Chairman of the Committee on Constitutional Affairs (Mr. Leinen). Its mandate was:

- to revise the Joint Declaration so as to integrate the relevant provisions of other-institutional agreements concluded since May 1999
- to clarify and update it with regard to best practice at first and second reading stages
- to respond to challenges arising from enlargement to streamline procedures and make best use of resources.

³ OJ C 331, 7.12.1993, p. 1.

⁴ OJ C 148, 28.5.1999, p. 1.

In the negotiations which then took place, the Council was represented by the successive chairs of Coreper I (Mr. Grahmmer and Mrs. Vaskunlahti) while Mrs. Wallström represented the Commission. It was disappointing that only one meeting at political level during the Austrian presidency proved possible; and that this made only limited headway. By contrast, negotiations moved more quickly during the second half of 2006: the Finnish presidency was given a negotiating mandate in October, paving the way for a final agreement in December 2006.

The substance of this agreement has been confirmed by an exchange of letters between the Institutions: formal adoption, by the responsible bodies (in the case of the Parliament, the Conference of Presidents) will take place when the new Joint Declaration is available in all official languages, in early 2007.

3. The 2006 Joint Declaration

In general, the 2006 Declaration sets out in greater detail the practical arrangements agreed. It clarifies important and widely-used terms, such as 'trilogue'; it pays more attention to the stages of the codecision procedure which precede conciliation; and it spells out the final steps of the procedure, between political agreement and publication in the Official Journal.

The key improvements incorporated in the 2006 Joint Declaration are:

- more detailed provisions concerning practical arrangements for the negotiation of first- and second-reading agreements, including references to each institution designating those who will participate in each meeting and defining their mandate;
- clarification of the current provisions governing legal-linguistic verification by the appropriate services of both Parliament and Council, and their extension to first, early-second and second reading agreements;
- the provision that, as standard practice, an agreement will be confirmed by a letter from the chair of Coreper to the chair of the responsible EP committee (first and second reading agreements) or vice-versa (early second reading agreements) setting out details of the substance of the agreement;
- an undertaking that the presidency-in-office of the Council will endeavour to attend meetings of EP committees and may provide information relating to the Council position on the dossier concerned;
- an updating of the provisions concerning conciliation to reflect current practice, e.g. the introduction of a reference to 'A points' (i.e. agenda items for approval without discussion) in meetings of the Conciliation Committee;
- new arrangements, such as joint press conferences and the more public signature of some acts, intended to increase transparency at all stages of the procedure;
- the inclusion of references to the inter-institutional agreement on 'Better Law-Making'.

III. The new comitology decision

Comitology emerged as a significant 'horizontal' issue in the second half of 2006. The adoption of a new Decision on comitology in July 2006 introduced a new element into the Groundwater and INSPIRE conciliations; and raised the prospect of a series of purely technical conciliations on other dossiers in order to align political agreements reached at second reading stage with the new possibility of a 'regulatory procedure with scrutiny'.

1. The 1999 Decision

The power to adopt implementing measures, or to adapt legislation to technical progress, is commonly delegated to the Commission under its executive powers, as foreseen in Article 202 of the EC Treaty. In practice, regulatory measures proposed by the Commission are dealt with by specialist committees made up of policy experts from the Member States.

The Parliament has long fought to gain the formal right to be fully informed of matters going through such committees; and to raise objections should it feel that the powers delegated to the Commission are being exceeded. It has argued that, if Parliament and Council can jointly delegate implementing measures, surely it follows that both should be involved in defining the procedures for exercising delegated powers and that they should have equal rights to oppose draft measures proposed by the Commission?

The Council Comitology Decision of 28 June 1999⁵ went some way to meeting the Parliament's concerns. It reinforced the Parliament's right to receive information; and to request that draft measures be re-examined, should it consider that the Commission's implementing powers were being exceeded on an issue relating to legislation subject to codecision. It also simplified matters by setting out just three possible types of procedure: the consultation procedure, the management procedure, and the regulatory procedure. Finally, it set out non-binding criteria guiding the choice of one or other procedure.

An agreement was subsequently reached between Parliament and the Commission on the procedures to be applied for implementing the Council Decision. This stipulated that the Parliament was to receive, at the same time as the members of the committees and on the same terms, the draft agendas for committee meetings; the draft measures submitted to the committees for the implementation of basic instruments adopted under codecision; and the results of voting, summary records of the meetings and lists of the authorities to which the persons designated by the Member States belonged.

The agreement also gave the Parliament one month from the date of receipt of the final draft of the implementing measures in which to adopt a resolution requesting re-examination of the proposed measures (for financial services measures, this period might be up to three months). In urgent cases, the Commissioner responsible might set a shorter deadline. Following adoption by the Parliament of such a resolution, the Commissioner responsible was to inform the Parliament of the action that the Commission intended to take. Importantly, however, the Parliament could call for re-examination of the proposed measures only on the grounds that the Commission had exceeded the implementing powers

⁵ OJ L 184, 17.7.1999, p. 23.

conferred on it by the basic act - not on the substance of the decision taken by the committee.

2. Implementation of the 1999 Decision

While the 1999 Decision made comitology procedures more transparent, it was hardly ideal from the Parliament's point of view. The Council continued to argue that, the advent of codecision notwithstanding, Article 202 of the Treaty remained unchanged: and that this provided for the Council alone to define the system for implementing powers. Moreover, the Parliament's right to oppose draft measures could be exercised only if the draft measures exceeded the implementing powers conferred on the Commission by the basic act; and not because the Parliament disagreed with the substance of the measures proposed.

Shortcomings in the practical arrangements for keeping the Parliament informed about comitology procedures also became apparent. Non-transmission of texts to the Parliament was the most glaring example (the Commission was itself prepared to own-up to this in no fewer than 50 recent cases). But parliamentary committees also experienced great difficulty in establishing the context in which texts were transmitted, and to which other documents they were related. Finally, parliamentary committees found that the deadline of one month set for exercise of Parliament's right of scrutiny was too short; and that the Commission's practice when transmitting texts shortly before a parliamentary recess gave the Parliament too little time to respond. In short, the effective exercise of the Parliament's right of scrutiny was difficult.

In 2002, and again in 2004, the Commission launched proposals to amend the 1999 Decision, taking account of the concerns noted above. However, these proposals made little headway in the Council, and the Parliament began to address its concerns about delegation of powers by introducing 'sunset clauses' in draft legislation, especially in the financial markets area, setting expiry dates for the delegation of powers. While this was a pragmatic ad hoc approach, it was a less than ideal long-term solution to the problem. It raised the prospect of rather different approaches to the same problem being taken in different legislative procedures. And, if generalised, it threatened to slow down the legislative process at all stages, as the comitology provisions in each procedure might need to be negotiated on a case-by-case basis.

3. The 2006 Decision

In 2005, the UK Presidency set up a working group to explore possible 'horizontal solutions' to continuing disagreements about comitology procedures between the two arms of the legislative authority. It was against this background that, on 11 November 2005, the Conference of Presidents gave Mr. Daul (Chairman of the Conference of Committee Chairs) and Mr. Corbett (as representative of the Committee on Constitutional Affairs) a mandate to take part in inter-institutional discussions on both the political and administrative aspects of comitology procedures. These were successfully concluded in July 2006.

The Council Decision to amend the current Decision entered into force on 23 July 2006⁶. It introduces a new type of comitology procedure ('regulatory procedure with scrutiny') for a specific type of implementing measure of acts within the EC Treaty. All other procedures will continue to exist and implementing measures on the basis of these procedures will remain subject to the existing parliamentary rights (i.e. 'right of information' and, for measures relating to legislation adopted in codecision, 'right of scrutiny'). Moreover, the new procedure may exist within an act alongside existing procedures. Finally, the essential elements of the act have still of course to be adopted through the normal legislative procedure.

The new procedure applies to cases where the basic instrument is adopted in codecision and *'provides for the adoption of measures of general scope designed to amend non-essential elements of that instrument, inter alia by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements ...'*. Such 'quasi-legislative measures' add, delete or revise non-essential elements in the main text or the annexes. Examples of measures considered to be typically quasi-legislative are measures to specify definitions; to adapt the act to technical progress; and to lay down minimum or maximum norms, levels, conditions, and so on.

For the first time, the EP has gained an effective right to block such measures: and it has three months (normally: shorter or longer deadlines remain possible) from the point at which it is presented with draft implementing measures in which to exercise this right. If it does so, the Commission may either present a new proposal or table draft legislation.

The character of each measure must be determined bearing in mind the specific context of the legislative act in question. But, once it is clear that 'quasi-legislative measures' may indeed be taken under the act, the new procedure is compulsory.

4. Alignment of existing and pending legislation

All legislative texts formally adopted and published after 23 July 2006 are subject to these new provisions. And the Decision also applies retrospectively, so all existing legislation adopted under codecision must be revised.

In a common declaration, the Parliament, Council and Commission identified 25 pieces of existing legislation which needed, as a matter of priority, to be brought into line with the new procedure. The Commission promised to submit quickly the necessary legislative proposals in these cases: by the end of December 2006 it had fulfilled this commitment. The Commission also undertook to examine all other codecided acts in force in order to determine whether these, too, needed to be amended, submitting before the end of 2007 whatever legislative proposals proved to be necessary.

In the case of legislative proposals underway (such as the Services Directive and the REACH Regulation), the new comitology rules were simply a new element to be included in the negotiations. Draft laws which had been agreed 'politically', but which had not yet been adopted by the two institutions, had to be brought into line with the new Decision without, however, reopening discussion of any points other than the comitology provisions.

⁶ OJ L 200, 22.7.2006, p. 11.

The Parliament's right to block implementing measures is confined to cases where such measures may be regarded as quasi-legislative in character and where, as a consequence, the regulatory procedure with scrutiny applies. It is therefore likely that both co-legislators will examine future legislative proposals very carefully indeed to try to ascertain whether they confer on the Commission implementing powers which may be considered quasi-legislative in character. (The first legislative proposals incorporating the new 'regulatory procedure with scrutiny' are expected in spring 2007). It is equally likely that they will not always reach the same conclusion on this point. In other words, comitology provisions in future legislative procedures may become more rather than less controversial. This is doubtless an issue to which the 2009 report on conciliation and codecision during the sixth legislature will return.

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ANNEX A

SUMMARIES OF THE PROCEDURES CONCLUDED IN CONCILIATION 2004-2006

1. European Parliament and Council directive concerning the management of bathing water quality and repealing Directive 76/160/EEC (2002/0254(COD)) - Antonios Trakatellis/Jules Maaten/ENVI

This conciliation concerned a proposal for a new Directive (replacing that adopted in 1976), updating mandatory microbiological standards for bathing waters and strengthening the management and monitoring regime.

At its second reading on 10 May, Parliament adopted 26 amendments. Parliament constituted its delegation on 7 June and three informal dialogues were held before conciliation was formally opened - and concluded - on 12 October.

The main elements in the final agreement were:

- Stricter limits on bathing water quality: The Parliament accepted an additional category ("sufficient") for bathing water on condition that the limit values for this category would be raised.
- Enhanced public information and participation: Up-to-date information on water quality at bathing sites will be available on the internet; but it will also be presented, by means of clear signs and symbols, at the bathing sites themselves.
- Further scientific developments in relation to viruses: The Commission will prepare a report by 2008 considering not only new scientific and epidemiological developments regarding bathing water quality but also in relation to viruses.

On 18 January 2006, the EP adopted its third-reading report approving the outcome of the conciliation procedure, with 584 votes in favour, 11 against, and 56 abstentions.

2. **European Parliament and Council directive on minimum conditions for the implementation of Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities and repealing Directive 88/599/EEC (2003/0255(COD)) - Alejo Vidal-Quadras/Helmuth Markov/TRAN and**
3. **European Parliament and Council regulation on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Regulation (EEC) No 3820/85 (2001/0241(COD)) - Alejo Vidal-Quadras/Helmuth Markov/TRAN**

These procedures dealt with two related proposals - a Regulation on working time, breaks and rest periods for drivers engaged in road transport of goods and passengers, and a Directive on the enforcement of the relevant legislation through checks and penalties.

Parliament concluded its second reading on 6 April 2005, adopting a total of 78 amendments (43 to the Regulation and 35 to the Directive).

The key points of disagreement between Parliament and Council in the case of both Regulation and Directive concerned the introduction of a common spectrum of penalties in the case of infringements; and rules for roadside checks and checks in the premises of the undertakings. In the case of the Regulation, other points at issue concerned the timetable for the introduction of digital tachographs, and rest periods and breaks for drivers. In the case of the Directive, the inclusion of a reference to Directive 2002/15/EC on the working time of drivers engaged in road transport (so that the time a driver spends driving to his place of assignment and/or to (un)load his lorry could also be taken into account.) was also an issue.

Parliament constituted its delegation on 10 May 2005. Following two trialogues, conciliation opened formally on 12 October. After two further trialogues, the Conciliation Committee reached an agreement on 6 December. The key points were:

- from May 2006, all new vehicles will have to be fitted with digital tachographs;
- higher levels of checks will be introduced a year earlier than originally proposed;
- a list of common serious infringements was agreed and the Commission undertook to draw-up a more detailed list in the future;
- recitals acknowledge the risks arising from driver fatigue and the importance of the Working Time Directive for common standards of road safety and working conditions;
- Council and Parliament disagreed on the length of a compulsory daily rest period for drivers: in order not to block the legislation, Parliament finally accepted the figure (11 hours) proposed by Council.

On 2 February 2006, the Parliament adopted its third-reading report on the conciliation text by a show of hands

4. European Parliament and Council directive on the management of waste from extractive industries and amending Directive 2004/35/EC (2003/0107(COD)) - Dagmar Roth-Behrendt/Jonas Sjöstedt/ENVI

Parliament's second reading on the proposed Directive - which aims to set minimum requirements for the treatment and disposal of mining waste - took place on 6 September 2005: 38 amendments to the Council's common position were adopted.

The main points of at stake concerned:

- provision by companies of financial guarantees to cover their obligations under the Directive;
- monitoring of sites after the end of extraction;
- inclusion of excavation voids;
- transitional provisions.

The Parliament constituted its delegation on 27 September 2005. Conciliation opened formally, and a first trialogue was held, on 12 October. In the course of the third trialogue (on 21 November), the two teams of negotiators reached an agreement (which was subsequently endorsed by COREPER and by the Parliament delegation).

The key points were that:

- financial guarantees provided by operators in respect of their obligations under the Directive will have to cover not only the waste facility itself but also the land affected by the waste facility, and must be readily available for the rehabilitation of such land;
- operators placing waste back into excavation voids will be required to carry out checks and undertake necessary maintenance or corrective measures so as to prevent contamination of soil and water;
- transitional provisions were tightened up, so as to bring the provisions of the Directive into force sooner;
- the Parliament, Council and Commission welcomed a Joint Declaration by Bulgaria and Romania, in response to Parliament's concerns about possible derogations for acceding countries, underlining their commitment to implement the Directive.

This agreement was confirmed as an 'A point' (i.e. without discussion) in the course of the Conciliation Committee on 6 December.

On 18 January 2006, the EP adopted its third-reading report, approving the text proposed by the Conciliation Committee, by a show of hands

5. European Parliament and Council directive on the minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (artificial optical radiation) (19th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (1992/0449B(COD)) - Antonios Trakatellis/Csaba Óry/ENVI

The initial Commission proposal dated back to 1992 and formed part of an integrated proposal for a Directive on minimum health and safety requirements for workers exposed to physical agents. In 1999, the Council decided to split the initial proposal into its constituent parts, and Parliament and Council have adopted in turn Directive 2002/44/EC on vibrations, Directive 2003/10/EC on noise, and Directive 2004/40/EC on electromagnetic fields. This proposal was the only left-over from the initial Commission proposal.

In its common position (18 April 2005), the Council drew a distinction between protection from radiation from artificial sources on the one hand, and, on the other hand, protection from radiation from natural sources. In its second reading (7 September 2005), the Parliament adopted 22 amendments.

The main issue at stake was the protection of workers from exposure to radiation from natural sources (e.g. sunlight or natural fires). A majority in the European Parliament considered that this was an issue which, in accordance with the principle of subsidiarity, should fall under the regulatory competence of the Member States.

Parliament constituted its delegation on 24 October 2005. It decided to ask for an opinion from the EP Legal Service with a view to clarifying the legal situation surrounding the issue of workers' protection from exposure to natural optical radiation.

The compromise package presented by the Presidency in the course of the first trialogue on 8 November in effect accepted Parliament's approach, excluding natural optical radiation from the Directive and thus limiting its scope to artificial optical radiation. With some minor modifications, this compromise package was accepted by the Parliament delegation on 15 November.

Conciliation was formally opened - and immediately concluded - in the course of the Conciliation Committee on 6 December, the agreement reached being treated as an 'A' point.

On 14 February 2006, the EP adopted its third-reading report approving the text proposed by the Conciliation Committee with 570 votes in favour, 16 against, and 49 abstentions

6. **European Parliament and Council regulation on certain fluorinated greenhouse gases (2003/0189A(COD)) - Antonios Trakatellis/Avril Doyle/ENVI and**
7. **European Parliament and Council directive relating to emissions from air conditioning systems in motor vehicles and amending Council Directive 70/156/EEC (2003/0189B(COD)) - Antonios Trakatellis/Avril Doyle/ENVI**

These linked legislative proposals aimed to reduce emissions of F-Gases, in line with the Kyoto Protocol.

The Parliament adopted 26 amendments at second reading. Concerning the Regulation, the key points of difference between Parliament and Council centred on:

- National measures (should Member States be allowed, if they wish, to maintain or introduce even stricter requirements?)
- Containment (how should safe containment be ensured?)
- Labelling of equipment
- Cross-border transport

The (single) amendment to the common position on the Directive concerned provisions governing the nature of incentive measures to encourage the use of environmentally-friendly alternatives.

The constituent meeting of the Parliament delegation to the Conciliation Committee took place on 10 January. Following trilogues on 17 and 31 January, an overall agreement was reached in the Conciliation Committee on 31 January. The main points of the agreement were:

- National measures: Council had introduced a dual legal basis (Treaty Art. 175 - environmental protection, and Art. 95 - internal market), and the most sensitive point of the negotiations was the issue of national exemptions for countries which already have, or wish to introduce, stricter measures as part of efforts to fight greenhouse gases. The compromise reinstated the general principle that Member States might maintain or introduce such measures in accordance with the provisions of the Treaty. Specifically, Denmark and Austria might keep their current measures until 31 December 2012.
- Revision clause: In the context of the compromise on national measures, Parliament and Council introduced a clause allowing for revision of the provisions in the light of existing or future international commitments to combat climate change.
- Labelling: Appliances containing fluorinated gases might be placed on the market only if they bore a label indicating clearly the names of the fluorinated gases and the quantity contained. Instruction manuals accompanying the appliances must also indicate the potential environmental impact of the gases.

On 6 April 2006, Parliament adopted the two third-reading reports with 476 votes in favour, 46 against and 25 abstentions (2003/0189A(COD)); and by a show of hands (2003/0189B(COD)).

8. European Parliament and Council directive on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (2003/0282(COD)) - Dagmar Roth-Behrendt/Johannes Blokland/ENVI

This conciliation concerned a proposal (dating from November 2003) for a Directive on batteries and accumulators which aimed to reduce the production of batteries containing heavy metals and to introduce stricter rules for the collection, recycling and disposal of waste batteries.

The Parliament concluded its second reading on 13 December 2005, adopting 23 amendments to the Council's common position. The key issues at stake between Parliament and Council were:

- exemptions for small producers
- Member States' obligations concerning research on less environmentally harmful batteries
- distributors' obligation to take back spent batteries at no charge
- whether batteries must be readily removable by consumers
- compulsory labelling indicating battery capacity
- recycling targets.

The constituent meeting of the Parliament's delegation was held in Strasbourg on 18 January.

Three trialogues were held. The fourth meeting of the EP delegation had given the Parliament's negotiators an open mandate in further negotiations with the Council. Further compromise texts were agreed in the course of an informal tripartite meeting on 26 April. Members of the EP delegation were informed of the outcome of this meeting in writing.

The key provisions of the agreement foresee:

- capacity labelling for portable batteries
- distributor take-back as the normal means of collecting spent portable batteries
- information campaigns financed by producers
- Member States' support for research to make batteries less environmentally harmful and to improve recycling technology
- manufacturers must ensure that batteries can be readily removed when spent
- limited exemptions from financing requirements for small producers
- the same registration requirements in all Member States
- recycling targets unchanged from the Common Position.

The conciliation procedure was formally opened and concluded as an agenda item without discussion at the meeting of the Conciliation Committee on 2 May 2006.

On 4 July 2006, the EP adopted by a show of hands its third-reading report approving the joint text proposed by the Conciliation Committee.

9. European Parliament and Council regulation on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (2003/0242(COD)) - Alejo Vidal-Quadras/Eija-Riitta Korhola/ENVI

This procedure concerned a proposal dating from October 2003 for a Regulation to apply fully the requirements of the Aarhus Convention to EC institutions and bodies. The Convention, concluded in 1998 by the United Nations Economic Commission for Europe, covers access to information, public participation in decision-making and access to justice in environmental matters to the Community institutions and bodies.

Parliament held its first reading on 16 March 2004: Council reached its Common Position on 18 July 2005. Parliament concluded its second reading on 18 January 2006 adopting 25 amendments to the Council's common position. The amendments concerned all three pillars of the Aarhus Convention, but in particular access to information.

The EP delegation to the Conciliation Committee held its constituent meeting on 15 February. Following three trialogues, the procedure was formally opened in the Conciliation Committee on 2 May: an agreement covering all outstanding issues was reached in the course of the same meeting.

Under this agreement:

- there will be a single regime for access to all kinds of information held by EC institutions and bodies;
- there is scope for public participation in 'banking' plans and programmes, which mainly concern the European Investment Bank;
- the period during which NGOs may request the internal review of an administrative environmental act is increased from 4 to 6 weeks.

On 4 July 2006, the EP adopted by a show of hands its third-reading report approving the joint text proposed by the Conciliation Committee.

10. European Parliament and Council directive on the protection of groundwater against pollution (2003/0210 (COD)) - Dagmar Roth-Behrendt/Christa Kläß/ENVI

The aim of the proposed Directive was to modernise and extend rules for the protection of groundwater after the repeal of the existing Groundwater Directive 80/68/EC.

The Council adopted its common position on 23 January 2006. In its second reading, on 13 June, the Parliament adopted 41 amendments to the common position.

In addition to a number of horizontal issues (chiefly, the inclusion of 'non-deterioration' as one of the objectives of the Directive; and its relationship with the Nitrates Directive), the main points at stake between Parliament and Council concern: assessment of the chemical status of groundwater; upward trends and trend reversals; prevention or limitation of inputs of pollutants into groundwater; and measurement methods, research and dissemination of the results of research.

The EP delegation held its constituent meeting on 5 July. After three trialogues, the Conciliation Committee met on the evening of 17 October. Shortly before midnight, the Committee was able to reach an overall agreement after, by 16 votes in favour and 4 abstentions, the EP delegation had accepted the compromise package proposed by the two teams of negotiators.

The key points of the agreement may be summarised as follows:

- Non-deterioration: Parliament secured protection from 'deterioration' as one of the objectives of the Directive and the inclusion of a corresponding reference in the recitals. It also managed to ensure that a later starting point for upward trends reversal measures should not lead to any delay in attaining the environmental objectives of the act.
- Nitrates: Parliament ensured that the measures necessary to maintain quality standards regarding nitrates will be in accordance with the Groundwater rather than the Nitrates Directive.
- Stricter national measures: A reference to the Water Framework Directive was included in the recitals, allowing Member States to establish safeguard zones concerning water intended for human consumption. In line with Parliament's proposal, such zones may cover the entire territory of a Member State.
- Comitology and codecision: If, as a result of this review, the Commission considers it necessary to amend the Directive, it will be able to do so under the new comitology procedure (regulatory committee with scrutiny), which confers more powers on Parliament. Specifically, the list of pollutants included in the act may be extended (addition of new substances) by comitology, but reduced (possible elimination of some substances) only by codecision.

The result of the conciliation will be submitted to the plenary for approval (third reading stage) in the course of the January 2007 Strasbourg part-session.

11. European Parliament and Council directive establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (2004/0175 (COD)) - Alejo Vidal-Quadras/Frieda Brepoels/ENVI

The aim of the proposed directive was to establish a framework to pool and improve the standard of geographical data generated in the various EU Member States (such as satellite images, temperature records, rainfall levels) in order to improve the planning and implementation of Community policies in areas such as the environment, transport, energy and agriculture.

The Council adopted its common position on 23 January 2006. At second reading, on 13 June 2006, the Parliament adopted 36 amendments to the Council's common position.

The main issues at stake between Parliament and Council concerned intellectual property rights and costs; exemptions from obligations to provide data; type of data provision services and access to these; meta data and data definition; scope of the Directive; and deadlines for its implementation.

The constituent meeting of Parliament's delegation was held in Strasbourg on 4 July. Three trialogues were held and reasonable progress was made on those groups of amendments which concerned public spatial services, principles of implementation, and technical issues. However, two key points of difference - levels of charges for data and intellectual property rights - remained unresolved.

The Conciliation Committee met on 21 November 2006. It was able to reach a final agreement after the delegation of the European Parliament had accepted unanimously the proposed compromise package.

The two key points of the agreement reached can be summarised as follows:

Levels of charges: At Parliament's insistence, Member States will in general have to make available free of charge the services for discovering and viewing spatial data sets. Some Member States were worried that this might threaten the financial viability of their public services, and it was agreed that under clearly-defined conditions, public authorities will be allowed to levy charges. However, this exemption will not apply to data that the public authorities are obliged to provide in order to fulfil their obligations under Community law.

Intellectual Property Rights: Member States' rights to restrict access to information on grounds of confidentiality will be in line with the provisions set out in the Aarhus Convention on access to publicly-held information about the environment (Council had initially pressed for the right to impose tighter restrictions on access than provided for in the Convention).

The result of the procedure will be submitted to the plenary for approval at the February 2007 session in Strasbourg.

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ANNEX B

GUIDELINES FOR FIRST AND SECOND READING AGREEMENTS UNDER THE CODECISION PROCEDURE

The following guidelines were adopted by the Conference of Presidents in November 2004.

First and second reading agreements: guidelines for best practice within Parliament

Preliminary considerations

1. Committees should make full use of the possibilities provided by the Treaties that allow for up to three readings. The decision to seek to achieve a first or second reading agreement should take due account of the very different situations existing at the first and second reading stages respectively. This concerns in particular the extent to which Parliament and Council have already reached a formal position; the majorities required at plenary stage and the deadlines imposed by the Treaties.
2. The decision should receive broad political support and should be taken in a transparent manner and announced in committee. It should be justified in terms of political priorities, deadlines, risk of legal uncertainty, or the uncontroversial nature of the proposal.

Meetings with Council and Commission

3. Informal contacts should be possible at all stages, provided that the committee, coordinators or shadow rapporteurs are kept informed of their existence and content. Concrete negotiations should not usually take place until the committee has adopted its first or second reading amendments. This position can then provide the mandate on the basis of which the committee's representatives can negotiate with Council and Commission.
4. EP participation should be decided by the coordinators. It should permit the fullest possible information to be provided to all political groups within the committee, either through direct participation of the Committee Chair and/or shadow rapporteurs or coordinators, or through prompt and sufficiently detailed information from the rapporteur to the Chair and shadow rapporteurs or coordinators. The coordinators may decide to invite the opinion committee draftsman to participate.
5. Interpretation should be provided, if requested, in particular during the concrete negotiation phase after the vote in committee.
6. Draft compromise texts submitted by any institution, and which are to be the basis of discussion at a forthcoming meeting, should as far as possible be circulated in advance to all negotiators.

Follow-up to meetings

7. The rapporteur should report back regularly on the state of negotiations, if necessary to the whole committee. Any significant change in the negotiating position should have broad political support.
8. The Council Presidency should be encouraged to participate in committee meetings to present the Council position.
9. If an agreement is reached, the Council Presidency should be invited to send a letter to the Committee Chair confirming Council's agreement in principle, and annexing the text.
10. Any compromise amendments required as a result of the agreement reached should be the subject of written information to all committee members. If they can not be approved by the committee for submission to plenary, they should be co-signed by the rapporteur and shadow rapporteurs or coordinators on behalf of their political groups to demonstrate that the amendments enjoy broad support.