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SECRETARIAT GÉNÉRAL

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**NOTE A L'ATTENTION DE DES DIRECTEURS GÉNÉRAUX ET DES CHEFS DE SERVICES**

**Objet: Nouvelle version du Guide pratique des procédures internes -  
codécision**

Je vous prie de trouver ci-jointe la nouvelle version du guide pratique des procédures internes relatif à la codécision qui prend en compte l'évolution de la procédure, notamment la tendance qui s'est confirmée d'une augmentation de la proportion des dossiers conclus en 1<sup>ère</sup> et en 2<sup>ème</sup> lecture. C'est ainsi que le Parlement européen, le Conseil et la Commission ont signé, le 13 juin 2007, une nouvelle déclaration commune sur les modalités pratiques de la procédure de codécision qui, en conséquence, devient un des documents de référence principaux de cette nouvelle version du guide pratique.

Ce guide attache une attention particulière à la possibilité de conclure des dossiers en 1<sup>ère</sup> et en 2<sup>ème</sup> lecture, au rôle du Groupe des relations interinstitutionnelles, ainsi qu'à celui du Secrétariat général. Il s'agit que les services puissent suivre, pas à pas, les différentes étapes de la procédure de codécision et ses répercussions au niveau des procédures internes.

Je vous remercie d'avance d'en assurer la diffusion au sein de vos services, l'unité SG-F-3 restant à votre disposition pour tout renseignement ou explication complémentaire.

Catherine Day



**SPI(2007)73**

**Codecision procedure - Article 251 EC**

**Guide to internal procedures**



## **FOREWORD**

This document is an update of the Practical guide of internal procedures for the codecision procedure (doc. SPI(2005) 002/2 of 20 October 2005). An update was necessary in order to take into account the way in which the procedure has evolved since the entry into force of the Treaty of Amsterdam, and in particular the steady increase in the proportion of dossiers concluded at first or second reading, a trend which is now well established. In the light of this trend, Parliament, the Council and the Commission signed a new Joint Declaration on practical arrangements for the codecision procedure on 13 June 2007 (OJ C 145, 30.6.2007). This update is largely based on Article 251 of the EC Treaty and the new Joint Declaration.

Between the entry into force of the Treaty of Amsterdam and 30 June 2007 a total of 635 dossiers were concluded under the codecision procedure: 274 at first reading (43%), 259 at second reading (41%) and 102 by conciliation (16%).

These figures confirm the major importance that the codecision procedure has acquired in the Community decision-making process and the growing tendency to conclude procedures at an early stage.

Given that 84% of dossiers were concluded at first or second reading, it is on these cases that the guide particularly focuses. It also deals more specifically with the internal procedure following the establishment of the Interinstitutional Relations Group (Groupe des relations interinstitutionnelles - GRI) on 22 November 2004 (see memo SEC(2004) 1477).

The guide explains the role of the Commission and the internal arrangements to be made by cabinets and departments at each stage of the legislative procedure (first and second reading or conciliation, as appropriate). It refers the user to specific annexes.

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## GENERAL INTRODUCTION THE CODECISION PROCEDURE – Article 251 EC

Since its introduction in 1993 **the codecision procedure has evolved:**

- **Its scope has been extended** significantly, particularly following the Treaties of Amsterdam and Nice. A list of Treaty Articles which provide for this procedure to be used by referring to Article 251 is given in ANNEX 1.
- **The procedure has been transformed** as a result of amendments to the Treaty and to institutional practice. A detailed outline (in ANNEX 2) and stage-by-stage description of the procedure are available on the “codecision” page on the Europa site<sup>1</sup>. The final phase, conciliation, has gradually become the exception. The institutions' main aim is now to adopt acts after the first or second reading. The procedural rules and interinstitutional contacts for these stages of the codecision procedure are therefore particularly important and are described in detail in this guide.
- **Cooperation between the institutions has improved** thanks to the establishment of a number of common principles on the operation of the procedure which were endorsed and extended as part of the revision on 13 June 2007 of the Joint Declaration of 4 May 1999 on practical arrangements for the codecision procedure (hereafter "Joint Declaration")<sup>2</sup>.

### Commission and codecision: General rules

- Codecision is the result of interinstitutional negotiations between the three institutions: Parliament, Council and Commission. Although the two “co-legislators” are Parliament and the Council, the Commission plays an active role as facilitator and mediator, over and above its monopoly of initiative.
- It is up to the Commission to strike the right balance between promoting its initial proposal, striving to facilitate the work of the co-legislators and adopting as quickly as possible the legislative texts which contribute to the development of Community policies and Community law, without losing sight of the fundamental objective of all legislation, which is to defend the European public interest.
- The fundamental role played by the Commission at all stages of the codecision procedure is laid down in Articles 250 and 251 and explained in the Joint Declaration. In order to carry out its role fully and effectively, the Commission has drawn up internal rules enabling it to contribute, through formal documents, to the discussions in the other institutions at each stage of the procedure (see ANNEX 3, which describes these different interventions).

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<sup>1</sup> [http://europa.eu.int/comm/codecision/index\\_en.htm](http://europa.eu.int/comm/codecision/index_en.htm)

<sup>2</sup> OJ C 145, 30.6.2007.

- The Commission's role also demands that it maintain informal contacts with the other two institutions at all stages of the procedure.
- As a result, the departments responsible for codecision dossiers should:
  - take the initiative and/or promote contacts between the main players concerned in order to improve understanding of their respective positions;
  - promote as far as possible an agreement between the co-legislators which should be compatible with the general objectives of the initial proposal;
  - ensure that these relations with the co-legislators enable the Commission fully to exercise at all stages of the procedure the prerogatives conferred upon it by the Treaty and, more particularly, its right of initiative;
  - ensure the consistency of the Commission's position in the European Parliament and Council bodies throughout the procedure;
  - submit to the College - via the GRI and/or directly to the weekly meeting of heads of cabinet (HEBDO), as appropriate - any important problem concerning the substance of the proposal or the operation and interpretation of the procedure and any decision on the position to be taken at the various stages of the procedure.

### **Commission and codecision: The role of the GRI**

- The Commission's position in the procedure is defined in accordance with internal decision-making procedures<sup>3</sup>. In order to ensure that the internal procedures work smoothly, constant coordination is essential, whether at the level of the Directorate-General itself (via the Parliament/Council coordinator(s)), with the cabinets or with the Legal Service and Secretariat-General.
- The task of the GRI is to monitor all interinstitutional relations<sup>4</sup>. It ensures coordination and collective responsibility. It is chaired by a member of the President's cabinet, in close association with the cabinet of the Vice-President for institutional relations, and comprises members of the cabinets responsible for interinstitutional affairs. It prepares the work of the College via the weekly meeting of heads of cabinet.
- The GRI is in particular responsible for preparing the positions to be adopted by the Commission within the framework of the codecision procedure, vis-à-vis both Parliament and the Council. The GRI ensures the consistency of the Commission's position in the successive phases of the procedure as the dossier evolves in both institutions. Its role is particularly important in the context of adoption at first and at second reading.

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<sup>3</sup> See the Manual of Procedures on Intracomm and the Commission Decision of 15 November 2005 amending its Rules of Procedure (OJ L 347, 30.12.2005) and the Rules giving effect to them.

<sup>4</sup> See SEC(2004) 1477.

- The work of the GRI is prepared by the Parliament/Council coordinators from the DGs<sup>5</sup>.
- Within the Secretariat-General, the "Codecision" unit (SG-F-3), working in close collaboration with the SG departments responsible for relations with the Council (SG-F-1 and 2) and Parliament (SG-G) respectively, provides the GRI secretariat and prepares and chairs the meetings of Parliament/Council coordinators.

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<sup>5</sup> The Parliament/Council coordinators meet before each meeting of the GRI in a group referred to as the "pre-GRI" in order to prepare the different agenda items. Once a month, usually during the meeting following a plenary session of Parliament, the coordinators take a closer look at all the dossiers in codecision in order to evaluate progress, advise the GRI to authorise informal contacts and, as far as possible, promote an early conclusion to the procedure.

## CODECISION PROCEDURE MECHANISM AND THE ROLE OF THE COMMISSION

### 1. The Commission presents a proposal to the European Parliament and the Council

Article 251(2), first subparagraph, of the EC Treaty: *"The Commission shall submit a proposal to the European Parliament and the Council."*

The Commission sends its proposal simultaneously to Parliament and the Council, and to the Economic and Social Committee and the Committee of the Regions where consultation of these is required by the Treaty. The co-legislators begin work at first reading in parallel. At second reading, the work of the co-legislators gives the impression of being more consecutive since the Council can take a decision only on amendments to its common position which have first been voted upon by Parliament. However, owing to the increasingly permanent contacts between the three institutions to finalise the dossiers before the conciliation phase, the procedure is more of a continuous process than a series of discrete stages.

#### First reading

### 2. Interinstitutional contacts at first reading - Role of the Commission

#### Joint Declaration

7: *"Cooperation between the institutions in the context of codecision often takes the form of tripartite meetings ("trilogues")...".*

8: *"Such trilogues are usually conducted in an informal framework. They may be held at all stages of the procedure and at different levels of representation, depending on the nature of the expected discussion. Each institution, in accordance with its own rules of procedure, will designate its participants for each meeting, define its mandate for the negotiations and inform the other institutions of arrangements for the meetings in good time."*

11: *"The institutions shall cooperate in good faith with a view to reconciling their positions as far as possible so that wherever possible acts can be adopted at first reading."*

12: *"Appropriate contacts shall be established to facilitate the conduct of proceedings at first reading."*

13: *"The Commission shall facilitate such contacts and shall exercise its right of initiative in a constructive manner with a view to reconciling the positions of the European Parliament and the Council, with due regard for the balance between the institutions and the role conferred on it by the Treaty."*

## 2.1. Rapid identification of dossiers likely to be concluded on a single reading

- At the start of the procedure, the department concerned should indicate to the **Secretariat-General** (SG-F-3) via the **Parliament/Council coordinators** in the Directorates-General at their monthly meeting<sup>6</sup>, those dossiers which have a good chance of being concluded at first reading.
- **The possibility of concluding the procedure at first reading:**
  - should be encouraged by the Commission representatives, in accordance with paragraphs 12 and 13 of the Joint Declaration, for technical and non-confrontational dossiers or certain politically urgent dossiers;
  - should not be pursued indiscriminately for more sensitive dossiers because of their substantial, budgetary, legal or institutional aspects<sup>7</sup>;
  - should also be assessed in relation to the time it is expected to save. Trying to conclude a dossier at first reading can sometimes take longer than a procedure that goes to a second reading because that has to be completed within time limits stipulated by the Treaty.

## 2.2. Regular contacts between the main players and trilogues

When the codecision procedure is launched<sup>8</sup>, the **Commission** departments involved, particularly those officials in charge of the dossier, establish **appropriate contacts** to monitor the progress of work which continue in parallel in the two institutions:

- **Parliament:** rapporteur, shadow rapporteurs, parliamentary assistants, officials of the political groups, officials of the secretariat of the parliamentary committees concerned, etc;
- **Council:** chairmen of the working parties, Member State delegations, those Secretariat officials concerned.

As suggested by the Joint Declaration, these contacts may take the form of "trilogues". Because these are completely informal, **the way in which they are organised** is up to the departments concerned. **The level of the institutions' representation in the trilogues** depends on the likely nature of the discussion.

The table below gives an indication of the sort of representation that might be expected:

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<sup>6</sup> See footnote 5.

<sup>7</sup> The Guide to Relations with the Council (SEC(2007) 406) emphasises that the Commission representatives on Council working parties should ask for any legal or institutional problem to be put to COREPER.

<sup>8</sup> That is to say, as the Commission has adopted the initial proposal and sent it to the other institutions.

EP <sup>9</sup>	Council <sup>10</sup>	Commission <sup>11</sup>
Rapporteur/shadow rapporteurs	Chair of the working group and/or chair of COREPER	Director/head of unit/desk officer
Chair of parliamentary committee/rapporteur	Minister/chair of Coreper	Member of the Commission/director-general/director <sup>12</sup>

Trilogues are usually held on Parliament's premises and chaired by an MEP (chair of the parliamentary committee or the rapporteur)<sup>13</sup>.

Trilogues may take place at **two stages** of the first reading:

- **Before the vote in the parliamentary committee:** in an attempt to reconcile the points of view and incorporate in the draft amendments as many of the elements discussed in the Council working groups as possible.
- **After the vote in the parliamentary committee:** to negotiate an agreement on the basis of the vote<sup>14</sup>.

<sup>9</sup> Parliament has drawn up a set of guidelines for best practice for conducting trilogues and negotiations so as to reach agreements at first and second reading. These recommend in particular that: the coordinators and/or shadow rapporteurs be kept informed by the rapporteur of the existence and content of contacts; that the decision on the EP's participation in trilogues be taken by the coordinators; that the committee chairperson and/or shadow rapporteurs or coordinators be allowed to participate in the trilogue. Occasionally, the draftsman from another committee may also be invited. Members of the secretariats of the political groups and/or parliamentary assistants also attend (as observers), as do representatives of the secretariat of the parliamentary committee and of Parliament's Legal Service.

<sup>10</sup> The Presidency is usually accompanied by representatives of the Council Secretariat and the Legal Service. It may also invite the next Presidency to send representatives if it thinks that the negotiations might continue into that Presidency.

<sup>11</sup> The level of the Commission's representation should reflect that of the other institutions. In addition to the lead DG, the Commission delegation will **always include a representative of the Secretariat-General** and, if necessary, of the Legal Service and other DGs involved. If the presence of the SG is required, the participation of other departments is a matter for the lead DG.

<sup>12</sup> In the case of politically sensitive dossiers, a Member of the Commission may represent the Commission in a trilogue.

<sup>13</sup> In the rarer cases when the trilogue is held in the Council it is chaired by the Council representative. There is nothing to stop the Member of the Commission in question from taking the initiative of convening a trilogue, where necessary, in which case it will be held on Commission premises.

<sup>14</sup> According to Parliament's best practices, *"concrete negotiations should not usually take place until the committee has adopted its first [...] reading amendments"*, in that this vote establishes a negotiating mandate for the rapporteur. However, the practice of parliamentary committees varies: some require the other institutions to negotiate an agreement before the vote in the parliamentary committee (e.g. LIBE) or organise a second vote to endorse the agreement in the committee before sending the dossier to the plenary (e.g. ITRE). Others see to it that the agreements are endorsed by the coordinators (e.g. ENVI, TRAN). Parliament's best practices state that *"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."*

The participants express the positions of their institution on the basis of an **informal negotiating mandate**.

In the case of Parliament, the mandate is based either on the draft amendments voted in committee or on the guidelines issued to the rapporteur by way of the debates in the committee and/or after his or her contacts with the shadow rapporteurs. In the case of the Council, it is based on the work of the working group or a mandate validated by COREPER following recommendations of the Presidency with a view to a trilogue. It may be a more advanced position endorsed by the Council at ministerial level in the form of a general guideline. The steps to be taken by the Commission are explained below.

Trilogue meetings usually work on the basis of a table showing the Commission's proposal, the amendments suggested by the Council and Parliament's draft amendments.

### **2.3. Behaviour of the Commission in the trilogues with a view to adoption at the stage of the first reading in Parliament**

- In accordance with paragraphs 7, 8, 12 and 13 of the Joint Declaration, the department concerned must **actively participate in the trilogues** with representatives of Parliament and the Council organised by the Council Presidency or the rapporteur or must **take the initiative** of organising such meetings as soon as possible.
- **The Codecision Unit of the Secretariat-General (SG-F-3) must be invited to participate in the trilogues<sup>15</sup> and, more generally, must be kept informed** of all interinstitutional contacts. Its role is to provide institutional and procedural support to the departments, ensure the consistency and coordination of the positions expressed and prepare for the stages to be followed according to internal procedures.
- During these contacts, the Commission representatives must:
  - ensure that the amendments proposed by the different parties are compatible with the objectives of the Commission's initial proposal;
  - ensure that the amendments proposed by Parliament are acceptable to the Council;
  - ensure that the amendments proposed by the Council are adopted by Parliament;
  - try to draw up before the first reading in Parliament compromise texts on every point of divergence and/or on the new elements that one or other of the co-legislators wishes to introduce, while remaining within the framework of the room for manoeuvre permitted under the objectives pursued by the initial proposal;
  - facilitate the next stages of the procedure (second reading) if it proves impossible to conclude the dossier at first reading.

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<sup>15</sup> Because of their close contact with those responsible for the proposals at the level of the co-legislators, the originating departments are usually the first to be informed that one or other institution wishes to organise a trilogue. They must therefore **immediately inform the Parliament/Council coordinator in their DG**, who can then relay this information to SG-F-3.

## 2.4. Internal procedures for an agreement at the stage of the first reading in Parliament

Information and views on the state of the dossiers are exchanged in a constant dialogue with the Secretariat-General. SG-F-3 informs the GRI about how the dossiers at first reading are progressing, largely on the basis of information gathered at the monthly meetings of Parliament/Council coordinators. The GRI may advise the Commission:

- to authorise the departments to establish and/or pursue informal contacts with a view to securing adoption at first reading; or
- to prepare to amend its proposals in order to facilitate an agreement at the stage of first reading in Parliament<sup>16</sup>.

### Joint Declaration

*14: "Where an agreement is reached through informal negotiations in trilogues, the chair of Coreper shall forward, in a letter to the chair of the relevant parliamentary committee, details of the substance of the agreement, in the form of amendments to the Commission proposal. That letter shall indicate the Council's willingness to accept that outcome, subject to legal-linguistic verification, should it be confirmed by the vote in plenary. A copy of that letter shall be forwarded to the Commission."*

- The department concerned, in close association with SG-F-3, should **ensure that the competent bodies in each institution** (lead parliamentary committee, COREPER and, in the case of the Commission, the GRI) **are fully aware of the results of the informal contacts** in order to ensure that there is general agreement on the amendments to be put to the vote in the plenary session of Parliament<sup>17</sup>.
- The department concerned must prepare the Commission's position on the compromise amendments agreed by the co-legislators with a view to adoption at first reading, coordinating in advance with the Secretariat-General and the Legal Service using an **GRI information sheet**. As a general rule, the Council (COREPER) will be the first to express its willingness to accept an agreement at first reading by sending a letter to the chair of the parliamentary committee concerned (see paragraph 14 of the Joint Declaration). The information sheet to be prepared for the GRI will thus relate to

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<sup>16</sup> If the Commission is in disagreement with the position of Parliament and/or the Council on important points, it should not hesitate to say so by refusing to amend its proposal (which would oblige the Council, in that case, to vote unanimously). It must also be borne in mind that any amendment by the Commission of its proposal - or refusal to amend it - which would prevent a conclusion at first reading could result in an interinstitutional conflict the repercussions of which should be examined within the College once the GRI has been informed.

<sup>17</sup> For Parliament, only the plenary can formally establish that agreement can be reached at first reading. For the Council, only COREPER can do so. In this sense, there is a need for a degree of prudence until confirmation of the mandate of the co-legislators' representatives by their "client" at the appropriate level. It may be useful for the Presidency to involve the relevant departments of the Commission in the preparation of this document.



a COREPER meeting (ANNEX 8). There will then be no need for a second GRI sheet for the plenary (ANNEXES 4 and 5).

### 3. **Opinion of Parliament at first reading**<sup>18</sup>

**Parliament**, meeting in plenary session and acting by a **majority of the votes cast** (no deadline is laid down):

- either **approves** the Commission's proposal as it stands (no amendment proposed or adopted), in which case, if the Council agrees, **the act in question is deemed to be adopted**;
- or **adopts amendments** to the proposal.

In the context of an agreement at first reading in Parliament, the amendments reflect the compromise agreed between the three institutions. Consequently, if the Council approves all the amendments contained in Parliament's opinion, **it may adopt the proposed act thus amended**.

### 4. **Position of the Commission on amendments by Parliament and amended proposal**

Article 250(2) of the EC Treaty: *"As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act."*

#### 4.1. **Position of the Commission on amendments by Parliament**

- The position is laid down by the College on the basis of an GRI information sheet produced by the departments concerned in agreement with the cabinet of the Member of the Commission responsible. The sheet will be examined by the GRI, which recommends the line to be adopted in the College. The GRI information sheets specify the authorisation being sought, and the record of the GRI makes a clear reference to it. See **ANNEXES 4 and 5**.
- It is presented in plenary session by the Member of the Commission responsible, duly authorised by the College, on the basis of the GRI recommendations.
- It is prepared in the light of work by both the Council and Parliament. The GRI information sheets presented before the vote in plenary thus report on developments in the dossier in the bodies of the two institutions (see Section 2.4 for the specific case of agreements at first reading).

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<sup>18</sup> It should also be noted that Rule 52 of Parliament's Rules of Procedure provides for the possibility of requesting the Commission to withdraw its proposal (see Annex 3) if it has been rejected in a vote. Although this procedure is referred to as "rejection", Article 251 does not, in fact, provide for such a possibility at this stage of the procedure.

- The position presented to the plenary may entail an amendment to the initial Commission proposal if certain amendments voted there are acceptable. It will thus determine the content of the future amended proposal.

#### 4.2. Adoption of an amended proposal

The amended proposal is not required by any provision in the Treaty but is the immediate consequence of the role that the Commission sees for itself in the interinstitutional relations provided for by the Treaty (Article 250(2)) (See ANNEX 7).

- **Procedure**

- After the plenary vote, SG-G draws up a note entitled “**Action to be taken on legislative opinions**”, which sets out the Commission's position on the amendments voted by Parliament during the plenary session. This note is based on the authorisation granted prior to the plenary by the College to the Member of the Commission responsible according to the GRI's recommendations. By approving the note during its meeting following the plenary in question, the College ratifies the delegation proposals it contains.
- **The amended proposal is thus the direct result of the delegation** granted by the College to the Member of the Commission responsible. In exceptional circumstances, particularly in an emergency, this delegation covers an oral presentation to the Council.
- The proposal is **adopted under the delegation procedure** following a specific interservice consultation limited to the Secretariat-General and the Legal Service ("CIS COD-PH").
- It is recommended that the delegation procedure be finalised **within six weeks** of the first reading in Parliament and it should, in any case, be on the table of the Council's preparatory bodies when they are preparing to adopt the act (or common position). The Council **should not vote without taking the amended proposal into consideration**<sup>19</sup>.
- In the case of an agreement at first reading in Parliament, there is no reason for the delegation granted to the Commissioner responsible to be formally exercised in writing and for the Commission actually to adopt an amended proposal.

- **Content of the amended proposal**

- **It aims to integrate into the original proposal the amendments from Parliament** which the Commission can accept.

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<sup>19</sup> SG-F-3 will regularly inform the Parliament/Council coordinators of amended proposals which are expected, following a vote by Parliament at first reading. Those for which the delegation procedure has not been started within six weeks of the vote at first reading will be brought to the attention of the GRI. Where appropriate, in order to take account of work under way in the Council (see below), mention is made of the reasons justifying a delay.

- Delegation is normally strictly limited to changes to the proposal following amendments from Parliament accepted by the Commission in plenary session, on the basis of recommendations by the GRI and/or heads of cabinet prior to the plenary.
- However, in certain specific cases, the amended proposal may also contain, where appropriate, changes being prepared in the Council bodies and acceptable to the Commission<sup>20</sup>.
- Any other change falling outside the framework of delegation deriving from the GRI information sheet is subject to the normal procedure (horizontal interservice consultation and written or oral procedure). See ANNEX 5.

## **5. First reading in the Council**

The Council, acting by a qualified majority<sup>21</sup> (no deadline is laid down<sup>22</sup>), may adopt the act on a single reading or adopt a common position.

### **5.1. Adoption of the act at first reading**

The Council may adopt the act at first reading and thereby close the procedure:

- if Parliament has not adopted any amendments, the Council may adopt the Commission proposal;
- if Parliament has adopted amendments and if the Council approves all of them, the Council may adopt the act proposed by the Commission as amended (this is the case in the event of an agreement at first reading<sup>23</sup>).

### **5.2. Adoption of a common position**

#### **5.2.1. Political agreement and common position**

- In other cases, the Council draws up a common position and forwards it to Parliament, accompanied by an explanatory memorandum, generally during the plenary session following its formal adoption.

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<sup>20</sup> This situation is limited to cases where the Commission wishes to allow the Council to reach a political agreement within a short time by qualified majority or where the Commission wishes to change the initial balance of its proposal. The GRI information sheets should therefore state in these cases the reasons for favouring an approach going beyond the simple request for a delegation limited exclusively to amendments on which Parliament intends to vote.

<sup>21</sup> However, the Council acts unanimously in the cases referred to by the Treaty; see ANNEX 1. Article 250(1) also provides that it must act unanimously when departing from the Commission's proposal.

<sup>22</sup> Paragraph 3 of Protocol No 9 on the role of national parliaments provides for a period of six weeks between referral to the Council (and Parliament) and the date on which the proposal is entered on the Council's agenda for a decision, subject to exceptions on grounds of urgency that are duly substantiated.

<sup>23</sup> See also Sections 2.3 and 2.4.

- There is no deadline for the Council to adopt a common position following the first reading in Parliament. Although, strictly speaking, the date of the Council's common position will be that on which it is formally adopted as an "A" item, in practice the significant moment in terms of decision-making is when the political agreement is reached<sup>24</sup>. A period of three to six months may elapse between the political agreement and the Council's formal adoption of the common position during which the texts are translated and revised by the lawyer-linguists.

Joint Declaration

*42: "The institutions undertake not to use the time-limits laid down for the legal-linguistic finalisation of acts to reopen discussions on substantive issues."*

- The debate on substantive issues cannot, therefore, be reopened during this period.

### 5.2.2. Behaviour of the Commission during the preparation of the adoption of a common position by the Council

Joint Declaration

*17: "The Commission shall facilitate such contacts and shall exercise its right of initiative in a constructive manner with a view to reconciling the positions of the European Parliament and the Council, with due regard for the balance between the institutions and the role conferred on it by the Treaty."*

- The Commission **encourages a political agreement** which is **compatible with its initial proposal** or its initial proposal as amended following amendments by Parliament or **which enables conclusion of the dossier** at second reading or, at least, will facilitate future conciliation.
- **The dossier may go back to the GRI** in order to take account of new developments since the plenary stage at first reading and to facilitate an agreement by qualified majority on the common position in the Council. On the basis of an information sheet prepared by the departments responsible, the GRI may recommend that the College clarify or supplement the authorisation previously given to the Member of the Commission concerned ahead of a Council meeting and with the aim of **promoting a political agreement on adopting a common position** (see the outline of the "GRI-Council" information sheet in **ANNEX 8**).
- The passage through the GRI should be **carefully timed** so as to allow the Commission to express its view as effectively as possible in the Council. This will usually mean at the point when the dossier is referred to COREPER in the course of preparations for a Council meeting.

<sup>24</sup> The Council sometimes agrees a "general guideline" even before the vote on Parliament's opinion at first reading. These guidelines sometimes form a negotiating mandate for the Presidency in the preparation of an agreement at first reading (see Section 2.2.). For information about the general guidelines, see the Guide to Relations with the Council (SEC(2007) 406).

- The GRI thus receives the dossiers for which the Commission may have to depart from the position defended by it at the first reading in Parliament and embodied in its amended proposal. It must also be borne in mind that, given the **requirement for consistency**, the Commission **will no longer be able to support at second reading** the amendments accepted by it at first reading which were not included in the common position adopted by qualified majority with its agreement (see also the Guide to relations with the Council, SEC(2007) 406).
- In those situations where the Council may decide only by qualified majority, the Commission should take advantage of this by encouraging it to adhere as closely as possible to its initial proposal, while including as many as possible of those amendments by Parliament which it has accepted. The Commission should prevent the Council adopting a common position by qualified majority which removes a sensitive amendment by Parliament that will return at second reading and could lead automatically to conciliation.
- Where the Commission has to accept a common position by qualified majority even though it does not agree with all of its elements, it can indicate this to the Council by means of a **statement** to the effect that its attitude is dictated by a concern to allow the procedure to continue. This statement must be annexed to its communication to Parliament on the common position (see Section 6 below).

### 5.2.3. Agreement at the stage of the common position: Adoption of a negotiated common position

#### Joint Declaration

16: *"Where no agreement is reached at the European Parliament's first reading, contacts may be continued with a view to concluding an agreement at the common position stage."*

18: *"Where an agreement is reached at this stage, the chair of the relevant parliamentary committee shall indicate, in a letter to the chair of Coreper, his recommendation to the plenary to accept the Council common position without amendment, subject to confirmation of the common position by the Council and to legal-linguistic verification. A copy of the letter shall be forwarded to the Commission."*

- In this case, the political agreement reached will reflect the agreement between the two co-legislators (negotiated common position). The practice is also referred to as "early second reading".
- Such an agreement does obviate the need for a second reading in Parliament but does enable Parliament to proceed to the second reading by accepting the Council's common position as it stands, without amendment, as provided for in Article 251(2), third subparagraph, point (a), sometimes within a very short space of time.
- The recommendations on the behaviour of the Commission during the preparation of the political agreement, set out at in Section 5.2.2, also apply to the search for an agreement at this stage. The Commission's role may be crucial in promoting an agreement in Council by qualified majority which will allow a second reading in Parliament without amendment. To this end, the Commission may have to amend its proposal to make it easier to obtain a qualified majority. Any proposed amendment to

the position that the Commission has hitherto defended must be referred in good time to the GRI, using an GRI information sheet (ANNEX 8).

## 6. Communication from the Commission to the European Parliament on the common position of the Council

*Article 251(2), second subparagraph, third indent, of the EC Treaty: "(...) The Commission shall inform the European Parliament fully of its position."*

*Joint Declaration, paragraph 19: "In its statement of reasons, the Council shall explain as clearly as possible the reasons that led it to adopt its common position. During its second reading the European Parliament shall take the greatest possible account of those reasons and of the Commission's opinion."*

The Commission presents its opinion on the common position and informs Parliament by means of a communication.

The internal procedures for drawing up and adopting the draft communication on the common position are explained in ANNEXES 9 and 10. The attention of departments is more particularly drawn to the following points:

- The draft communication should be prepared by the DG concerned **as soon as a political agreement on a common position is reached in the Council. There is no need to wait for formal adoption of the common position**, given the very short time within which the Council generally sends its common position to Parliament.
- At each of its meetings the GRI will review progress in the preparation of communications by the relevant departments.

### Joint Declaration

*20: "Before transmitting the common position, the Council shall endeavour to consider in consultation with the European Parliament and the Commission the date for its transmission in order to ensure the maximum efficiency of the legislative procedure at second reading."*

- Any delay in transmitting the Commission communication has the effect of postponing receipt of the common position by Parliament in plenary session<sup>25</sup>, delaying the second reading and causing problems for the Commission with the Council.
- The communication is adopted by written procedure after a horizontal interservice consultation covering all the departments that were consulted when the original proposal was adopted.
- The communication should clearly inform Parliament of the Commission's position with regard to the common position, whether adopted by qualified majority or

<sup>25</sup> In view of Rule 57 of Parliament's Rules of Procedure (see footnote 26).

unanimously. The reasons why the Commission is accepting, supporting or opposing the common position must be explicitly stated.

- **Any joint Commission/Council statements** and any unilateral statements by the Commission on the common position in the minutes of the Council should be **attached to the communication.**

## Second reading

### 7. Interinstitutional contacts at second reading - Role of the Commission

#### Joint Declaration

21: "Appropriate contacts will continue as soon as the Council common position is forwarded to the European Parliament, with a view to achieving a better understanding of the respective positions and thus to bringing the legislative procedure to a conclusion as quickly as possible."

22: "The Commission shall facilitate such contacts and give its opinion with a view to reconciling the positions of the European Parliament and the Council, with due regard for the balance between the institutions and the role conferred on it by the Treaty."

23: "Where an agreement is reached through informal negotiations in trilogues, the chair of Coreper shall forward, in a letter to the chair of the relevant parliamentary committee, details of the substance of the agreement, in the form of amendments to the Council common position. That letter shall indicate the Council's willingness to accept that outcome, subject to legal-linguistic verification, should it be confirmed by the vote in plenary. A copy of that letter shall be forwarded to the Commission."

- The second reading begins with the transmission to Parliament of the common position and the Commission's opinion on the common position<sup>26</sup>.
- The interinstitutional contacts at second reading are more or less systematic. They are aimed at **avoiding the conciliation stage** and encouraging:
  - Parliament to adopt the Council's common position without amendments;
  - Parliament and the Council to reach agreement, prior to the plenary vote, on a compromise text voted on in plenary in the form of amendments which are then accepted by the Council.
- The Commission departments concerned and, in particular, the official responsible for the dossier are urged to:

<sup>26</sup> According to Rule 57 of Parliament's Rules of Procedure, "Communication of the Council's common position pursuant to Articles 251 and 252 of the EC Treaty takes place when it is announced by the President in Parliament. The President shall make the announcement after he has received the documents containing the common position itself, all statements made in the Council minutes when it adopts the common position, the reasons which led the Council to adopt its common position and the Commission's position, duly translated into the official languages of the European Union. The President's announcement shall be made during the part-session following the receipt of such documents."



- **play an active part in or take the initiative of convening trilogues** between the main players in Parliament and the Council with a view to helping them reach agreement **before** the second reading in Parliament;
- **suggest compromise amendments** acceptable to the other two institutions.
- The arrangements for organising trilogues for the first reading, set out in Section 2.2 above, and the behaviour of the Commission described in Sections 2.3 and 2.4 also apply to the second reading. As in the case of the first reading, the Secretariat-General's Codecision Unit (SG-F-3) must participate in the trilogues.
- The level of representation at second-reading trilogues is usually higher and involves at least the level of chair of COREPER.
- **SG-F-3 informs the GRI of progress with the dossiers at second reading**, and the GRI may recommend that the Commission:
  - encourage informal contacts with a view to adoption at second reading;
  - accept any compromise amendments between the co-legislators with a view to concluding the procedure at second reading, by means of the **GRI information sheets**. See ANNEX 6.
- The department concerned, in close association with SG-F-3, should **ensure that the competent bodies in each institution** (lead parliamentary committee, COREPER and, in the case of the Commission, the GRI) **are fully aware of the results of the informal contacts** in order to ensure that there is general agreement on the amendments to be put to the vote in the plenary session of Parliament<sup>27</sup>.

## 8. Second reading in the European Parliament

Within three (or four) months<sup>28</sup>, Parliament's plenary session:

- **approves** the common position as it stands (i.e. no amendments are proposed in the case of a negotiated common position, the proposed amendments are not adopted by the plenary or the quorum is not reached<sup>29</sup>) or takes no decision: the act in question will be deemed to have been adopted in accordance with the common position. **The procedure is closed;**

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<sup>27</sup> For Parliament, only the plenary can formally establish that agreement can be reached at second reading. For the Council, only COREPER can do so. In this sense, there is a need for a degree of prudence until confirmation of the mandate of the co-legislators' representatives by their "client" at the appropriate level.

<sup>28</sup> According to Article 251(7) of the Treaty, the periods of three months referred to in the Article may be extended by one month at the initiative of Parliament or the Council. Parliament considers that this period starts on the day following acknowledgment of receipt in plenary session of the common position, its explanatory memorandum and the Commission communication to Parliament on the Council's common position.

<sup>29</sup> At second reading the quorum consists of an absolute majority of Parliament's component members, i.e. 393 votes out of 785 MEPs.

- or **rejects** the common position by an **absolute majority of its component members**: the proposed act will be deemed not to have been adopted and **the procedure is closed**;
  - or **adopts amendments** to the common position by an **absolute majority of its component members**.
9. **Opinion of the Commission on amendments by the European Parliament at second reading**

*Article 251(2), third subparagraph, point (c), of the EC Treaty: "If (...) the European Parliament (...) proposes amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments."*

*Article 251(3) of the EC Treaty: "(...) the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion."*

- The **Commission** must issue an opinion **on all the amendments adopted** by Parliament in plenary session. **This opinion determines the type of vote required in the Council for accepting** Parliament's amendments (qualified majority/unanimity).
- The Commission's position on Parliament's amendments at second reading, including any compromise amendments between the co-legislators as part of an agreement at second reading, is prepared in the light of work done by the Council and Parliament and on the basis of GRI information sheets produced by the departments and discussed in the GRI before the vote in plenary session. The Member of the Commission responsible is thus authorised to adopt a position in plenary session. See ANNEXES 4 and 6.
- The Commission's opinion is adopted using the delegation procedure and following a specific interservice consultation limited to the Secretariat-General and the Legal Service ("CIS COD-PH")<sup>30</sup>.

#### Joint Declaration

*19: "During its second reading, the European Parliament shall take the greatest possible account of (...) the Commission's opinion."*

<sup>30</sup> At second reading, delegation is given "ex ante", i.e. the Member of the Commission responsible is empowered to present a Commission opinion on Parliament's amendments at the same time as the College authorises him to adopt a position in plenary session in accordance with the recommendations of the GRI regarding the information sheet submitted to it.

- The Commission's opinion must be presented **as soon as possible (three weeks)** after the vote in plenary so as to enable the Council to adopt a position on Parliament's amendments. See the model opinion in ANNEX 11.
- At each of its meetings the GRI will review progress in the preparation of opinions by the relevant departments.
- Article 251(2), third subparagraph, point (c), of the Treaty requires the Commission to deliver an opinion on Parliament's amendments. **This opinion is therefore required even if agreement has been reached on the dossier at second reading**, in that the Council cannot act without it.

#### 10. Second reading in the Council

Within three (or four) months of receiving the amendments from Parliament<sup>31</sup>, the Council, acting by qualified majority (or unanimously in the cases provided for by the Treaty or where it departs from the Commission's opinion) must:

- either **approve all Parliament's amendments without change**. In this case, the act in question is deemed to have been adopted in accordance with the common position as amended and **the procedure is closed**; or
- **decide not to approve all of Parliament's amendments**. The President of the Council, in agreement with the President of Parliament, will then **convene a meeting of the Conciliation Committee** within six (or eight) weeks<sup>32</sup>.

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<sup>31</sup> According to Article 251(7) of the Treaty, the periods of three months referred to in the Article may be extended by one month at the initiative of Parliament or the Council.

<sup>32</sup> According to Article 251(7) of the Treaty, the periods of six weeks referred to in the Article may be extended by two weeks at the initiative of Parliament or the Council.

## Conciliation

*Article 251(4) of the EC Treaty: "(...) The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council."*

*Joint Declaration, paragraph 27: "(...) Such initiatives may include draft compromise texts having regard to the positions of the European Parliament and of the Council and with due regard for the role conferred upon the Commission by the Treaty."*

### **11. The two stages of conciliation**

#### **11.1 Period before the meeting of the Conciliation Committee**

- If the negotiations to conclude the dossier at second reading have not produced agreement, it will be clear as soon as the vote is held in plenary that conciliation is needed; informal contacts to prepare for this can therefore be started as soon as the plenary session takes place, even before the Council takes a formal decision.

#### Joint Declaration

*24: "If it becomes clear that the Council will not be in a position to accept all the amendments of the European Parliament at second reading and when the Council is ready to present its position, a first trilogue will be organised. Each institution, in accordance with its own rules of procedure, will designate its participants for each meeting and define its mandate for the negotiations. The Commission will indicate to both delegations at the earliest possible stage its intentions with regard to its opinion on the European Parliament's second reading amendments."*

- The formal adoption of the Council's position not to accept all of Parliament's amendments marks the beginning of a period of six or eight weeks during which the Conciliation Committee is convened<sup>33</sup>. This period, which precedes the formal meeting of the Conciliation Committee, enables the institutions to continue preparing the Committee's work and, if possible, to reconcile their points of view.

#### Joint Declaration

*25: "Trilogues shall take place throughout the conciliation procedure with the aim of resolving outstanding issues and preparing the ground for an agreement to be reached in the Conciliation Committee. The results of the trilogues shall be discussed and possibly approved at the meetings of the respective institutions."*

- These contacts will lead to trilogue meetings chaired jointly by the Vice-President of Parliament who chairs Parliament's delegation to the conciliation and by the chair of COREPER. The co-legislators informally agree on a negotiating timetable for each dossier in the conciliation procedure. This provides for several trilogue meetings and a

<sup>33</sup> According to Article 251(7) of the Treaty, the periods of six weeks referred to in the Article may be extended by two weeks at the initiative of the European Parliament or the Council.

date for the meeting of the Conciliation Committee. Each trilogue is prepared by COREPER for the Council and by the EP delegation (the 27 MEPs who are members of the Conciliation Committee). The Commission attends all of these meetings.

## 11.2. Meeting of the Conciliation Committee

- The procedure under Article 251 is as follows: within six/eight weeks of its first meeting, the Conciliation Committee, acting by a qualified majority of members of the Council or their representatives, except for those cases of unanimity laid down by the Treaty (see ANNEX 1), and by a majority of the representatives of the European Parliament:
  - **either approves a joint text:** Parliament (by a majority of the votes cast; no amendment may be tabled) and the Council (by qualified majority) **adopt the act** within six (or eight) weeks, in accordance with the joint text;
  - **or does not approve a joint text: the act will be deemed not to have been adopted.**
- In theory, the negotiations in the trilogues will help to reconcile opinions, thereby enabling agreement to be reached at the first meeting of the Conciliation Committee. One or more trilogues will take place on the day scheduled for the Committee meeting in an attempt to finalise outstanding issues. These trilogues usually produce an agreement of which the formal meeting of the Conciliation Committee then simply has to take note.

## 11.3. Period after the meeting of the Conciliation Committee

Given the time limits laid down in the Treaty, the finalisation of the joint text by the secretariats of the two co-legislators may extend beyond the first meeting of the Committee.

## 12. Behaviour of the Commission in the conciliation phase

- In its role as **mediator** in conciliation, which is laid down by the Treaty and the Joint Declaration, the Commission should propose **draft compromise texts (See ANNEX 12)**.
- The Commission is **explicitly associated with all the conciliation work:**
  - preparatory work in the respective bodies of Parliament (delegation) and the Council (working group and COREPER)<sup>34</sup>
  - trilogues held in the period before the meeting of the Conciliation Committee;
  - meetings of the Conciliation Committee and trilogues.

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<sup>34</sup> Ideally, the same official should represent the Commission in the preparatory meetings of both the Council and Parliament in order to enhance the consistency of the Commission's action.

- The **minimum level of representation** for the Commission at each phase of the procedure should be as follows:
  - director for meetings of COREPER;
  - director/head of unit for meetings of the European Parliament delegation;
  - director-general/deputy director-general or director for trilogues;
  - Member of the Commission for Conciliation Committee meetings (and trilogues held on these occasions<sup>35</sup>).
  
- The Commission's Secretariat-General is involved with the Committee Secretariat (provided jointly by the Secretariats-General of the Council and Parliament). In addition, the **GRI** is kept regularly informed by SG-F-3 of the situation concerning ongoing conciliation procedures, on the basis of **GRI information sheets** (see model in **ANNEX 13**).
  
- As a result, the **Commission departments concerned** establish and maintain **at the appropriate level** and in coordination with SG-F-3 all the necessary contacts with those most closely concerned in Parliament and the Council. In particular, they are urged to:
  - **use the strict deadlines laid down by Article 251 before the start of the formal conciliation** (4 months between the vote in plenary and the second reading by the Council; six/eight weeks after the second reading in the Council) to encourage informal contacts, in coordination with SG-F-3 (see preceding paragraph);
  - propose, where appropriate, informal intervention by the Member of the Commission on politically sensitive points;
  - **actively** encourage the pursuit of a Parliament-Council agreement on points of conflict<sup>36</sup>, either:
    - by expressing a favourable opinion on compromises which emerge between the co-legislators and are likely to be supported by the Commission; or
    - by taking the **initiative** in proposing compromise texts<sup>37</sup>.
  
- The **compromise texts presented by the Commission**:
  - should receive **the assent of the Secretariat-General, the Legal Service** and, where appropriate, the DGs most closely involved, before being forwarded to the other institutions;

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<sup>35</sup> At these trilogues the Council is represented by a minister of the Presidency.

<sup>36</sup> The departments concerned should not confine themselves to finding the middle ground between the two points of view but should use their judgement to determine the best way of "reconciling the positions of the Council and the European Parliament".

<sup>37</sup> These should preferably be presented simultaneously to both parties (EP delegation and COREPER), although texts may still be presented at the request of either of the co-legislators.

- are forwarded to Parliament and the Council by SG-F-3;
- may initially be proposed in the form of staff working documents in the institutions' preparatory bodies;
- should then, with a view to the subsequent stages of the procedure, receive **the political assent of the College**, as well as any statements from the Commission (unilateral or joint statements) or the latter's support for compromises which emerge between the co-legislators. To this end, the normal procedures should generally be followed (GRI and/or chefs de cabinet). See ANNEX 13.

**Codecision procedure - Article 251**  
**SCOPE, 1 JANUARY 2005**

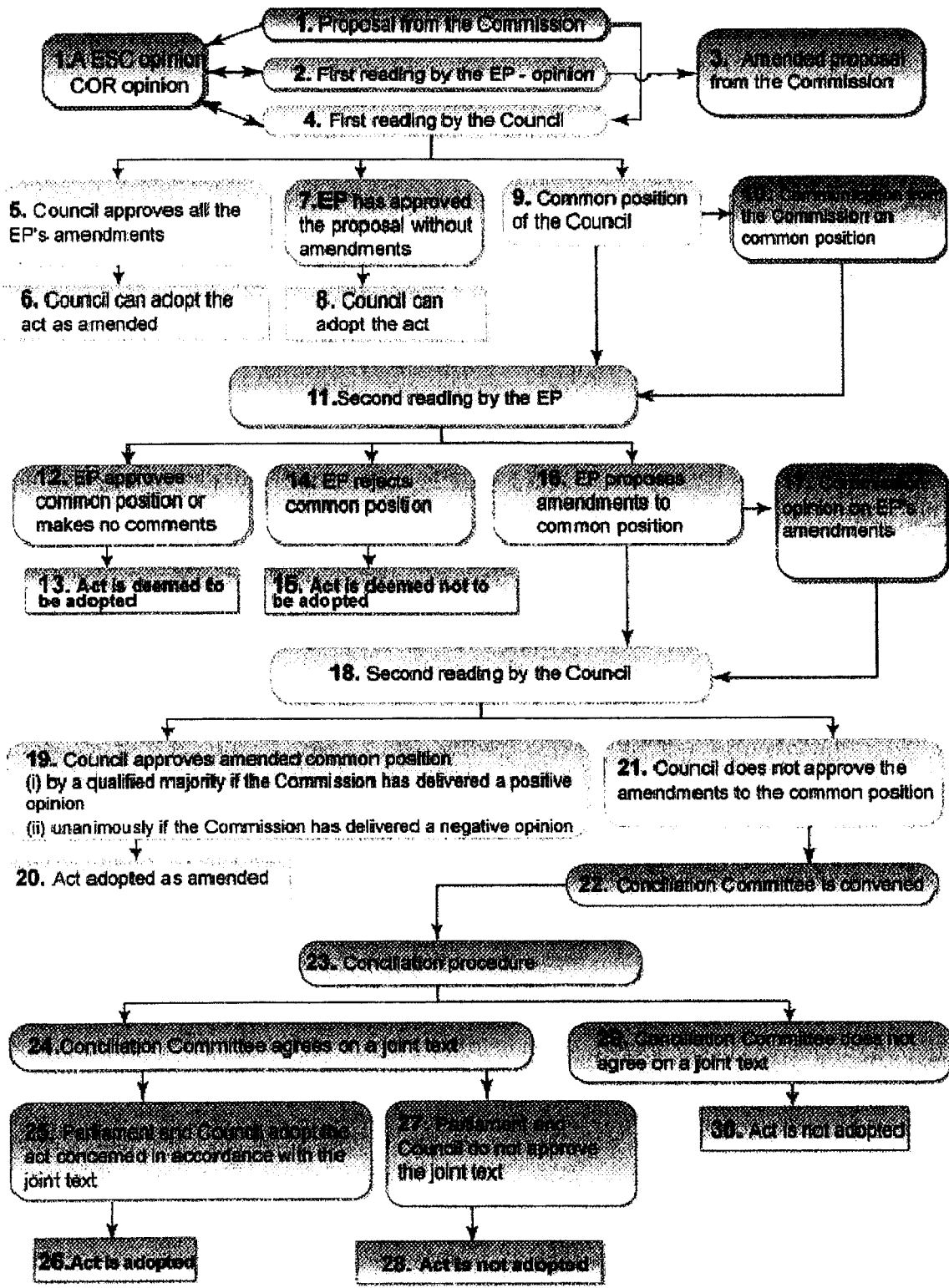
Article 12	: non-discrimination on grounds of nationality
Article 13(2)	: combating discrimination (incentive measures)
Article 18(2)	: right to move and reside freely
Article 40	: freedom of movement for workers
(*) Article 42	: social security for migrant workers in the Community
Article 44	: freedom of establishment
Article 46(2)	: right of establishment: special treatment for foreign nationals
Article 47	: taking up and pursuing self-employed activities; recognition of diplomas
(*) Article 47(2)	: idem, if national legislation is amended
Article 55	: right of establishment: services
(*) Article 62(1)	: absence of controls on persons when crossing internal borders
(*) Article 62(2)(a)	: checks at external borders
(*) Article 62(3)	: freedom of movement for nationals of third countries in possession of visas
Article 63(2)(a)	: persons under temporary protection
(*) Article 63(2)(b)	: refugees and displaced persons
(*) Article 63(3)(b)	: measures against illegal immigration
Article 65	: judicial cooperation in civil matters (except family law)
Article 71(1)	: transport (rail, road, inland waterways)
Article 80(2)	: transport (extension: sea, air)
Article 95	: internal market
Article 129	: employment (incentive measures)
Article 135	: customs cooperation
Article 137(1)-(2)	: social policy
Article 141	: social policy: equal opportunities; equality of men and women
Article 148	: ESF (implementing decisions)
Article 149(4)	: education (incentive measures)
Article 150(4)	: vocational education
(*) Article 151(5)	: culture (incentive measures)
Article 152(4)	: public health (incentive and other measures)
Article 153(4)	: consumer protection
Article 156	: trans-European networks
Article 157(3)	: industry (specific support measures)
Article 159(3)	: economic and social cohesion (specific actions outside the Funds)
Article 162	: ERDF: implementing decisions
Article 166	: research (framework programme)
Article 172	: research: implementation
Article 175(1)-(3)	: environment
Article 179	: development cooperation
Article 191	: political parties at European level (statute and political rules)
Article 255(2)	: access to institution documents
Article 280(4)	: prevention of and fight against fraud
Article 285(1)	: statistics
Article 286(2)	: independent supervisory body for monitoring protection of personal data
(*)	Council acts unanimously

**Switch to codecision at a later stage**

Article 63(1) : asylum policy (after adoption of a Community framework)



**CODECISION PROCEDURE MECHANISM**



**CODECISION PROCEDURE:  
Outline of internal procedures**

STAGES	INTERNAL PROCEDURE
1. <u>Adoption of the proposal</u> (COM doc. - 23 languages*)	Written/oral procedure
2. <u>Commission position on EP amendments proposed at first reading</u>	GRI → Weekly "heads of cabinet" → Commission minutes based on GRI-EP information sheet (SP doc.) <b>ANNEXES 3 and 4</b>
3. (Possibly) <u>amended proposal after EP first reading</u> (COM doc. - 23 languages*)	<u>Delegation of powers</u> on basis of GRI conclusions and "Action to be taken" (SP doc.). <b>CIS COD-PH restricted to SG and Legal Service</b> <b>Recommended deadline: 6 weeks after vote in EP</b> <b>ANNEX 6</b>
4. If necessary, <u>further change in Commission's position with a view to Council common position</u>	GRI → Weekly "heads of cabinet" → Commission minutes on basis of GRI - Council information sheet (SI doc.) or weekly "heads of cabinet" telex <b>ANNEX 7</b>
5. <u>Communication to EP on Council common position</u> (Article 251(2)) (SEC doc. - 23 languages*)	Normal written procedure (5 days) or, if necessary, <u>expedited or special expedited written procedure</u> depending on Council schedule. <b>Horizontal CIS.</b> <b>Deadline: launch CIS as soon as political agreement reached</b> <b>ANNEXES 7, 8 and 9</b>
6. <u>Commission position on EP amendments proposed at second reading</u>	GRI → Weekly "heads of cabinet" → Commission minutes based on GRI-EP information sheet (SP doc.) <b>ANNEXES 3 and 5</b>
7. <u>Opinion on EP amendments at second reading</u> (Article 251(2)(c)) amending the proposal if necessary (COM doc. - 23 languages*)	<u>"Ex ante" delegation of powers</u> (COM doc.) based on GRI conclusions → Weekly "heads of cabinet" → Commission minutes <b>CIS COD-PH restricted to SG and Legal Service</b>

\* Under Article 2 of Council Regulation (EC) No 920/2005 (OJ L 156, 18.6.2005), the institutions of the European Union are not bound by the obligation to draft all acts in Irish and to publish them in that language in the *Official Journal of the European Union* for a renewable period of five years starting on 1 January 2007. This exception does not apply to regulations adopted jointly by the European Parliament and the Council. Proposals for regulations subject to the codecision procedure must therefore be produced in Irish, and only proposals for directives and decisions fall under the exception. The requirement for certain acts to be produced in Irish also applies to intermediate acts, such as amended proposals and communications on common positions concerning codecision regulations. All subsequent references to the "23 languages" are to be understood in the light of Article 2 of Regulation (EC) No 920/2005.

	<b>Recommended deadline: 3 weeks after vote in EP</b> <b>ANNEX 10</b>
8. (Possibly) <u>Compromise texts/ statements for the Conciliation Committee</u>	GRI → Weekly "heads of cabinet" → Commission minutes based on GRI - Conciliation information sheet (SP doc.) <b>ANNEXES 11 and 12</b>

**PREPARATION OF THE COMMISSION POSITION ON AMENDMENTS PROPOSED BY THE  
EUROPEAN PARLIAMENT  
GRI – EP INFORMATION SHEET / FIRST AND SECOND READING**

Given that Article 251 allows the codecision procedure to be concluded at **first reading** and that the Commission has to amend its proposal to enable the Council to act by a qualified majority (Article 250(1)), the Commission position has to be carefully prepared, particularly where the Council's approach departs from the initial proposal.

At first reading, the Commission must be very careful about **the possibility of being asked to withdraw its proposal** under Rule 52 of Parliament's Rules of Procedure, following a vote by Parliament to reject it, whereupon the Commission will have to decide whether to maintain its proposal or withdraw it. Under this Rule, if a Commission proposal fails to secure a majority of the votes cast at first reading, the President of Parliament requests the Commission to withdraw the proposal before Parliament votes on the draft legislative resolution. If the Commission does not do so, reserving its position in the plenary, the matter is referred back to the committee responsible without a vote on the draft legislative resolution. This committee reports back to Parliament, orally or in writing, within a period decided by Parliament which may not exceed two months. During the period of referral to the relevant committee, the Commission must first examine the situation during the first meeting of the GRI following the part-session and in preparation for the next Commission meeting, using as a basis an information sheet produced by the relevant DG under the authority of the cabinet responsible. If it decides to maintain the proposal, contacts must be made at the appropriate level to try to convince Parliament not to reject it, by referring, for example, to the situation of the dossier in the Council, which may wish the legislative procedure to continue.

The **second reading** is also important for the Commission, mainly in case the conciliation procedure has to be launched. Moreover, the Commission has undertaken to take Parliament's amendments at second reading fully into account, to consider at full Commission level those it decides not to accept and to explain itself to Parliament if necessary (paragraph 31 of the Framework Agreement of 26 May 2005).

The procedure is as follows:

- At its first meeting after the plenary session, the **Interinstitutional Relations Group (GRI)** identifies the codecision dossiers on the agenda for the next plenary session(s) which are likely to be concluded at first reading and those which may require a second reading or conciliation, basing its assessment mainly on information supplied by the Parliament/Council coordinators of the Directorates-General at their monthly meeting with the Secretariat-General.
- **Information sheets** on these dossiers are prepared by the lead DG in coordination with the associated DG(s) and where appropriate, the cabinet(s) concerned, the Secretariat-General and the Legal Service. They recommend that the Commission empower the competent Member to adopt a particular line in plenary on Parliament's proposed or expected amendments, in the light of the Council's deliberations.

- Departments/cabinets are reminded of the importance of **prior coordination with any other associated departments/cabinets**, given that the interservice consultation for delegation of powers following EP opinions (amended proposal, opinion) is limited to consultation of the Legal Service and the Secretariat-General.
- The information sheets are submitted to the GRI in preparation for its meeting preceding the last Commission meeting before the plenary session ("GRI-2"). **Where dossiers are likely to be concluded at first reading** and barring unforeseen circumstances, the recommendations in the information sheets for the EP plenary are generally adopted as "A items" by the GRI, provided that the Commission's support for an agreement at first reading has already been endorsed by the College (when it went through COREPER). This is recorded in the minutes.
- **Where a second reading is required**, the cabinets concerned inform the GRI, on the basis of the above information sheets, of the position that their Member intends to adopt on Parliament's amendments. If necessary, they supplement the Directorate-General's comments with a specific political appraisal and indicate the points to which the Commission's attention will be drawn in the minutes. In the case of these dossiers, the information sheets will also indicate the Council's position, and the SG-F will, if necessary, draw attention to the situation in the Council. The Legal Service makes its comments known.
- After discussion, the GRI recommends that the Commission authorise the competent Member to adopt a particular line on the proposed or expected amendments in Parliament's plenary session, in the light of the Council's deliberations.  
**The powers granted to the competent Member for subsequent changes in the proposal (taking account of any amendments in preparation in the Council) stem directly from this authorisation.**
- **If the proposal is likely to be rejected** by Parliament, the GRI may also advise the Commission to authorise the Member concerned to maintain or withdraw it in plenary, as appropriate.
- The conclusions and recommendations of the GRI or unresolved problems are referred to the heads of cabinet at their weekly meeting in readiness for the Commission meeting.

If the outcome of voting in a parliamentary committee is not available for the "GRI-2" meeting, a provisional information sheet on the amendments tabled will, as far as possible, have to be prepared, indicating the position suggested to the Commission. If necessary, a revised sheet reflecting the outcome of the vote may be distributed for the next meeting of the GRI or to the heads of cabinet at their weekly meeting. The same approach may be used if the negotiations on an agreement at first reading are still under way when the "GRI-2" meeting takes place.

If requests for urgent consultation are received too late for amendments to be examined by the GRI, they should, if necessary, be brought to the Commission's attention using the "virtual GRI" procedure and/or at the weekly meeting of heads of cabinet, after consultation with the Legal Service.

When new amendments are put forward after the last meeting of the GRI before the part-session or when compromise amendments between political groups or with the Commission are formulated during the plenary session, the cabinet of the Member responsible consults with the cabinet of the President, the cabinet of the Member responsible for relations with Parliament and any associated cabinet(s) and with the Legal Service, to follow up as appropriate.

When a report is sent back to committee by the plenary (Rule 69(2) or 168 of Parliament's Rules of Procedure) to seek a compromise with the Commission, the parliamentary committee does not vote on the compromise amendments negotiated by the rapporteur and Commission departments until it knows whether the full Commission will accept them. The GRI must therefore be informed in good time so that the representative of the Commission is able to indicate its position at the parliamentary committee meeting.

In the event of substantial amendment(s) to the proposal going beyond the scope of the powers already delegated, the dossier must be referred again to the heads of cabinet (prior coordination between the lead department, the Secretariat-General and the Legal Service).

### **Content and presentation of information sheets on Parliament amendments** (see outlines in **ANNEXES 5 and 6**)

The information sheets must first give a short assessment of the political significance of the dossier and indicate clearly the most sensitive amendments or those with major political, institutional, legal or budgetary implications. They must report on the dossier's progress within the Council and recommend any necessary delegation of powers to take account, in the amended proposal, of changes being prepared in the Council which are acceptable to the Commission.

- At **first reading**, they must indicate whether conclusion is likely at this stage (Parliament's proposed amendments are acceptable to the Commission and the Council, or compromise amendments acceptable to the Commission have been formulated by the co-legislators) and suggest a Commission position for the plenary. If a second reading is expected, the information sheets must suggest a line of conduct to the Commission in the light of the Council's deliberations. Wherever possible, attention should also be drawn to amendments likely to cause problems at second reading. Any risk of rejection by Parliament must be pointed out. The reasons for maintaining or withdrawing the proposal must be emphasised so that the Commission can take a decision.
- At **second reading**, if the suggested Commission position does not differ from that adopted at first reading, the information sheets can be brief. Where it is proposed to adopt a different position at second reading from that adopted at first reading on certain amendments, the reasons must be clearly stated and more detailed information given on the points concerned in order to bring this to the Commission's attention. The consistency between this and the Commission's position on the adoption of the common position must be explained.

**The information sheet must include**, as an annex, a **summary table** showing for each amendment (or compromise amendment formulated by the co-legislators) the article of the Commission proposal or common position to be amended, the main grounds for and origin of the amendment, the **position suggested to the Commission** with a short statement of reasons and, in the case of tables for the second reading, the position adopted by the Commission at first

reading. This also applies to amendments which were not incorporated after the vote in parliamentary committee but may be retabled in plenary. Any last-minute amendments likely to create political problems during the debate in plenary must also be mentioned. The text of the amendments must be attached to the information sheet.

In general terms, and especially at second reading, the information sheets must not lead to any misunderstanding regarding the position that it is suggested the Commission adopt. An amendment must be explicitly accepted or rejected. If the recommendation is to accept amendments in part or subject to rewording, the acceptable parts or proposed rewording must be specified.

The information sheets should also enable the Commission to respond to any requests from Parliament to withdraw its proposal. If, at second reading, there is a strong likelihood of the dossier going to conciliation, the information sheet may also include proposals to be presented subsequently to the Conciliation Committee.

The sheets must conclude with a recommendation to the Commission on the suggested position to adopt. Annexes 3 and 4 contain models that can be used for this.

### **Deadlines**

- **The information sheets must be available to the GRI at least three working days before its meeting.** Accordingly, the lead cabinet must ensure that they are sent by e-mail to the GRI Secretariat (Mr J. MUELLER, tel. 94401) four working days before the meeting.

**GRI-EP INFORMATION SHEET / OUTLINE - FIRST READING**

**GRI MEETING ON ...**

**MEMO TO MEMBERS OF THE GRI**

Subject: Title of proposal

Ref. COM ... + interinstitutional code (COD)

Codecision procedure first reading

Rapporteur:

Lead parliamentary committee:

Any other parliamentary committee(s) consulted:

**1. BACKGROUND**

- a) Objective of the proposal
- b) Date of the Commission decision
- c) Date on which the proposal was sent to Parliament and the Council
- d) Opinions of the Economic and Social Committee and the Committee of the Regions (if delivered)
- e) Budgetary aspects (if any)

**2. STATUS OF THE DOSSIER IN PARLIAMENT AND THE COUNCIL**

- a) Brief assessment of the political significance and sensitivity of the dossier; highlight the key institutional, legal, budgetary or political problems. Indicate whether conclusion is likely at first reading.
- b) Brief appraisal of the situation in the lead parliamentary committee. Opinion of any other parliamentary committees involved.
- c) Concise analysis of politically sensitive amendments (adopted in parliamentary committee or foreseeable) and any compromise amendments between the co-legislators. State clearly the position suggested to the Commission and the reasons for it (also for amendments which were not incorporated after the vote in parliamentary committee but may be retabled in plenary, or any fresh amendments).



- d) Report on developments in the Council  
Indicate, if appropriate, that the delegation should cover authority to take into account in the amended proposal changes being prepared in the Council which are acceptable to the Commission. State the reasons for preferring this approach (allowing the Council to vote by a qualified majority, Commission seeking to alter its position, etc.) and the substantive amendments made by the Council, focusing on the main points. This approach should be adopted only if political agreement on the common position might be reached within the Council less than two months after the plenary vote.
- e) Comments (if any) on any risk of rejection; state why the proposal should then be maintained or withdrawn, as appropriate.
- f) Annex a **table** indicating for each proposed or foreseeable amendment (or compromise amendment) the article of the proposal to be amended, the main grounds and support for the amendment, the position suggested to the Commission and a short statement of reasons. Mark **key amendments** with an asterisk.
- g) Wherever possible, attach the text of the amendments (electronically).

### 3. PROSPECTS FOR THE PLENARY

Political outlook, given the dossier's progress in the Council and the position of the political groups in Parliament.

### 4. RECOMMENDATION TO THE COMMISSION

It is essential that the information sheet propose a recommendation to the Commission on the authorisation that the Member responsible wishes to obtain before the dossier comes before the plenary.

The recommendation may be in one of two forms:

- either it "*suggests that the GRI recommend that the Commission adopt the line indicated in this sheet*";
- or, if further discussion is required on compromise amendments, e.g. to allow agreement at first reading, it "*suggests that the GRI recommend that the Commission adopt the line indicated in this sheet and authorise the Member responsible to continue contacts with Parliament (and the Council), following the line indicated in this sheet, with the aim of promoting agreement at first reading*".

### 5. OFFICIAL RESPONSIBLE

Mr/Ms

Tel.

**GRI-EP INFORMATION SHEET / OUTLINE - SECOND READING**

**GRI MEETING ON ...**

**MEMO TO MEMBERS OF THE GRI**

Subject: Title of proposal

Ref. COM ... + interinstitutional code (COD)

Codecision procedure second reading

Rapporteur:

Lead parliamentary committee:

**1. BACKGROUND**

- a) Objective of the proposal
- b) Date of the Commission decision
- c) Date on which the proposal was sent to Parliament and the Council
- d) Outcome (in brief) of the first reading in Parliament
- e) Amended Commission proposal (if any)
- f) Date of adoption of the common position and of acknowledgement of its receipt by Parliament. Specify whether the common position was adopted by a qualified majority or unanimously and whether statements were entered in the Council minutes.
- g) Brief comments on the common position
- h) Budgetary aspects (if any)

## 2. STATUS OF THE DOSSIER IN PARLIAMENT AND THE COUNCIL

- a) Brief assessment of the political significance and sensitivity of the dossier; highlight the key institutional, legal, budgetary or political problems.  
Indicate whether conclusion is likely at second reading.
- b) Brief appraisal of the situation in the parliamentary committee at second reading; in particular, the position of the various political groups on the amendments.
- c) Concise analysis of politically sensitive amendments (adopted in committee or foreseeable) and any compromise amendments, in particular between the co-legislators.
- d) Report on developments in the Council
- e) State clearly the position suggested to the Commission on the amendments and the reasons for it (also with regard to amendments which were not incorporated after the vote in parliamentary committee but may be retabled in plenary); highlight and give reasons for any differences from the position adopted by the Commission at first reading. If the recommendation is to accept certain amendments in part or subject to rewording, specify the acceptable part or the proposed rewording.

Comments (if any) on the potential risks of rejection of the common position

- g) Annex a **table** indicating for each proposed or foreseeable amendment (or compromise amendment) the relevant article of the common position, the main grounds and support for the amendment, the position adopted by the Commission at first reading, the position suggested at second reading and a short statement of reasons. Mark **key amendments** with an asterisk.
- h) Wherever possible, attach the text of the amendments (electronically).

## 3. PROSPECTS FOR THE PLENARY

Political outlook, given the number of votes needed at second reading (position of the political groups in Parliament) and the dossier's progress in the Council.

## 4. RECOMMENDATION TO THE COMMISSION

It is essential that the information sheet propose a recommendation to the Commission on the authorisation that the Member responsible wishes to obtain before the dossier comes before the plenary.

The recommendation may be in one of two forms:

- either it "*suggests that the GRI recommend that the Commission adopt the line indicated in this sheet*";
- or, if further discussion is required on compromise amendments, e.g. to allow agreement at second reading, it "*suggests that the GRI recommend that the Commission adopt the line indicated in this sheet and authorise the Member responsible to continue contacts with Parliament (and the Council), following the line indicated in this sheet, with the aim of promoting agreement at second reading*".

**5. OFFICIAL RESPONSIBLE**

Mr/Ms

Tel.

**FOLLOW-UP TO LEGISLATIVE OPINIONS OF PARLIAMENT**

The Commission amends its proposal to take account of the Parliament amendments it accepted in plenary session at first reading. Amended proposals are generally adopted by delegation of powers to the responsible Member of the Commission. Such powers stem directly from the prior authorisation granted by the Commission to the competent Member (following the recommendations of the GRI and/or heads of cabinet) to adopt a line of conduct in Parliament plenary session. Where appropriate and following the recommendation of the GRI and/or heads of cabinet, this delegation of powers may cover amendments being prepared within the Council which are acceptable to the Commission.

**Any amendment outside the scope of these powers is subject to the usual procedures (written or oral).**

Amended proposals/opinions must be presented in the 23 languages\* (the text of Parliament's amendments is available electronically).

**If agreement is reached on a proposal at first reading in Parliament there is no reason for the delegation granted to the Commissioner responsible to be formally exercised in writing and for the Commission actually to adopt an amended proposal.**

► **After first reading under the codecision procedure**

- In terms of actual presentation, the amended proposal appears in a simplified form consisting of running text in "Legiswrite" (**not a consolidated text** incorporating the Parliament amendments accepted by the Commission into the initial proposal).
- After a brief reminder of the purpose of the proposal and the background to the dossier (particularly its progress in the Council), the text sets out in detail the Parliament amendments accepted by the Commission in whole or in part. The rewording proposed for amendments accepted subject to rewording must be stated explicitly (see SPI (2001) 82).
- The text must conclude with the following sentence: "Under Article 250(2) of the EC Treaty, the Commission amends its proposal as indicated above."

Title of document: Amended proposal for a [type of act] of the European Parliament and of the Council [title of act] presented by the Commission pursuant to Article 250(2) of the EC Treaty (Legiswrite model available).

An amended proposal in the form of a consolidated text may be considered if this is necessary for clarity, for example when many amendments have been adopted and accepted by the Commission or if the nature of the proposal is such that certain amendments must be presented in the context of the initial proposal.

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\* Taking into account the earlier comment about the application of Article 2 of Regulation (EC) No 920/2005.

The preference for a **simplified presentation** does not, however, exclude the possibility of presenting a consolidated proposal at any point in the procedure in cases where this is justified and where the consolidated proposal may genuinely serve as a working basis for continuing the interinstitutional procedure. Such a proposal, prefaced by an explanatory memorandum, is then presented as a consolidated legal text, with the Parliament amendments incorporated into the initial proposal ("Legiswrite" system).

### **Deadlines**

- The text has to be available to the Council's preparatory bodies at the time when they are preparing to adopt the act or the political agreement on the common position, so that the Council does not have to act without taking the amended proposal into consideration\*.
- In cases of urgency, the delegation of powers to the competent Member of the Commission also covers the option for the Member or his/her representative to argue the case for the amended proposal orally in the Council. However, this should be done only in exceptional circumstances, and it is preferable for the Commission to send a formal amended proposal before the Council meeting.

Although it could sometimes be useful to defer any amendment of the proposal following Parliament's first reading, depending on developments within the Council, while allowing sufficient time to influence the COREPER discussions, this exceptional option is inadvisable. It gives rise to the very great risk that, having waited for the "right moment", the Commission could find that its intervention appears out of place. The GRI sheet must mention any such possibility or, if this could not be done at the time when it was drawn up, the cabinet responsible must bring the matter to the attention of the GRI.

**If Parliament has not adopted any amendment, no amended proposal is required.**

N.B. The internal procedures set out above are also applicable to dossiers for simple consultation of Parliament.

#### ► **After second reading under the codecision procedure (outline in ANNEX 10)**

- The Commission must deliver an **opinion** on all the amendments adopted by Parliament (Article 251(2), third subparagraph, point (c) of the Treaty), whether or not it has accepted them. This document is important in that the Council must act unanimously on amendments on which the Commission has delivered a negative opinion (Article 251(3)).
- This opinion is required for all dossiers, even those on which agreement is reached at second reading. In this case the opinion may be presented in a simplified form reiterating the main points of agreement and confirming the Commission's support for the compromise.

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\* A maximum of six weeks is recommended in cases where the Council's schedule is not urgent.

- If no amendment is adopted by Parliament, there is no need to deliver an opinion (the act is deemed to have been adopted and the procedure concluded, subject to the joint signature of the Presidents of the Council and Parliament).
- In terms of actual presentation, the Commission's opinion takes the form of a running text (not a consolidated proposal) setting out in detail the Commission's position on all the amendments adopted by Parliament (see SPI (2000) 15).
- If one or more amendments are accepted in part by the Commission, the part(s) of amendment(s) accepted must be specified. If certain amendments have been accepted by the Commission subject to rewording, the text must indicate explicitly the proposed rewording. If an agreement has been negotiated between the institutions on the text with a view to adoption at second reading, the opinion sets out the Commission's position on the salient points of that agreement relative to the positions it had adopted at the earlier stages of the procedure.
- The text of the amendments need not be attached.

Title of document: Commission opinion pursuant to point (c) of the third subparagraph of Article 251(2) of the EC Treaty on the European Parliament's amendment(s) to the Council common position on the proposal for a [...type of act...] of the European Parliament and of the Council [...title of act...]. Add, where appropriate: amending the proposal of the Commission pursuant to Article 250(2) of the EC Treaty (Legiswrite model available).

### **Deadlines**

- The Commission opinion must be available as soon as possible after the Parliament vote in plenary session\* so that the Council can formulate its position on Parliament's amendments (and decide whether or not to start the conciliation procedure). Ex ante delegation of powers is generally granted to the Member of the Commission responsible by the usual GRI procedure.

### **Delegation procedure following opinions of Parliament**

- A note headed **Action to be taken on legislative opinions**, and covering all the legislative dossiers adopted by Parliament during the plenary session which is just ending is drawn up by SG-G (Mr ROBERTS, Tel. 59782, and Mr V. GUERREIRO, Tel. 50054) on the Friday afternoon of each plenary session in readiness for the meeting of the heads of cabinet on the following Monday. The Commission has to approve it, generally at its first meeting after the plenary session. The minutes record the approval of delegation proposals contained in this document\*.
- In urgent cases (and particularly at codecision second reading), a delegation decision may be adopted in advance ("ex ante") by the Commission (on the recommendation of the GRI and/or heads of cabinet), unless it decides otherwise, and subject to the position adopted by Parliament in plenary.

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\* A maximum of three weeks is recommended.

- The note refers expressly to the prior authorisation given by the Commission (following the recommendations of the GRI and/or heads of cabinet) in readiness for the plenary meeting of Parliament. It suggests that the Commission empower the competent Members to adopt and send to the Council an amended proposal, an opinion or a re-examined proposal, as the case may be.
- Delegation of powers is not required if the Commission has not accepted any Parliament amendment (or if Parliament has approved the proposal as it stands).
- The note may also suggest that the Commission either maintain or withdraw its proposal if Parliament rejects it (or the Council common position). If the Commission decides to withdraw its proposal, it takes a decision to that effect, which is minuted.
- The note will also mention any proposals rejected by Parliament on which the Commission has reserved its position in plenary, including cases where the GRI had not been informed of the risk of rejection. This is automatically brought to the attention of the heads of cabinet at their first meeting after the part-session so that they can make recommendations to the Commission.

The document "Action to be taken on legislative opinions" is sent to the Directorates-General for further action in their areas of responsibility, including the delegation process (see above).

### **Delegation procedure**

- To the extent that the proposal amended/opinion delivered following Parliament's opinion conforms to and merely confirms the authorisation given by the Commission to one of its Members in advance of the plenary (GRI /Weekly "heads of cabinet"), the interservice consultation prior to starting the delegation procedure is limited to consultation of the Legal Service and the Secretariat-General.
- This interservice consultation is managed by SG-F-3 (Mr D. VANDERGHEYNST, Tel. 56923, and Ms W. KAMP, Tel. 59341) via CIS-Net in accordance with the arrangements for specific consultations under the acronym "COD - PH" so as to allow faster identification and processing. The time allowed for this type of consultation is five working days. This may, however, be reduced to 48 hours, provided that adequate reasons of political urgency linked to the Council agenda are given in the official note accompanying the launch of the consultation process (contact person in SG-D-3, Ms V. CUMPS, Tel. 67061; see also section 3.1. of the Guide to Interservice Consultation, which may be found at:  
[http://www.cc.cec/home/dgserv/sg/cis/doc/cis\\_procedural\\_guide\\_en.pdf](http://www.cc.cec/home/dgserv/sg/cis/doc/cis_procedural_guide_en.pdf)).
- The originating department sends the following to SG-A-3, via the Greffe 2000 website (Mr KODECK, Tel. 57435): the dossier, which must be complete and correct ("Legiswrite"; 23 languages\*), accompanied by the appropriate electronic information sheet duly completed (including reference to the decision delegating powers (minutes), agreement of the lead DG, the Legal Service and the Secretariat-General). The cabinets of the President and of the Vice-President responsible for interinstitutional relations may

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\* Taking into account the earlier comment about the application of Article 2 of Regulation (EC) No 920/2005.



give their assent directly on the Greffe 2000 site. After checking the dossier (completeness, quality of legislative drafting, electronic quality and linguistic consistency), SG-A-3 transfers it to SG-A-2 (Mr VON KEMPIS, Tel. 68809, and Mr B. DE COCK, Tel. 84425) to start the empowerment procedure (see also paragraph 13 of the Rules giving effect to the Commission's Rules of Procedure (COM(2005) 4416 final)).

- The Parliament/Council coordinators of the Directorates-General are asked to ensure that this procedure runs smoothly, in coordination with Unit SG-F-3.

**GRI INFORMATION SHEET – COUNCIL/OUTLINE**

Date ....

**GRI MEETING ON ...**

**MEMO TO MEMBERS OF THE GRI**

Information sheet produced by DG ..., under the authority of Mr/Ms ... 's cabinet

The GRI secretariat does not distribute an information sheet, together with a cover note bearing an SI code, until the competent cabinet(s) send(s) it the sheet or give(s) it the "go-ahead" if the sheet was sent by the departments concerned.

There is no need to produce an GRI sheet for every item on the various COREPER or Council agendas, unlike the legislative points in codecision on Parliament plenary agendas. Nor need a sheet be produced for every dossier on the list of sensitive dossiers before the Council of which the GRI takes note at each of its meetings.

Matters must be referred to the GRI if the Commission:

- has to adapt/amend its proposal or the position it has hitherto adopted; and/or
- has to adopt a position in the negotiations on an agreement at first or second reading; and/or
- is faced with a political or institutional difficulty or a problem of principle.

**1. Subject**

Indicate the usual title of the dossier (e.g. "Takeover bids"), the interinstitutional code (e.g. COD) and the reference to the SI note for the most recent discussion at COREPER. This point needs to be stressed, because it will help to avoid cluttering the information sheets with superfluous background information.

**Request for delegation of powers/Information note**

In a box, indicate the purpose of the information sheet, clearly stating, for example, that "this sheet relates to a request for delegation of powers to Ms/Mr ..., for the "X" Council on ..., to accept a Presidency compromise relating to a political agreement on a common position reached by qualified majority to the extent that this compromise is in accordance with the line set out in this sheet". The wording must, of course, be adapted if necessary to the powers required and the stage of negotiation in the Council, e.g. "this sheet relates to a request for delegation of powers for the departments concerned to lift a reservation in the Council bodies in accordance with the line it sets out".

**2. Stage reached at the Council**

Indicate the date of the COREPER and/or Council meeting for which the sheet has been produced.

In the case of an agreement at first or second reading, the GRI and the College must be able to define the Commission's position before the agreement is endorsed by COREPER (i.e. well before the COREPER meeting which authorises the Presidency to send a letter communicating the Council's assent to the agreement).

### **3. Nature of the problems placed before the GRI**

Indicate only problems facing the Commission which might force it to change the position it has hitherto adopted. Also explain the changes needed to facilitate an agreement between the co-legislators or the possibility of a qualified majority in the Council. This does not include matters falling within "normal room for manoeuvre", e.g. as regards certain quantified items or deadlines, but only political or institutional questions and matters of principle, e.g. committee procedures, the right of initiative, acceptance or rejection of a political agreement reached by a qualified majority, etc. This presentation should be not more than 15 lines long.

### **4. Possible developments at the Council**

Indicate the anticipated developments at the Council with regard to the position which the Member of the Commission in charge of the dossier or his departments would be empowered to adopt, e.g. opening the way to a political agreement which could finally be reached by a qualified majority. 10 lines should suffice.

### **5. Status of the dossier in Parliament**

Referring, where appropriate, to the GRI's discussion of the dossier before it came before Parliament, indicate the dossier's current status. 15 lines should suffice.

### **6. Foreseeable consequences of the Commission's position for the rest of the procedure (if appropriate)**

Indicate any possible impact of the Commission's position in Parliament (e.g. if, by accepting a political agreement reached by a qualified majority, the Commission discards amendments accepted at first reading) or at international level (e.g. with regard to the WTO). This section should not exceed 5 lines.

**COMMUNICATION FROM THE COMMISSION TO PARLIAMENT ON THE COMMON POSITION OF  
THE COUNCIL**

**Procedure**

- Once the Council has formally adopted the common position, it sends it to Parliament. The Treaty stipulates that the Council must inform Parliament fully of the reasons which led it to adopt its common position and that the Commission must inform Parliament fully of its position (Article 251(2)).
- The text of the common position and the Council's explanatory memorandum are forwarded to Parliament in the 23 languages<sup>\*</sup>, in principle on the Monday of the plenary session following the Council's formal adoption of the common position and explanatory memorandum.
- At the same time, the Commission sends its comments in the form of a communication to Parliament, also in the 23 languages<sup>\*</sup>.
- The President of Parliament acknowledges receipt of the common position and the related documents in the course of the same plenary session, after checking (with the parliamentary committees concerned) that Parliament has been fully informed by the Council and the Commission.
- The period of three (or four) months available to Parliament for delivering its opinion at second reading generally runs from the day after the acknowledgement of receipt of the common position in plenary<sup>1</sup>.

**Preparation and adoption of the draft communication**

- The draft communication under Article 251(2) must be drawn up by the lead DG as soon as a **political agreement on a common position is reached in the Council** on a codecision dossier. There is no need to await adoption of the formal agreement (usually as an A item), given the very short time within which the Council generally sends its common position and explanatory memorandum to Parliament.

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\* Taking into account the earlier comment about the application of Article 2 of Regulation (EC) No 920/2005.

<sup>1</sup> The Council considers that this period starts on the day after Parliament actually receives the common position and its explanatory memorandum.

**The horizontal interservice consultation** preceding the written procedure must be launched as quickly as possible, together with the requests for **translation** (23 languages required\*) (SG-D-3, Ms V. CUMPS, Tel. 67061). At each of its meetings, the GRI will check progress in preparing the internal procedures for the Commission's draft communications against a list of common positions likely to be sent by the Council to Parliament during the forthcoming plenary sessions. Further information on the timetable set by the Council is provided in good time to the coordinators and to the Secretariat-General's Registry (Greffé) by SG-F-3 (Mr D. VANDERGHEYNST, Tel. 56923, and Ms W. KAMP, Tel. 59341).

- The draft communication is submitted for Commission adoption by normal written procedure (five working days). The DGs are asked to present the draft communication as soon as the Council's formal agreement is given or, if necessary, "subject to adoption of the common position by the Council", so that the written procedure can be started. Given the generally tight schedules at this stage of the interinstitutional procedure, the Commission has authorised recourse to the "codecision" written procedure (two working days from the date of distribution). This does not have to be requested by the DG concerned when initiating the written procedure but is launched by the Secretariat-General if necessary (paragraph 12-4.6 of the Rules giving effect to the Commission's Rules of Procedure).
- The lead DG, under the responsibility of its legislation coordinator, forwards to SG-A-3 via the Greffe 2000 website (Mr KODECK, Tel. 57435) a dossier which must be complete and correct ("Legiswrite"; 23 languages\*), together with the appropriate electronic information sheet, duly completed (including agreement of the departments involved, the Legal Service and the Secretariat-General; reasons for urgency to be stated).
- SG-A-4, after checking the dossier (completeness, quality of legislative drafting, electronic quality and linguistic consistency), transfers it to SG-A-2 to start the procedure (Mr K. VON KEMPIS, Tel. 68809, and Mr C. LE VILAIN, Tel. 54422). No written procedure can be launched unless the three procedural languages (FR, EN, DE) are available, and no procedure can be approved at the final date unless the 23 languages required are available\*. As mentioned above, SG-A-2 will, if necessary, request the "codecision" written procedure itself after consulting SG-F-3.
- The cabinets involved in initiating the written procedure are deemed to have assented after 24 hours, and the procedure is launched. Once it has started, the cabinets must communicate formally, on the Greffe 2000 website and as quickly as possible, any request they may have for it to be suspended or extended.
- If the expedited written procedure is held up because of an objection to a draft communication, the cabinets of the President, the Vice-President responsible for interinstitutional relations and the Members of the Commission most directly concerned seek a solution as quickly as possible through bilateral contacts. If the problem is not resolved, the matter is placed on the agenda for the next meeting of the GRI.

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\* Taking into account the earlier comment about the application of Article 2 of Regulation (EC) No 920/2005.

- **Deadlines:** In principle, the written procedure ("codecision" written procedure, where appropriate) for adoption of the draft communication finishes the day after the Council officially adopts its common position as an "A" item. It must therefore be launched before the Council officially adopts the common position. However, if the Council adopts its common position sufficiently in advance of sending it to Parliament to allow the whole written procedure to run after adoption, the procedure may be launched after adoption. At all events, it is essential that the written procedure finish in time for the Commission communication to be sent to Parliament at the same time as the common position.
- The Parliament/Council coordinators are asked to ensure that this procedure runs smoothly. There is a regular review at their monthly meetings.

### **Transmission of the communication to Parliament**

When the document has been adopted and finalised, SG-A-3 sends the communication electronically in the 23 languages\* to Parliament and, for information, to the Council and to any other institutions concerned. A paper version of each language is also sent to Parliament. The official notification of transmission to the Secretaries-General of Parliament and the Council (and the other institutions where appropriate) is drawn up by SG-A-3; it is sent electronically to Parliament and on paper to the other institutions.

### **Content of the communication** (see outline in ANNEX 9)

- Observations on the common position must be brief.
- It is, however, essential to inform Parliament clearly about the Commission's position and whether the Council's common position was adopted by a qualified majority (support for the text) or unanimously (agreement on the text or maintenance of the initial/amended proposal, with any statements entered in the minutes). Any compromises accepted by the Commission or amendments introduced unanimously by the Council must also be mentioned and attention drawn to any Commission reservations.
- Any joint Commission/Council statements and unilateral statements by the Commission in the Council minutes are attached to the communication.

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\* Taking into account the earlier comment about the application of Article 2 of Regulation (EC) No 920/2005.

**COMMUNICATION FROM THE COMMISSION TO PARLIAMENT ON THE COMMON POSITION OF  
THE COUNCIL - OUTLINE**

**TITLE: Communication from the Commission to the European Parliament pursuant to the second subparagraph of Article 251(2) of the EC Treaty concerning the common position of the Council on the adoption of a [...type of act and title...]**  
(Legiswrite model available)

**0. BRIEF MEMORANDUM TO THE COMMISSION (not more than 1 page)**

- 3 languages (EN,FR,DE)
- Presentation of the document and its context
- Exact wording of the decision proposed to the Commission and indication that the document is addressed to Parliament

**1. BACKGROUND**

- Date on which the proposal was sent to Parliament and the Council
- Date of Parliament's opinion at first reading
- Date on which the amended proposal was sent to the Council
- Date of political agreement and formal adoption of the common position by the Council (indicate qualified majority/unanimously)
- Dates of the opinions of the Economic and Social Committee and the Committee of the Regions, if delivered

**2. PURPOSE OF THE COMMISSION PROPOSAL**

State briefly the purpose of the Commission proposal (directive or regulation).

**3. COMMENTS ON THE COMMON POSITION**

3.1. Brief general comments on the common position

3.2. Outcome of Parliament's amendments at first reading (in brief):

- included in the amended proposal and in the common position;
- included in the amended proposal but not in the common position (indicate the Commission's stance);
- explain in greater detail any points of divergence between the Commission's amended proposal and the Council common position.

- 3.3. Indicate any new provisions introduced by the Council and the Commission's stance.
- 3.4. Mention any major problem encountered when adopting the common position (committee procedures, legal basis, budget, etc.). Indicate the Commission's stance.

#### 4. **CONCLUSIONS/GENERAL OBSERVATIONS**

Briefly summarise the Commission's position:

- 1) support for the text if the Council has acted by a qualified majority;
- 2) agreement on the text or maintenance of the initial/amended proposal (with any statements entered in the minutes) if the Council has acted unanimously.

If the Commission, although aware that the common position does not meet some of the essential aims of its initial/amended proposal, decides (through the GRI/weekly "heads of cabinet") to support the common position so as to enable the Council to adopt it by a qualified majority, the following wording is recommended: *"Although it considers that the common position does not meet some of the essential aims of its initial/amended proposal, the Commission perceives that the only way of allowing the procedure to continue is to refrain from opposing it."*

#### 5. **STATEMENTS BY THE COMMISSION** (if any)

Attach to the draft communication any joint Commission/Council statements and unilateral statements by the Commission entered in the Council minutes.



**OPINION OF THE COMMISSION ON AMENDMENTS BY PARLIAMENT AT SECOND READING -  
OUTLINE**

**TITLE: Opinion of the Commission pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty on the European Parliament's amendment[s] to the Council's common position regarding the proposal for a [...type of act ...] of the European Parliament and of the Council [... title of act ....]. Where appropriate, add: amending the proposal of the Commission pursuant to Article 250(2) of the EC Treaty (Legiswrite model available).**

**1. BACKGROUND**

- Date on which the proposal was sent to Parliament and the Council
- Date of Parliament's opinion at first reading
- Date on which the amended proposal was sent to the Council
- Date of political agreement and formal adoption of the common position by the Council (indicate qualified majority/unanimously)
- Dates of the opinions of the Economic and Social Committee and the Committee of the Regions, if delivered
- Date of Parliament's opinion at second reading

**2. PURPOSE OF THE COMMISSION PROPOSAL**

State briefly the purpose of the Commission proposal (directive or regulation).

**3. COMMISSION'S OPINION ON THE AMENDMENTS PROPOSED BY PARLIAMENT**

**3.1. Summary of the Commission's position**

Mention the number of amendments adopted by Parliament. State how many of these the Commission can accept as they stand (specify which in brackets), how many it can accept in part (specify in brackets), in principle and/or subject to rewording (specify in brackets) and which it rejects (specify in brackets).

**3.2. Parliament's amendments at second reading**

**3.2.1. Amendments accepted**

Briefly mention the amendments accepted by the Commission.

**3.2.2. Amendments accepted in part**

State exactly which parts of amendments the Commission accepts.

### 3.2.3. Amendments accepted in principle and/or subject to rewording

Explain exactly the nature of the acceptance in principle and/or subject to rewording. The simplest way of doing this is to include in the Commission's opinion the wording which the Commission regards as preferable.

### 3.2.4. Amendments rejected

State clearly which amendments the Commission cannot accept, with reasons. Ways of making the rejected amendments acceptable may be indicated in order to ease discussions at the conciliation stage.

**If conclusion is possible at second reading, the Commission's opinion may be limited to points 1, 2, and 3.1, the last point indicating simply that the Commission accepts all the amendments adopted by Parliament.**

## CONCILIATION PROCEDURE

The Commission can no longer amend its proposal at this stage of the procedure. However, its role as mediator is explicitly provided for by the Treaty (Article 251(4)) and is made clear in the Joint Declaration on practical arrangements for the codecision procedure. The steps that the Commission has to take in this connection expressly include the presentation, on its own initiative, of compromise texts. These should preferably be presented simultaneously to the two parties, and always through SG-F-3.

**The GRI and the Parliament/Council coordinators of the Directorates-General are kept regularly informed by SG-F-3 of the situation regarding current or anticipated conciliation procedures.**

During the informal conciliation procedure (6/8 weeks) and in preparation for the Conciliation Committee meeting, **the Commission's political endorsement** is required for:

- support - or withholding support - for compromises emerging between the Parliament and Council representatives;
- alternatives to be put to the co-legislators;
- possible support for the position of one of the institutions;
- compromise texts proposed by Commission departments on their own initiative that are likely to be accepted by the co-legislators;
- any (unilateral or joint) statements by the Commission;
- any political issue requiring the Commission to take a position or representing an undertaking on its part.

To this end, information sheets prepared by the DGs concerned, in agreement with their cabinets and the Legal Service, are placed on the agenda for an GRI meeting sufficiently in advance of the Conciliation Committee meeting or the last informal trilogue scheduled. The GRI recommendations are submitted to the heads of cabinet at their weekly meeting in readiness for the next Commission meeting. In urgent cases, the information sheets are submitted direct to the heads of cabinet.

### **Content and presentation of "conciliation" information sheets** (see outline in ANNEX 12 below)

The information sheets must contain a brief summary of the background and **political significance** of the dossier, **clearly** indicating **sensitive issues** or aspects posing major problems for the Commission. They must briefly state how the co-legislators' positions are evolving during the informal conciliation procedure (emerging agreements, outstanding matters reserved for the Conciliation Committee, etc.).

They must conclude with **recommendations** to the Commission for the Conciliation Committee meeting and must contain the compromise texts and draft statements, if any (possibly in an annex).

## **Deadlines**

The information sheets must be available to the GRI at least three working days before its meeting. Accordingly, the lead cabinet is asked to have them sent by e-mail to the GRI Secretariat (Mr D. VANDERGHEYNST, Tel. 56923), with a copy to SG-F-3 (Ms U. O'DWYER), four working days before the meeting.

**CONCILIATION INFORMATION SHEET - OUTLINE**

**GRI MEETING ON ...**

**MEMO TO MEMBERS OF THE GRI**

Subject: Title of proposal

Ref. COM ... + interinstitutional code (COD)

Rapporteur:

Lead committee:

**1. BACKGROUND**

- Objective of the proposal
- Brief assessment of the political significance and sensitivity of the dossier  
Indicate key problems
- Date of adoption of the Council's common position (qualified majority/unanimity)
- Date and outcome of the second reading in Parliament
- Date and summary of the Commission's opinion
- Date and outcome of the second reading in the Council

**2. STATUS OF THE DOSSIER**

Brief appraisal of the situation in the Parliament delegation and COREPER and/or the last informal trilogue (issues resolved/outstanding).

**3. PROSPECTS FOR THE CONCILIATION COMMITTEE**

Political outlook given the positions of the Parliament delegation and COREPER.

**4. RECOMMENDATIONS**

Recommend that the Commission:

- support - or withhold support from - compromises emerging between the co-legislators;
- (possibly) support the position of one of the institutions;

- approve compromise texts suggested by its departments which are likely to be endorsed by the co-legislators;
- approve any (unilateral or joint) statements by the Commission;
- adopt a position on sensitive issues reserved for the Conciliation Committee;
- adopt any appropriate position;
- authorise the Member responsible to continue contacts with the co-legislators with a view to seeking a compromise in accordance with the line set out in the sheet.

Compromise texts and any statements must be included in the information sheet (possibly in an annex).

## **5. OFFICIAL RESPONSIBLE**

Mr/Ms

Tel.