

Improving the functioning of the codecision procedure

Discussion document

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CODECISION WORKS

There is no question that the codecision procedure works and works well. This was one of the messages that emerged from the interinstitutional seminar, which took place in the Parliament on 6 and 7 November 2000 (see Annex I, Joint Press Release). It reflected the positive tone of the Activity Report that was submitted by us on the work of the Conciliation Committee for the period from 1 May 1999 to 31 July 2000. The Council reiterated this view in the document that the French Presidency and the Council Secretariat presented to the European Council in Nice and which was included in Annex VI to the Conclusions of the summit.

Contrary to what many expected, the Joint Declaration of 4 May 1999 on practical arrangements for codecision (Annex II) has provided a remarkably successful framework for dealing with the extra workload. All the institutions have co-operated to ensure that the new procedure can work and that agreements can be reached within the deadlines provided for.

CODECISION IS CHANGING

If the overall success of the procedure is clear, it is equally clear that the character of the procedure is undergoing very rapid change. The most obvious sign of this change is that many more procedures are being concluded without conciliation. Whereas before Amsterdam 40% of all codecisions reached the final conciliation phase, this figure has now dropped to closer to 25%.

This ability to reach agreements more rapidly can be explained in various ways. In part it is because of the new provision in the Amsterdam Treaty which provides for the procedure to be concluded at first reading. 20% of all codecision procedures are being adopted in this way. In part too it is as a result of the willingness of the Parliament to conclude the procedure at second reading where the differences between the two institutions do not appear to warrant going to conciliation.

However, perhaps even more important, has been the change in the behaviour of the Council. In the past it tended to pay limited attention to the Parliament, keeping it at arm's length. Since Amsterdam, all parts of the Council - Presidency, Coreper and Secretariat - have adopted a conscious strategy of developing contacts with the Parliament. It regularly establishes contact with rapporteurs early in the procedure and has deepened its relations with committee chairs. And it now enters into informal negotiations as soon and as often as it can with a view to reaching as many agreements as possible before conciliation, whether at first or second reading.

These negotiations before conciliation pose risks but also create opportunities for the Parliament.

RISKS FOR THE PARLIAMENT

The willingness of the Council to take the Parliament seriously and to enter into dialogue with it must be welcomed. And yet the way in which the Council has developed contacts with the Parliament poses clear risks for our institution. **The Parliament must not lose the initiative in determining the future shape of such contacts.**

A central aim of the Council is to encourage the Parliament to anticipate the negotiations that are the standard feature of the conciliation procedure. This is very evident from the section of the report on codecision submitted to the Nice European Council which deals with

Negotiations with the European Parliament (Annex III). It makes clear that **the Council wants the Parliament to organise itself in a way that fits more easily into the Council's way of working.** Thus subpara ix), discussing the period before conciliation, states:

The Presidency, which informs Coreper, proposes the most appropriate triologue format. In order, in particular, to reach overall agreement at first or second reading, it proposes the holding of an enlarged triologue with the participation of the coordinators of the main European Parliament political groups.

This interpretation of the phrase *appropriate contacts* as used in the joint declaration of 4 May 1999, is designed to transfer to first and second readings the techniques of conciliation.

The Parliament must be clear about the terms under which it wishes to enter into such informal negotiations. If these terms are not the right ones, there are **two manifest dangers** for this institution:

- first, Parliament could find itself reduced to the role of the *16th Member State*, with reduced opportunities for wider societal and political interests to introduce their points of view into the decision making process. Governmental interests as expressed in the Council would tend to prevail more often.
- second, open and public debate in committee and plenary with the full participation of all political groups and members would tend to be reduced in importance by informal negotiations taking place elsewhere. The essential transparency of the legislative process would be put at risk, threatening the *agora* function of this institution.

The legislative procedure must be permitted to run its full course, where appropriate, and not be denatured by an essentially intergovernmental approach to resolving differences of view.

OPPORTUNITIES FOR THE PARLIAMENT

Such risks can be avoided provided the Parliament takes the initiative and does not allow the Council to dictate the terms of contact between the two institutions. **Without prejudice to the prerogatives of either institution, the Council should be encouraged to become more like the Parliament, not the other way around.**

In our view, two basic principles must be respected:

- first, **parity** with the Council must be maintained: the Parliament should not be obliged to seek agreements on terms set by the other branch of the legislative authority;

- second, the shortening of the legislative procedure should be the subject of an **express political decision**: the right of the Parliament to use the full time available to consider any legislative proposal should be given up only after proper deliberation, taking account of the Parliament's role as an institution whose purpose is to encourage the broadest possible debate.

On this basis the Parliament must underline who are the relevant actors at the different phases in the procedure. In conciliation it is the Parliament delegation that acts on behalf of the Parliament as a whole; in first and second readings, it is the committees (and the plenary) that are the main points of contact between our institution and the Council. It is in these bodies that the political balance of our institution is most fully protected.

Hence it is the normal committee meetings of Parliament that should be the central point of contact between the Parliament and Council in first and second reading. The Council should be encouraged to take advantage of Rules 70 and 76 of our Rules of Procedure which provide for it to appear in front of our committees. It should also be reminded of the provisions of its own Rules of Procedure which make clear that such appearances are perfectly permissible. Thus the section on Representation before the European Parliament includes the following paragraph:

Subject to special procedures, the Council may be represented by the Presidency or by any other of its members before the European Parliament or its committees. The Council may also be represented before those committees by its Secretary-General, its Deputy Secretary-General or senior officials of the General Secretariat, acting on instructions from the Presidency. The Council may also present its views to the European Parliament by means of a written statement.

To accept fully and without demur Council arguments that such appearances are too time-consuming or not suitable for passing on information relating to discussions in the Council is to risk ensuring that the Council never considers coming to committees with any seriousness. Indeed one could go further and suggest that **only if Council is willing to devote more energy to explaining itself in committee will the Parliament be prepared to develop contacts of a more informal kind. The two forms of contact must go hand in hand.**

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Against this general background we would offer some more practical suggestions designed to make the codecision procedure work more efficiently. They are based in large part on the ideas that were discussed in the interinstitutional seminar that took place last November (see attached press statement adopted at the end of the meeting by all three institutions).

SUGGESTIONS FOR IMPROVING THE FUNCTIONING OF CODECISION

A. Joint work programming and co-ordination with the Council

1. Programming of codecision before conciliation

30. *Joint establishment of parallel and integrated working calendars*: this is a task best fulfilled through a planning meeting before the start of a new Presidency, between the Presidency and the EP Committees/Committee chairs.

31. *Joint follow-up of progress* should be established, based on the Commission's commitment to provide the framework for an interinstitutional document.

These measures should be backed up by intensified communication and co-ordination at the administrative level between the institutions and within the Parliament.

2. **Reinforced planning and discipline in time management during conciliation**

Building on the experience of "asterisk days", we would urge **fixing a date**, for instance every [second] Thursday morning/afternoon, which would be reserved for all kinds of meetings with the Council (or for EP delegations) in conciliation.

B. Identifying possible "fast track agreements"

3. **A method of identifying potential fast track agreements** (i.e. conclusion in 1st reading) needs to be established. One option might be, that in the framework of discussions on the Council Presidency programme in committees, indications be given, by the EP Committee or the incoming Presidency, of any files where there is a genuine interest to conclude rapidly. Joint debate should lead to the establishment of joint priorities, relating in particular to politically very important issues, where there is a genuine shared political agreement as to their urgency (like OLAF or Unbundling of the Local loop)

C. Format of contacts with Council

4. The Conference of Committee Chairs might want to discuss, and possibly to lay down, **guidelines for contacts with the Council during 1st and 2nd readings**. In our view, the starting point should be that negotiations with the Council normally take place in committee meetings and the plenary. To this end, Council should be given the floor systematically in these fora. During second reading, when Council has already adopted its common position, any reluctance to discuss in public seems totally unjustified.

On this basis we offer the following set of questions and suggestions as a checklist for consideration by the committees:

Interest: Is an agreement at first reading one that the committee feels it can recommend to the Parliament as a whole? Apart from any "fast track agreements", this might also cover files that are technical and politically non-controversial (for example files which are currently concluded even without report or by simplified procedures, codification etc.). At second reading a conscious choice should be made about the desirability or not of seeking to avoid conciliation.

Timing: Can substantive negotiations be appropriate before the general orientation of the majority of the Committee is known? Under what conditions should negotiations with the Council take place during 1st reading before the vote in the Committee and before the vote in the Plenary?

How should flexible arrangements for the timing of the vote in Plenary, if a conclusion in 1st reading is envisaged, be used (eg. more time between the vote in Committee and the vote in Plenary or a separate vote on the amendments and on the legislative resolution)?

At second reading, the deadlines imposed by the Treaty reduce flexibility but still provide for discussions either before the committee vote or between the committee vote and the vote in plenary.

After Parliament's second reading and before conclusion of the Council second reading, the EP delegation is established and negotiations take place under its responsibility.

Format: On the basis of active Council participation in committee meetings, committees should decide what kind of contacts they are willing to agree to outside this framework e.g. trialogues.

Mandate/Reporting: As in conciliation, all negotiation should be based on an appropriate mandate. The representative(s) should always be mandated by the Committee, or if appropriate, by the co-ordinators and/or Bureau of the Committee. The Committee, or the authority giving the mandate, should also define the form and timetable of reporting back.

Transparency: Unlike conciliation, 1st and 2nd readings in the committees are open to the public. The Parliament needs to consider how to ensure comprehensive reporting back in public on any negotiations with the Council as well as how to make the documents arising from the negotiations public. This is of course something to be discussed with the Council, taking into account the need to protect confidentiality and to promote trust between the institutions.

Respect of procedures: procedures which guarantee other parliamentary committees a say in the work of the competent committee should not be undermined (e.g. HUGHES procedure). When engaging in contacts and negotiations with the Council, the committee responsible should take this into account and find the appropriate means.

D. Joint verification of texts

5. There should be an **improved legal-linguistic co-operation and verification:**
 32. Establishment of a joint basis for conciliation (**definitive** version of EP 2nd reading amendments).
 33. Verification of faithful incorporation of EP amendments, where they are accepted in 1st and 2nd reading.

This may seem a technical point but it is an essential mechanism for ensuring that the will of the Parliament is fully respected in the text that the President of the Parliament signs.

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Annexes

- Annex I: Joint Press Release
- Annex II: Joint Declaration of 4 May 1999
- Annex III: Extract from the Council report on codecision submitted to the Nice European Council