

Early days: the European Parliament, co-decision and the European Union legislative process post-Maastricht

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ABSTRACT

Since the European Parliament's first vote on a Council common position submitted under the co-decision procedure in January 1994 the practice of co-decision has been scrutinized carefully within Parliament and the other European Union (EU) institutions. However, such scrutiny has produced differing interpretations. This article seeks to assess these respective claims by analysing the first thirty-two legislative proposals processed under co-decision, and so to make an initial assessment of the legislative impact of the European Parliament under the new procedure.

Under co-decision Parliament is a more equal partner in the EU's legislative process, and now has a rightful place alongside Council in several important policy areas - despite the weighting of the procedure towards Council. Certainly, informal inter-institutional linkages have expanded as a result of co-decision and, whatever their qualitative effect, there has been an undeniable quantitative increase in the interactions between Parliament and Council.

The net result of the dialogue between Parliament and Council is the confirmation of an increasingly bipartite bargaining process and this, in turn, has placed the Commission in a considerably more ambiguous, and weaker, position than in the co-operation or consultation procedures.

KEYWORDS

Co-decision; consultation; legislative; Parliament.

INTRODUCTION

Compromises rarely satisfy those making them. So it was with Article 189b of the Treaty on European Union (TEU), which introduced the new legislative procedure — now almost universally referred to as the 'co-decision procedure' - into the EU's legislative process.

Certainly, the procedure was not what the European Parliament (EP) had hoped for, as it was far from the generalized system of co-decision sought by the EP (see Lodge 1993:29) and its scope was more limited and its operation more complex than initially envisaged by Parliament (see Corbett 1994: 208-10).

That co-decision is an extremely intricate procedure is beyond doubt. Commentators and practitioners alike regard the procedure at best as 'highly complex' (Westlake 1994a: 145) and at worst as 'cumbersome' (European Parliament 1994a: 4). Doubts were soon expressed, within months of the negotiation of the TEU, that such procedural complexity would 'inevitably lead to much complication, confusion and legal wrangling' during the processing of EU legislation. In these circumstances it was argued that the enhancement of Parliament's legislative influence would 'probably depend as much on the imaginative, shrewd and active interpretation and use of the new provisions and on [the EP's] negotiating ability... as on the Maastricht agreement itself (PE 155.239 1992:6).

Yet, equally, analysts were also convinced that co-decision was 'a remarkable step forward' (Westlake 1994a: 146) and 'of fundamental importance to public perceptions of Parliament's role: it can no longer be accused of lacking teeth' (Corbett 1994: 210). Co-decision opened the possibility of systematic, direct negotiation between the EP and Council. For the first time Parliament is now an equal partner in the legislative process, with acts adopted under the procedure jointly signed by the presidents of Council and Parliament.

Since the EP's first vote on a Council common position submitted under the procedure in January 1994 (OJ C44,14 February 1994: 81) the practice of co-decision has been scrutinized carefully within Parliament and the other institutions. However, such scrutiny has produced differing interpretations. On the one side, the claim has been made that 'in spite of its complicated procedures, [it has] generally worked well' (PE 211.919/B 1995: 3); while on the other side the counter-claim has been made that it is 'quite a long way from the idyllic state of affairs set out in the Maastricht Treaty' (Nicole Fontaine, MEP, European Parliament, *Info Memo Press Release*, 22 February 1995). This article seeks, therefore, to assess these respective claims by analysing the first thirty-two legislative procedures processed under co-decision, and so to make an initial assessment of the legislative impact of the European Parliament under the new procedure.

ANATOMY OF THE PROCEDURE

Co-decision is a development from, and an extension of, the co-operation procedure introduced by the Single European Act. Despite its shortcomings, the co-operation procedure instituted direct dialogue and negotiation between Council and Parliament, and first introduced into EU legislative procedures the idea that Parliament could constrain the Council's hitherto absolute freedom of action - except when Council was unanimous.

The co-decision procedure extends this notion to the point where Parliament, in certain circumstances, is able to prevent the adoption of EU legislation, even when Council unanimously supports it, and institutionalizes a conciliation procedure to reconcile the views of Parliament and Council.

The first stage of co-decision remains, as in the co-operation procedure, with the EP producing an opinion on the Commission's proposal before Council adopts its common position. However, whereas previously the Commission sent its proposal to Council - which in turn then asked Parliament for an opinion - the TEU introduced the 'legal innovation' whereby the Commission now formally sends its proposal directly to Parliament at the same time as it sends it to the Council (see European Commission 1993: 4). Then, at second reading, Parliament may amend Council's common position. However, unlike the co-operation procedure, in which Council finally and exclusively determines the outcome of these amendments (on the basis of a re-examined Commission proposal), under co-decision, a conciliation committee must be convened if Council does not approve all of Parliament's amendments (whether accepted by the Commission or not - though with the Council requiring unanimity for amendments not accepted by the Commission). The conciliation committee, composed of equal numbers of MEPs and the delegations of Council, is intended to bring together the views of Parliament and Council in a joint text acceptable to both institutions. According to both the TEU and the 1993 inter-institutional agreement, *Arrangements for the Proceedings of the Conciliation Committee under Article 189b* (OJ C329, 6 December 1993:141-2), the Commission's role in conciliation is merely to 'take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council'. In this process, the Commission's impact is much more limited than in the second reading of the co-operation procedure, as its position on Parliament's amendments, once conciliation is embarked upon, no longer formally determines the majorities required for the adoption of Council's subsequent position.

A conciliation committee may also be convened where the EP declares its intention to reject Council's common position. In this case, according to Article 189b(2)(b), the objective is for Council 'to explain further its position'. This 'petite' conciliation is not intended to produce a joint text. Following the conciliation Parliament may only confirm its rejection of the common position, or table amendments to it. Outright rejection of Council's common position may also occur where conciliation fails to agree a joint text and Council decides to reconfirm its common position. In such a case the measure will be definitively adopted unless the EP rejects the text by an absolute majority within six weeks (as occurred in the case of open network provision (ONP) voice telephony, see below). Where a joint text is agreed in conciliation both Council (by qualified majority) and Parliament (by simple majority) are required to adopt the measure in accordance with the joint text. Failure to approve the text in

this way results in the proposed act being 'deemed not to have been adopted' (Article 189b(5)), as in the case of the proposal on biotechnological inventions (see below). The latter case demonstrated, controversially, that where Parliament's delegation to conciliation might be unable to win Parliament's support for a compromise agreed with Council in conciliation, it is in Council's interest to be intransigent. Simply stated, if agreement is prevented in conciliation, and Council reconfirms its common position unchanged, Parliament is then forced either to accept Council's text, or to reject it by an absolute majority. Thus, a much more onerous threshold is imposed than the simple majority needed for Parliament to reject an agreement reached in conciliation.

THE INITIAL EXPERIENCES OF CO-DECISION

By the end of the 1989-94 parliamentary term in June 1994, 110 proposals for co-decision legislation had been submitted to Parliament. (This represents about a quarter of the EP's legislative workload.) By this date agreement between Council and Parliament had been found, and the procedure concluded, on fifteen proposals. Four of these cases involved conciliation (European Parliament 1994c: 4; see also OJ C205, 25 July 1994: 236). By the end of March 1995, thirty-two co-decision procedures had been completed, and, except for those texts rejected, the resultant legislation was signed, or awaiting signature, by the Presidents of Council and Parliament.

The thirty-two measures subject to the co-decision procedure between January 1994 and March 1995 are listed in Table 1. Procedures which were still in progress at the end of March 1995 are not examined here, but measures upon which substantive agreement had been reached but definitive acts not adopted are included. In the following discussion attention is concentrated on the processing of legislation *after* Council has adopted its common position, as this is the phase of co-decision which provides the greatest contrast with the earlier co-operation procedure. Nevertheless, a brief survey of Council's common positions is necessary to indicate Parliament's overall impact at first reading in the thirty-two completed procedures.

COUNCIL'S ASSESSMENT OF THE EUROPEAN PARLIAMENT'S IMPACT AT FIRST READING

The general pattern which emerged under the co-operation procedure (see Earnshaw and Judge 1995a) - of Council taking up a considerable number of the EP's amendments at first reading - can also be identified for the thirty-two measures listed in Table 1. This was particularly so where support for Parliament's amendments also came from the Commission. In the case of the directive on summertime, for example, Council considered that its common position 'incorporates most of the amendments adopted

Table 1 Co-decision procedures completed by March 1995

<i>Directive or decision</i>	<i>Issue</i>	<i>Committee responsible</i>	<i>Date agreed</i>
Directive 94/9	Equipment for use in potentially explosive atmospheres	EMAC	March 1994
Directive 94/10	Technical standards	EMAC	March 1994
Directive 94/11	Footwear labelling	Environment	March 1994
Directive 94/12	Motor vehicle emissions	Environment	March 1994
Decision 1110/94	Fourth RTD Framework Programme	CERT	April 1994
Directive 94/18	Obligation to publish listing particulars	Legal	May 1994
Directive 94/19	Deposit guarantees	Legal	May 1994
Directive 94/20	Mechanical coupling devices	EMAC	May 1994
Directive 94/21	Summertime	Transport	May 1994
Directive 94/22	Hydrocarbon exploration	CERT	May 1994
Directive 94/25	Recreational craft	EMAC	June 1994
Directive 94/27	12th amendment dangerous substances	Environment	June 1994
Directive 94/34	Food additives- framework	Environment	June 1994
Directive 94/35	Food additives- sweeteners	Environment	June 1994
Directive 94/36	Food additives- colours	Environment	June 1994
Directive 94/47	Timeshare	Environment	Oct 1994
Directive 94/48	13th amendment, dangerous substances	Environment	Dec 1994
Directive 94/52	Extraction solvents	Environment	Dec 1994
Directive 94/60	14th amendment, dangerous substances	Environment	Dec 1994
Directive 94/62	Packaging waste	Environment	Dec 1994
Directive 94/63	VOC emissions	Environment	Dec 1994
Decision 3092/94	Home and leisure accidents	Environment	Dec 1994
Regulation 3378/94	Definition of alcoholic drinks following the Uruguay round Continuation of Europe against AIDS programme	External Relations Environment	Dec 1994 Jan 1995
Directive 95/1	Motorcycle speed, torque and power	EMAC	Feb 1995
Directive 95/2	Miscellaneous additives	Environment	Feb 1995
Decision 818/95	Youth for Europe programme	Culture	March 1995
Decision 819/95	Socrates programme Noise of earthmoving machinery Prudential supervision: BCCI directive Open Network Provision in voice telephony Biotechnological inventions	Culture Environment Legal Affairs EMAC Legal Affairs	March 1995 March 1995 March 1995 Common position rejected July 1994 Joint text rejected by EP March 1995

by the European Parliament' (Council's Reasons, OJ C137, 19 May 1994: 40); on the thirteenth amendment to the directive on the marketing and use of dangerous substances, Council 'basically went along with the amended Commission proposal' which in turn had 'incorporated... all the amendments proposed by the European Parliament' (Council's Reasons, OJ C244, 31 August 1994: 11); and, on the Fourth Framework Programme, Council's reasons for its common position stated, even more strongly, that:

Council has sought to incorporate to the largest extent possible the suggestions from the European Parliament, with a view to formulating a text which reflects a consensus between the two legislative bodies whilst respecting the overall balance of the Commission's proposal.
(Council's Reasons, OJ C101, 9 April 1994:54)

In the reasons on recreational craft, Council noted that the Commission's amended proposal had taken up thirteen of the EP's twenty-two amendments and that: 'Almost all of those amendments have been adopted by the Council in its common position either to the letter or in spirit, and expanded upon in certain cases' (Council's Reasons, OJ C137, 19 May 1994: 25). Similarly, on timeshare, Council was 'able to include in its common position, whether literally, in substance, or in part, the European Parliament's amendments taken on board by the Commission in its amended proposal' (Council's Reasons, OJ C137, 19 May 1994:47). On the Socrates programme Council took up twenty-nine of the Parliament's first reading amendments, which numbered over 100, rejecting those which the Commission also opposed. Similarly, on the continuation of an EU-wide system of information on home and leisure accidents (EHLASS), Council 'accepted without change the amendments proposed by the European Parliament which were also accepted by the Commission' (Council's Reasons, OJ C244, 31 August 1994: 88). Finally, on technical standards, Commissioner Bangemann, while addressing Parliament's plenary during the second reading debate on Council's common position, noted that of 'the 12 amendments tabled, which Parliament adopted in its first reading and which were accepted by the Commission, 10 were incorporated into the common position' (DEP 3-442, 7 February 1994:27).

There was one notable exception, however, where Council made no pretence that Parliament had significantly influenced its common position. This was the directive on emissions from motor vehicles where the Commission 'drew up an amended proposal which incorporated three of the 23 amendments proposed by the Parliament' (Council's Reasons, OJ C101, 9 April 1994: 12). These three amendments were only minor - relating specifically to the recitals of the proposal; and so, although subsequently adopted by Council, had no effect on the substantive provisions of the common position.

In contrast, there were occasions when Council explicitly supported

EP amendments which had not been accepted by the Commission. In its reasons for the common position on hydrocarbon exploration, for example, Council noted that it had 'accepted, word for word or in substance... five amendments of the European Parliament, not inserted by the Commission in its amended proposal' (Council's Reasons, OJ C101, 9 April 1994: 20). Parliament's rapporteur, during the second reading debate, underlined the significance of this event in his observation that: 'interinstitutionally speaking it is interesting to note that the Council has not taken any notice of the Commission here' (DEP 3-445, 8 March 1994: 39). In addition, five other EP amendments were accepted by the Commission and also by Council. This left two amendments which were neither incorporated by the Commission in its amended proposal, nor accepted by Council. Even with these two, Council was satisfied, none the less, 'with the Commission's assurance that it would bear these amendments in mind, and did not therefore consider it necessary to amend the texts' (Council's Reasons, OJ C101, 9 April 1994:20).

PARLIAMENT'S SECOND READING

In twelve of the thirty-two items of legislation to reach the end of the co-decision process by March 1995 Parliament proposed no amendments at second reading. In each case legislation was adopted on the basis of the common position agreed by Council. On eight of these issues Parliament undertook its second reading expeditiously, without further debate. This it did on the basis of a letter of recommendation from the relevant parliamentary committee (under Rule 66[7]) or by means of the President declaring the common position approved without a vote (Rule 68). Indeed, in one case (the definition of alcoholic drinks following the Uruguay round), Parliament completed both its first and second readings within the same week so as to enable ratification of the agreement by the end of 1994 (OJ C18, 23 January 1995:53). However, on four other issues further debate occurred without Parliament proposing amendments. These deliberations were motivated, on occasion, by a desire to maximize Parliament's policy preferences without the need for a formal vote on amendments.

In the case of the directive on summertime, for example, Parliament's Transport Committee succeeded in extracting a commitment from the Commission (which apparently had already been given to Council) that it submit a report on the economic and other effects of changing over from wintertime to summertime and vice versa. In fact, the need for just such a report had been identified in Parliament's first reading amendments, but Council had not incorporated this amendment in its common position. With Council anxious to reach a quick decision, it requested Parliament to expedite its second reading on this issue. Astutely, the EP raised the possibility of delaying its second reading, leading the Commission to declare, forthwith, that it 'undertakes further to table a report on this to the European Parliament and the Council before 1 January 1996' (DEP

3-447, 22 April 1994: 294). Parliament then went ahead and voted its approval of the common position, without amendment.

On the proposal relating to listing particulars to be published for the admission of securities to official stock exchange listing, Parliament's Legal Affairs Committee had initially decided to propose three amendments to the common position. It became clear in April 1994, with European elections looming, that if Parliament amended the common position and provoked conciliation, adoption of the directive would be delayed. Parliament's rapporteur believed that such a delay would 'not [be] helpful either to capital movements or our stock markets' (DEP 3-447, 20 April 1994: 156). However, if passed without amendment, the directive would enter into force within one month. The rapporteur, along with the Legal Affairs Committee, proposed therefore that Parliament 'vote against the Legal Affairs Committee's amendments so that this legislation can be brought in immediately' (DEP 3-447, 20 April 1994: 156). As a result, Parliament adopted no amendments to the common position, and the directive was definitively adopted by Council and Parliament in May 1994.

The continuing problem of absolute majorities

The difficulty facing Parliament at second reading stage is brought into stark relief in the two other cases in which Parliament did not vote amendments to Council's common position. The basic problem is that the EP must muster an absolute majority to amend a common position. A clear, and early, example of this difficulty was provided by the directive on motor vehicle emissions. As noted above, Council had already refused, at first reading, to take up any of the EP's substantive amendments. Parliament was then faced with a Commission determined to defend Council's common position against the second reading amendments proposed by Parliament's Environment Committee. The latter sought: first, to tighten 1996 emission standards; second, to give member states greater leeway in applying tax incentives; and, third, to decide on stricter limits from 1999 immediately, rather than waiting for the results of a Commission-industry study on reformulated fuels and new engine technologies. Commissioner Bangemann was in no doubt that should Parliament adopt the suggested amendments at second reading, 'endless disputes with the Member States in the conciliation committee' would ensue, and that 'we know that the Member States are not prepared to go further' (DEP 3-444, 7 March 1994: 35). In Parliament, however, some members saw the possibility of a sequel to Parliament's 1989 small cars emissions triumph. Outside there was also considerable press and industrial interest in Parliament's second reading which led Parliament's rapporteur, Kurt Vittinghof (Soc/Ger), to comment that the 'industrial lobby has never been so strong, [and] has never had such an influence as in this case' (DEP 3-444, 7 March 1994: 30). To the surprise of many,

therefore, the plenary vote saw amendments tabled by the Environment Committee not only failing to pass the absolute majority threshold but, unusually, actually being defeated. The result was that Council's common position was approved unamended. The Chairman of Parliament's Environment Committee, reflecting on the debate, recorded that it had been 'disfigured by a great deal of misleading and hysterical lobbying by a great many people who should have known better, including certain Commission officials' (DEP 3-445,9 March 1994:105).

Finally, on the twelfth amendment to the directive on dangerous substances and preparations, the EP's Environment Committee proposed an intention to reject the common position. Parliament's first reading amendments had been designed to restrict the scope of the measure, and this Council had accepted in essence in its common position. None the less, Council still sought to follow the Commission's proposal that there should be a limitation on the use of nickel in jewellery and similar items. The Environment Committee's favoured approach, however, was simply to label items containing nickel, thereby enabling the consumer to choose. More particularly, Parliament's rapporteur, Caroline Jackson (EPP/UK), argued that the Commission had blatantly disregarded the cost to industry of the proposal, and that members of the Environment Committee 'find it unacceptable that a Commission official could come to our meeting... and say that he had not had any conversations with the jewellery industry' (DEP 3-448,3 May 1994:103). Once more, this time in the vote to declare an intention to reject, Parliament fell short of the required absolute majority threshold. On this occasion there were 214 votes in favour of rejection and thirty-seven against (with nine abstentions). While the EPP and Socialist members voted overwhelmingly in favour of the Environment Committee's proposal, an absolute majority was denied by a combination of absenteeism, owing to impending elections, and the dissenting votes of members of the Green and Rainbow groups, who considered labelling both as an insufficient safeguard and as offering lower levels of protection than already existed in some national legislation. With the loss of the vote to declare an intention to reject, Parliament's President therefore declared the common position to be approved without amendment.

AMENDED COMMON POSITIONS

In the first year of the co-decision procedure twenty Council common positions were amended by Parliament. Only in fourteen cases, however, did this result in Council convening the conciliation committee. In the other six cases, Council went ahead and accepted Parliament's second reading amendments. This it did, sometimes against the position adopted by the Commission (for example, on technical standards), and, on one occasion, on sweeteners in food, against the wishes of a member state which had supported the initial common position. On the latter issue, Parliament voted one amendment to the common position, to which one

member state - France - was vehemently opposed. (France had supported the original sweeteners common position.) Protracted negotiations were required, therefore, in the Committee of Permanent Representatives (COREPER) to try to reach an accommodation acceptable to the French delegation. Some member states, in particular the UK, argued at length that it was important to retain intact both the common position itself and also the initial line-up of member states in Council in support of the common position. It was thought that adopting the legislation by a different qualified majority than had voted the common position could set a dangerous precedent. Until this point Council had sought to maintain the same majority between the common position stage and the definitive adoption of legislation, thereby minimizing the impact of EP amendments at second reading. Eventually, a solution was found within COREPER whereby the sweeteners common position was definitively adopted with the abstention of the French delegation, and with the Commission committing itself (in a Council minute statement) to review the offending clause before the directive was implemented nationally. A final part of the compromise was that France made a further statement in Council about the difficulties it faced on the issue - following which both the sweeteners and colours legislation was adopted (for full details, see Earnshaw and Judge 1995a).

INTO CONCILIATION

By March 1995 twelve measures had been agreed after having been processed through the conciliation procedure. All involved conciliation after Parliament's second reading, and one issue entailed 'petite' conciliation as well during the second reading (after a declaration of intent to reject the common position). Two proposed measures, on ONP voice telephony and the legal protection of biotechnological inventions, fell after conciliation.

Comitology

In several cases conciliation was prompted by inter-institutional conflicts between Parliament and Council: most notably over the question of comitology. Indeed, the issue of comitology was raised 'in one form or another' in most conciliation meetings during 1994, and was to prove decisive in the first rejection of Council's common position under co-decision (see PE 210.7001995). Comitology is seen both within the EP, and beyond, to cause 'a serious gap in the Community's democratic structure' (HL 88-11990: para. 154). In the context of co-decision, the inter-institutional dispute was first signalled immediately after the entry into force of the TEU, when Parliament voiced its disapproval of retaining existing comitology procedures for co-decision legislation. Parliament's position was set out in a report from its Institutional Affairs Committee,

drafted by Biagio De Giovanni (Soc/Italy) and considered by plenary in December 1993. The report argued that existing comitology practices should not apply to measures adopted jointly by Council and Parliament under the co-decision procedure but should be retained only for those measures adopted by Council alone. Under co-decision, in Parliament's view, 'full responsibility for legislative acts... lies with Council and Parliament' (OJ C20, 24 January 1994: 177). As Biagio De Giovanni commented:

The Council used to have a power of delegation to the Commission for the execution of acts it had adopted, but it is quite clear that in the case of acts of codecision exclusive power of delegation lapses because the Council no longer has sole responsibility for the act and it is therefore also clear that this power belongs to the Council and the European Parliament jointly.
(DEP 3-440, 14 December 1993:94)

In December 1993 Parliament adopted a resolution based on the De Giovanni report on comitology in which it proclaimed that it should have an equal right with Council to propose annulment of Commission implementing decisions. It recognized, however, that the agreement of both institutions would be necessary for annulment to occur, and sought to strengthen the Commission's role by allowing it to adopt measures after receiving the opinion of member states and the EP.

These principles were applied for the first time under co-decision in March 1994 on the comitology provisions contained in the common positions on mechanical coupling devices and recreational craft. In the former, Council opted for a regulatory committee, and in the latter for an advisory committee procedure. In both cases, Parliament's amendments stipulated that the relevant EP committee, and not simply the committee of member state representatives, should be consulted on the Commission's draft implementing measures. In the case of the recreational craft common position, where Council had already agreed to an advisory committee procedure (under which the Commission need only 'take the utmost account' of the opinion of the committee), Parliament resisted proposing more restrictive implementing provisions than those foreseen by Council. On the mechanical coupling devices common position, Parliament went further and also asserted a claim to be able to annul implementing measures.

Not surprisingly, Council resisted strongly Parliament's attempt to include these principles in the common position on mechanical coupling devices. On this occasion, the institutions agreed to differ, with Council maintaining that the correct type of committee had been provided, while the EP delegation in the conciliation committee dissented from this view and maintained that the principles laid down in the December 1993 comitology resolution should apply. The final compromise, agreed at

a single meeting of the conciliation committee, was to delete in its entirety the article dealing with adaptations to technical progress by comitology. Council was satisfied that an implementing committee established under a related framework directive would be sufficient in this instance. On this basis, in May 1994, Parliament approved the joint text agreed by the conciliation committee, so omitting any reference to comitology.

On the proposal on recreational craft, Parliament acceded in conciliation to Council's decision to establish an advisory committee, but only after winning a declaration from the Commission that Parliament would be kept fully informed of the work of the committee. Significantly, on this measure the Commission also 'abandoned the exceptions based on confidentiality and urgency' which it had retained in the 1988 Delors/ Plumb undertaking on comitology (through which Parliament is normally kept informed of implementing legislation (European Parliament 1994c; see also Jacobs *et al.* 1992: 234)). Council further agreed to two substantive second reading amendments: one specifically excluding from the directive boats designed to carry passengers for commercial purposes; and the other a technical amendment withdrawing certain provisions concerning fireproofing.

In the case of the ONP voice telephony proposal (see below) the issue of comitology led, on the one hand, to Council reconfirming its common position after failure to reach agreement in conciliation, and, on the other, to the subsequent rejection of the proposal by Parliament. This event finally prompted Council to negotiate more expeditiously with Parliament to find a horizontal solution to the comitology problem. For its part, Parliament appointed two *explorateurs* with the intention of concluding such an agreement between Parliament, Council and Commission. A series of meetings with the German Presidency of the Council and the Commission led eventually to a draft *modus vivendi* on comitology.

Approved at an Inter-Institutional Conference at the end of December 1994, and ratified by Parliament in January 1995, the *modus vivendi* provides for the EP to be kept informed of proposals for implementing measures, and also provides the opportunity for it to deliver an opinion in cases where implementing committees fail to agree and the matter is referred to Council. While stopping far short of granting the EP the right to reject comitology decisions (an idea unacceptable to Council), the *modus vivendi* does provide that, in the case of an unfavourable EP opinion, Council should take 'due account of the European Parliament's point of view without delay'. None the less, this formulation is open to very different interpretations: with Parliament considering that it institutes a 'concertation procedure... aimed at reaching a compromise' (PE 210.700 1995: 16), while one national government, possibly reflecting the views of others, prefers to emphasize instead the fact that the *modus vivendi* 'does not oblige the Council to accept the Parliament's opinion'

(HC 70-v 1995: xi). Hence, while the *modus vivendi* increases the information available to Parliament about implementing measures, it is less clear that it diminishes the authority of the Council and Commission. Early experience reveals, none the less, that the *modus vivendi* has served to lessen disagreement between EP and Council on comitology provisions (at least temporarily - and until the 1996 Intergovernmental Conference (IGC)). Indeed, since its adoption, Parliament and Council have reached rapid agreement on legislation on which substantive agreement could be reached promptly (for example, on motorcycle power, and noise limits for earth-moving equipment) but which might otherwise have been stalled because of conflict over comitology.

'Amounts deemed necessary'

Another long-standing institutional issue which featured in early conciliations was Council's inclination to incorporate binding ceilings on expenditure - known as 'amounts deemed necessary' - in the text of EU legislation. Parliament and the Commission maintain that such amounts are purely indicative and that, moreover, Parliament and Council - as the budgetary authority —are responsible for determining the funding necessary for EU programmes on an annual basis. In addition, the 1982 Joint Declaration on various measures to improve the budgetary procedure (OJ C194, 28 July 1982: 1) agreed that 'the fixing of maximum amounts by regulation must be avoided'; yet Council effectively continued to sidestep this agreement through the practice of setting 'amounts deemed necessary'.

The issue was one of the central points of contention between Parliament and Council in the case of the Socrates and Youth for Europe programmes. In both cases the process of conciliation was expedited by informal negotiations before Parliament's second reading. In these negotiations most of the substantive issues between the EP and Council were resolved. Indeed, the reports of Parliament's conciliation delegations on both programmes noted that the EP had 'won the day' in these informal negotiations (see PE 211.518/fin 1995 and PE 211.519/fin 1995: 6). Certainly, in quantitative terms Parliament was successful: with eighteen out of its twenty second reading amendments on Socrates, and five out of six on Youth for Europe, accepted by Council at the first meeting of the conciliation committee. None the less, on the 'amounts deemed necessary' (760 MECU for Socrates and 105 MECU for Youth for Europe), agreement proved more difficult. Not only was Parliament opposed to the entry of specific amounts in the legislation, arguing that actual spending should be set during the annual budgetary procedure, but it also sought increased funding of 1,005 MECU and 157 MECU respectively (*Euro-pean Report*, 25 January 1995).

Parliament's Committee on Budgets chose in these circumstances to adopt an approach paralleling that adopted on comitology - by

appointing two *explorateurs* to negotiate a horizontal solution to the dispute over 'amounts deemed necessary'. This strategy ultimately proved successful, as the Council Presidency and Parliament's *explorateurs* reached agreement in a joint declaration in mid-January 1995, shortly before the second meeting of the Socrates and Youth for Europe conciliation committee. However, while the conciliation meeting agreed increases in the funding allocated to the programmes (850 MECU for Socrates with a review after two years, and 126 MECU for Youth for Europe), definitive agreement on the joint declaration on 'amounts deemed necessary' proved elusive. In fact, the conciliation meeting was interrupted by numerous adjournments for separate meetings of the delegations, and some delegations of Council eventually only agreed to its final compromise *ad referendum*. These reservations were later lifted - just within the deadline laid down in the co-decision timetable for conciliation —but only after further informal negotiations between Parliament, the Council Presidency and the German delegation of Council (the latter 'remained unenthusiastic and very isolated' about the joint declaration (PE 211.519/fin 1995:7)). In these subsequent negotiations Parliament accepted further minor changes to the joint text on 'amounts deemed necessary', and thereby avoided the possibility of Council losing its qualified majority in favour of the text agreed by its conciliation delegation. Hence, the onus on Council and Parliament to reach agreement on the two programmes within the co-decision deadlines led to a resolution of the broader institutional question.

In March 1995, the EP plenary ratified the Declaration by the three institutions on the incorporation of financial provisions into legislative acts. Its underlying principle is that a 'financial framework' for multi-annual programmes may only be included in legislation which is adopted by Parliament and Council through co-decision, or through conciliation as provided for by the 1975 Joint Declaration on conciliation. According to the declaration, such an amount shall provide a 'principal point of reference for the budgetary authority during the annual budget procedure', and may only be departed from because of 'new objective circumstances ... for which an explicit and precise explanation is given' (OJ C68, 20 March 1995: 28-30). However, legislative acts not subject to co-decision (or conciliation) are not to contain amounts deemed necessary, but where Council includes such a financial estimate this 'shall not affect the powers of the budgetary authority as defined in the Treaty' - and this shall be referred to 'in every act which includes such a financial reference'. The agreement effectively reduced the gap between Parliament's post-Maastricht legislative role and its budgetary role (see Jacobs *et al.* 1992: 222). Where Council and Parliament jointly adopt legislation they may include estimates of financing; where Council acts alone it should not. If Council does include a financial estimate, the declaration reiterates that the powers of the budgetary authority (Parliament and Council) to make amendments remain unaffected. The agreement also

encourages Council to embark on conciliation for measures outside the co-decision procedure, as 'amounts agreed' in such conciliations would be more difficult for Parliament to change at a later stage during the budget procedure.

SUBSTANTIVE ISSUES

The other conciliation procedures centred almost entirely on issues of policy. In the case of the proposal on deposit guarantee schemes Parliament passed seven second reading amendments. Only four of the EP's seven amendments were accepted by the Commission. Nevertheless, with one exception, Council responded positively in conciliation to the substance of each of Parliament's amendments voted at second reading. As a result, Parliament approved the joint text at its May 1994 plenary session, and the text was formally signed by the EP and Council Presidents later the same month. The exception was provided when the German delegation voted against the adoption of the deposit guarantee directive in Council, as its provisions were deemed incompatible with Germany's own very high level of depositor protection. Germany subsequently brought a case to annul the directive in the Court of Justice (Case C-233/94). (This case had the distinction of being the first action brought jointly against Council and Parliament as 'co-legislature'.) Germany argued that the legal base of the directive, Article 57(2), was insufficient and that Article 235, requiring unanimity in Council, should have been used instead. Germany also maintained that unanimity in the Council and the co-decision procedure 'are not mutually exclusive', and pointed to the requirement for unanimity for the adoption of the RTD Framework Programme and cultural measures (OJ C275, 1 October 1994: 20).

However, as one observer notes, the requirement for Council to act unanimously under co-decision in the area of research and technological development policy 'makes an already complicated procedure even more cumbersome' (European Parliament 1994b: 14). The Fourth RTD Framework Programme (FP) was one of the first issues subject to co-decision, and became the first to result in the convening of a conciliation committee under the new procedure. The likelihood that it would be processed through co-decision led to informal dialogues being held — bringing together the Council Presidency, the Chairman of Parliament's Energy, Research and Technology Committee, and the Commissioner responsible for research policy - even before the Commission submitted its formal proposal in June 1993. The dialogues continued throughout the first reading and through to the conciliation, and were judged by the EP to be 'an indispensable instrument for coordination between the Community institutions involved in the decision making process' (European Parliament 1994b: 21). At an analytical level the dialogues also underscore the point that the formal powers of the EP, in this case the very prospect of

co-decision, led the Commission and Council to court the EP informally. There was both a substantive concern to ensure that the EP's Energy Committee would not delay adoption of the fourth FP, and an inter-institutional concern to guarantee the smooth operation of the co-decision procedure on one of its first outings (Judge *et al.* 1994: 47; see Earnshaw and Judge 1995a for details).

The outcome of this informal collaboration, alongside the formal processes, was clear soon after Parliament's first reading, with Council's common position taking up no fewer than eighty of the EP's 118 amendments. At second reading the EP's Energy Committee decided, therefore, to focus on six key issues and in so concentrating its attention Parliament was able to present a unified front. Council, on the other hand, was unable to agree a unified approach and so approached the first meeting of the conciliation committee 'equipped only with the mandate of the common position and the claim that it had already met Parliament's demands to a very large extent' (European Parliament 1994b: 43). Divisions in Council were exacerbated by the requirement that Council act unanimously on FP decisions. Yet on one issue — that of comitology - Council was unanimous in its opposition to Parliament's stance.

Conciliation eventually resulted in compromise both between the institutions and among Council delegations (for details, see Earnshaw and Judge 1995b). But these compromises were only effected by informal negotiations beyond conciliation: between, on the one side, the EP, the Commission and Council Presidency; and, on the other, among Council delegations in COREPER.

'Petite' conciliation

Another early co-decision procedure which resulted in conciliation was that relating to motorcycle power, speed and torque. This issue is unique 'in being the first and, at least until mid-1995, the only one in which conciliation occurred during Parliament's second reading, following a declaration of Parliament's 'intention to reject'. The case is also unique in terms of Parliament's procedural creativity, through which it sought to activate the procedure before entry into force of the TEU (see Earnshaw and Judge 1995a). The EP rejected Council's common position, adopted under the co-operation procedure, some five days before the entry into force of the TEU but, in an explanatory qualification to the rejection, stated its intention for the rejection to be considered an 'intention to reject' under co-decision, once the TEU came into force on 1 November 1993. Subsequently, however, Parliament's Legal Affairs Committee, and the EP's Conference of Presidents, decided that all legislative items not finalized by Council before the entry into force of the TEU were to be confirmed by Parliament before conclusion by co-decision. This entailed the motorcycle issue returning to Parliament's plenary once more in

February 1994, for confirmation of the declaration of an intention to reject the common position.

According to the TEU, the path chosen by Parliament allowed Council 'to explain further its position' in conciliation (Article 189b(2)(c)) - a provision which Council has tended to interpret strictly. Parliament, on the other hand, has preferred to interpret this 'petite' conciliation as an opportunity to negotiate along similar lines to the other conciliation procedure provided for by Article 189b(3). In the case of motorcycle power Council members did, however, provide a mandate for the Council Presidency to negotiate informally with MEPs. However, both informal contacts and a formal meeting of the conciliation committee failed to resolve the divergent positions of Council, Commission and Parliament.

'Petite' conciliation having failed, Parliament sought to reject definitively Council's common position at its April 1994 plenary session. In the run-up to the June 1994 European elections, and hence with reduced attendance at plenary, Parliament failed to pass the absolute majority hurdle, mustering only 252 votes for rejection, with twenty-five against and two abstentions. Co-decision thus had to be relaunched, and amendments to the common position agreed. The EP's amendments to the common position, subsequently adopted with majorities well above the absolute majority threshold, were explicitly based on possible compromises raised during the formal and informal conciliations which had occurred earlier.

Still opposed to Parliament's amendments, Council convened the conciliation committee, which met for the first time in October 1994 (so setting in motion the six weeks - extendable to eight weeks - timetable for its deliberations). At this meeting Council accepted that the 'question of a power limit everywhere in the Union would be put to one side for now'. It also agreed that the Commission should complete a study on the relationship between motorcycle power and road accidents before the introduction of EU legislation to limit engine power (*AgenceEurope*, 19 October 1994). Hence, Council dropped an earlier agreement, enshrined in its common position, which would have allowed member states to permit more powerful motorcycles only for five years. Final agreement was reached at the end of December 1994, following agreement on the *modus vivendi* on comitology. On the basis of the *modus vivendi*, the EP and Council joint chairmen of the motorcycle power conciliation committee were able to exchange letters approving a joint text which incorporated the agreement on substantive issues reached during conciliation. Parliament finally approved the joint text in January 1995 with *Reuters News Service* (18 January 1995) commenting that: 'There was little doubt... that it was the Parliament in the driving seat' on this occasion.

THE ENVIRONMENT COMMITTEE AND CO-DECISION

By far the greatest burden of processing co-decision proposals in the first year fell on Parliament's Environment Committee (see Table 1). Over half

of the co-decision procedures concluded by March 1995 came within the responsibilities of this single committee. In fact, the Environment Committee was responsible for every co-decision procedure concluded during the second half of 1994, except for one urgent measure which, exceptionally, completed its passage through the co-decision procedure in a week. Three of these measures - packaging waste, the control of volatile organic compound (VOC) emissions, and the protection of purchasers of time-share properties — went to third reading and conciliation.

Timeshare proved to be the least contentious issue. Negotiations focused on just four EP second reading amendments, and agreement between Parliament and Council was reached during a single meeting of the conciliation committee in September 1994. Nevertheless, Parliament's impact through conciliation was marked, pushing the Commission significantly beyond what it had been prepared to accept at second reading; and beyond what Council had been prepared to accept at the outset of conciliation (for details, see Earnshaw and Judge 1995b).

Packaging waste proved to be far more contentious in conciliation. Already at first reading the widespread interest of industry and environmental lobbies had found reflection in over 100 amendments being tabled to the proposed directive. The political sensitivity of the issue was further demonstrated when Council adopted its common position only by qualified majority - against the opposition of Germany, the Netherlands and Denmark. All three countries supported more stringent legislation.

Matters were further complicated by the fact that, from July 1994, the Presidency of the Council was held by Germany, which was firmly opposed to the common position subject to negotiation in the conciliation committee. An additional twist to the negotiations was provided by the imminent accession to the EU of Sweden, Finland, Austria (and, at that time, Norway). All these potential entrants were known to be likely to support the minority in Council, and hence, if agreement was not reached before the end of 1994, to threaten any future negotiations on the directive.

The packaging directive is also notable for underlining the difficulty in obtaining an absolute majority in Parliament at second reading (noted above). Some nineteen amendments were adopted at this stage, while forty-two others were lost, despite, in many cases, securing large majorities in support. Of the nineteen amendments adopted by Parliament nearly half affected recitals, and five related to the definitions used in the directive. All were accepted by the Commission: though it had required a change of heart by the Commission on five of the amendments - to avoid the need for conciliation by seeking the adoption of the amendments by qualified majority in Council.

For the Council, however, one of Parliament's amendments proved to be fraught with political difficulties to the extent that, at the June 1994 Environment Council, Belgium held out against adoption of this single amendment. (This was despite the legal services of the Commission and

Council composing an interpretative statement which would effectively have nullified the amendment's possible impact.) While all Parliament's other amendments could readily be accepted by Council, Belgium maintained that this one would result in legal uncertainty over the use of national economic and fiscal instruments to promote the directive's objectives. Some support for Belgium was eventually forthcoming from Luxembourg and the UK (though the UK's position was based on the rather different grounds that it feared any adoption of EU-level fiscal measures by qualified majority). In the absence of a qualified majority Belgium maintained its opposition and, after lengthy negotiations among member state permanent representations, Council declared it was unable to accept all the EP's amendments and intended, therefore, to convene the conciliation committee.

Parliament, for its part, sought concessions from Council on five amendments which had failed to pass the absolute majority hurdle at second reading in return for a redrafting of the single amendment disputed by some delegations of Council. This strategy seriously divided Council, with the German presidency, on one side, showing 'a willingness to take on board the five changes called for by the Parliament's delegation' while the Italian delegation, on the other, believed that this strategy would set a 'dangerous precedent'. In this the Italians found support from the Portuguese, French, Greek and UK delegations. Given these internal divisions, the first conciliation meeting appeared, at least to one commentator, to be 'chaotic and fruitless' (*Environment Watch Western Europe*, 7 October 1994: 3). Agreement between Parliament and Council was eventually effected at a third meeting of the conciliation committee, after the delegations of both Council and Parliament had asked the Commission to 'formulate suggestions for a compromise solution' (*Environment Watch Western Europe*, 18 November 1994: 3). A reworded version of the disputed amendment was accepted, as was Parliament's insistence that there be a specific reference in the directive to a parliamentary role in the review of the practical experience of the legislation. (Significantly, this last point had not figured among Parliament's second reading amendments.) The Commission also offered Parliament an assurance on comitology, whereby Parliament was to be kept fully informed of implementing measures submitted to a regulatory committee established by the directive. Parliament made it clear, however, that it accepted this assurance 'without prejudice either to any position it may adopt on other legislative acts or to the position it will adopt in respect of any general agreement between the Institutions on this subject' (Statement by the European Parliament entered in the minutes of the Conciliation Committee, PE-CONS 3627/94).

Running in tandem with the conciliation on packaging was that on VOC emissions, with meetings of the conciliation committee devoted to discussion of both the packaging and VOC dossier. As with packaging waste, the German delegation had voted against the common position, but

again, paradoxically, found itself responsible for co-ordinating Council's stance in negotiations with Parliament. At its second reading in March 1994, Parliament adopted seven amendments to the VOC common position. A further amendment failed, by just six votes, to pass the absolute majority threshold. Of the seven amendments, the Commission supported just one. In turn, Council adamantly refused to make concessions on anything but this single amendment at the first meeting of the conciliation committee; but, at a subsequent meeting, Council did eventually concede to Parliament's two main amendments. In return, Parliament agreed to drop three of its less significant amendments; while on the contentious issue of comitology, the conciliation committee reached an agreement similar to that concluded in the case of packaging. Some dissension was expressed within Parliament's delegation over these agreements on comitology, but eventually the VOC directive - along with that on packaging - was signed by Council and Parliament Presidents at the end of December 1994.

REJECTION

One Council common position was rejected during the first year of co-decision, and one joint text agreed in conciliation failed to gain the approval of Parliament's plenary. The rejection occurred on a proposal to apply ONP to voice telephony services. The proposal was introduced by the Commission in October 1992, and Parliament voted on it at first reading in March 1993. Council's common position, submitted to Parliament in July 1993, reflected several of the EP's first reading amendments. However, Council added a regulatory committee for the most important aspects of the directive's implementation, and opposed a number of Parliament's amendments promoting the interests of telephone users and transparency. The political sensitivity of the common position was noted by Parliament's rapporteur in her recommendation for second reading: 'comitology [has] become a more serious issue... as a result of the Council's common position'; and she reiterated the point that such a committee procedure 'has been traditionally regarded as unacceptable by the Parliament' (PE 206.718/fin, 1993:12). Accordingly, she proposed deletion of the regulatory committee, and sought formal consultation of Parliament and Council where the Commission requested 'modifications . . . of a significant nature' to adapt the directive to new technological developments or to changes in market demand (OJ C44, 14 February 1994:97).

Thus, the significance of the ONP case is that the issue of comitology became entwined with, and provided the opportunity for, Parliament's assertion of its claim to some equivalence with Council in the implementation of legislative measures. Of equal significance is that this provided the first direct challenge by Parliament to a common position under the co-decision procedure. Indeed, the constitutional importance of the ONP proposal is underscored in Docksey and Williams' observations that:

The issue of comitology and the accompanying question of institutional balance became so sensitive that for the first time under the codecision procedure the conciliation phase failed. This failure made it possible for Parliament to exercise its new veto power under the procedure.

(Docksey and Williams 1994:141)

Both before and during negotiations in the conciliation committee, held during the run-up to the June 1994 European elections, Council refused to entertain Parliament's position on comitology. Council also disagreed basically with Parliament on the substantive issues underpinning the proposal. Without agreement on a joint text in conciliation, and amidst the campaign for the election of the new European Parliament, Council chose to reaffirm its common position. Parliament, via its President, had asked the Commission (pursuant to rule 78[1]) to withdraw its proposal, and the Council not to confirm its common position. Council did, however, delay its formal confirmation of the common position until the end of June, thereby making it possible for the newly elected Parliament to decide on the text at its July session - within the six-week timetable laid down in Article 189b. The decision to confirm its common position, and to do so by qualified majority, led the Council into uncharted constitutional waters (see Earnshaw and Judge 1995b).

At Parliament's first session after the June 1994 elections its rapporteur observed that 'the Council has not felt able... to accept any of the amendments nor any of the compromise text'. On the unresolved issue of comitology Council limited itself to a reiteration of 'its commitment... to return to the discussion of the question of comitology. The procedures for implementing this directive will be re-examined to the extent that the results of this discussion so require.' As an expression of Parliament's dissatisfaction with this outcome the rapporteur called on Parliament to 'stand firm on this and by rejecting this report fight for the principle of comitology which has been so important' (DEP 4-449, 19 July 1994:8). Parliament then proceeded to reject Council's reconfirmed common position by an over-whelming 373 votes to forty-five with twelve abstentions.

According to Article 189b(5) of the TEU, 'Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall have a period of six weeks . . . in which to adopt' a joint text agreed in conciliation. This stage was not reached in the case of ONP voice telephony as negotiations in conciliation failed. However, in the case of the legal protection of biotechnological inventions, agreement was reached in conciliation, which Parliament subsequently failed to ratify.

The proposal on the legal protection of biotechnological inventions was marked by serious differences on substantive issues. Indeed, it took Parliament's Legal Affairs Committee three attempts for its first reading report to pass through the EP plenary; and the proposal eventually spanned three parliamentary mandates before the final declaration of

rejection in March 1994. First proposed in 1988 under the co-operation procedure, the proposal's objective was considered by the Commission at the time to be relatively straightforward and primarily technical: it sought to harmonize member states' national patent laws in the area of biotechnological inventions, a new area of technology in which it was argued that European industry needed a clear and precise framework for the protection of its intellectual property. Hence, the Commission largely omitted from its original proposal a consideration of the ethical issues raised by the patentability of biotechnological inventions and, in particular, the patentability of living matter. Only in its amended proposal, following Parliament's first reading, did the Commission accept that the ethical dimension could not be ignored and so, following Parliament's amendments, moved to incorporate more precise guidelines about ethical issues. The Commission also took up, explicitly, Parliament's proposal to introduce the concept of 'farmer's privilege' into patent law.

In December 1993 Council adopted a common position on the biotechnological inventions proposal (definitively adopted, once finalized, in February 1994) with Spain, Luxembourg and Denmark voting against on ethical grounds (*European Report*, 18 December 1993). In May 1994 Parliament adopted only three amendments to the recitals of the common position at second reading - basically because of the difficulty in securing an absolute majority (see OJ C205, 25 July 1994:147). However, the significance of one of the three EP amendments made it almost certain that Council would convene the conciliation committee.

The conciliation on biotechnological inventions eventually took place after the 1994 elections. Three meetings of the conciliation committee resulted in an agreement on the last day allowed under the co-decision timetable. The compromise saw two of Parliament's three amendments included in the text, as well as modifications to other recitals and to an article of the common position. In addition, an agreement on human genetics was concluded. In total, therefore, as one industry commentator put it, 'Council had met many of Parliament's demands, even on amendments that failed to secure the required majority' (*Scrip*, 10 March 1995: 5). Of some considerable significance also was the series of interpretative declarations adopted, respectively, by: Council; Commission and Parliament jointly; the Council and individual delegations of Council; Parliament; and the Commission. The conciliation committee agreed that some of these declarations should be published in the Official Journal. From Parliament's perspective this 'represented a precedent... which the [Conciliation] Committee will find useful to have at its disposal in future' (PE 211.522 1995:18).

Parliament's conciliation delegation proceeded to approve the joint text for submission to plenary, by majority vote with four members opposed. One of the dissenting members felt moved to submit a formal statement 'rejecting] the majority position of the EP delegation to the Conciliation Committee' (see PE 211.523 1995:1) on the grounds that, as individual

delegations of Council were free to record their dissent from the majority position, so could individual MEPs who found themselves in a minority in the EP's conciliation delegation. Other members of the conciliation delegation argued within their political groups, and later in plenary, for rejection of the text. Outside Parliament, there was exceptionally strong lobbying, including noisy demonstrations and picketing of the EP, by opponents of the text agreed in conciliation.

In plenary the joint text was rejected by 240 votes to 188 with twenty- three abstentions. Splits were evident in most political groups - though Christian Democrats tended to vote in favour of the compromise, and Socialists against. The French President in Office of the Council, Alain Lamassoure, responded: 'I regret the European Parliament's rejection of the compromise... due to an internal problem within that institution. This vote reveals a problem of method in the codecision procedure.' He concluded that: '[t]he Council delegation spoke for the Council as a whole; the Parliamentary delegation has just been disavowed by the plenary session' (quoted in *Agence Europe*, 3 March 1995:5).

CONCLUSION

Under co-decision Parliament is certainly a more equal partner in the legislative process, and now has a rightful place alongside Council in several important policy areas - despite the weighting of the procedure towards Council. As Westlake observes (1994a: 150): 'The Council, its procedures, its secretariat, its personalities and even buildings are no longer "off limits" to Parliament... MEPs are now entitled to stalk its corridors and sit at its tables in search of compromise and concession.' In the first year this search proved to be highly productive, as Parliament made a real qualitative impact on EU legislation.

Indeed, despite initial fears, the conciliation committee had to be convened in less than half of the legislative proposals subject to co-decision; in a quarter of the cases Parliament was satisfied with Council's common position; and in a third of cases voted no amendments to the common position. Even when conciliation did occur, Council and Parliament succeeded in reaching a compromise in all but one case, and, in another, Parliament's plenary rejected the outcome of conciliation. In terms of the EP's amendments to co-decision legislation, the vast majority are now incorporated in law.

Moreover, expected delays in the processing of legislation did not materialize. The main cause for delay in EU legislative procedures continues to be the time taken by Council to adopt its common position (for example, five years in the case of biotechnological inventions).

Of those issues which foundered during co-decision, one (ONP voice telephony) did so mostly because of constitutional differences (over comitology) which are now effectively resolved until the 1996 IGC. On biotechnological inventions, Parliament's plenary chose to repudiate the

agreed text despite agreement in conciliation. Yet the legal protection of biotechnological inventions may be considered as a special case, in that it had always been a highly emotionally charged issue and one which involved serious ethical considerations. In which case, Parliament's rejection of the outcome of conciliation is probably not representative of the broader operation of co-decision. None the less, Council took this opportunity to criticize Parliament's 'apparent inability to get support for agreements made in conciliation committee when they take them back to the assembly' (First draft of the Council's Report on the Functioning of the TEU, see *Reuters News Service*, 27 March 1995).

On the positive side, however, informal inter-institutional linkages have expanded as a result of co-decision. Hence, during the early conciliation procedures, as Peterson (1995: 86) observed, 'informal conciliations and dialogues - involving the Council Presidency, EP committee chairpersons and members of the Commission — emerged as crucial arenas for informal bargaining.' Informal negotiation also increased 'upstream' - with bargaining occurring earlier in the legislative process. Thus, in April 1995, for example, one of Parliament's rapporteurs was willing to state that the compromise he had negotiated, well before Council adopted its common position or Parliament its opinion at first reading, 'is not a starting point for further compromises. The package is itself a compromise product of those discussions, which have involved all interested parties, including the Commission and the Council's expert working group' (Verbatim Report, 5 April 1995: 15). Negotiation and compromise at the early stages of decision-making are now also actively encouraged by the EP's 1994 Rules of Procedure. The new Rules prompt the Commission to table amendments to its own proposals directly in EP committees, rather than having to wait until after Parliament's formal first reading (EP Rules of Procedure, 1994, 9th edn: Rule 56[3]).

At a broader institutional level, one of the early outcomes of co-decision has been the conclusion of horizontal agreements between Parliament and Council (and the Commission)

on comitology and on 'amounts deemed necessary'. These are in addition to their earlier agreement regularizing interactions at the conciliation stage. The practical effect of these agreements should not be underestimated. Westlake (1994b: 101), for example, views them as 'an indispensable element, a sort of constitutional glue, used to fill in and flesh out the bare framework provided by the inter-governmental conferences'. Whatever their qualitative effect, there has been an undeniable quantitative increase in the interactions between Parliament and Council.

The net result of the dialogue between Parliament and Council is the confirmation of an increasingly *bipartite* bargaining process and this, in turn, has placed the Commission in a considerably more ambiguous, and weaker, position than in the co-operation or consultation procedures. The ultimate logic of the Commission's position is that it needs now to act in a more even-handed manner between Parliament and Council in its search

for legislative agreement. Unlike the European Parliament, co-decision has not strengthened the Commission's role.

What the initial experience of co-decision reveals, therefore, is what we already know: that the European Parliament will seek to maximize, through its own internal procedures and through informal pressure, its own contribution to the legislative process (see Judge *et al.* 1994: 45-7). Co-decision has been propitious for the EP. If Parliament is successful in its quest to extend co-decision 'to all areas in which legislation is adopted by the Council (at the very least in all cases where majority voting applies)' (PE 211.919/B 1995: 19; PES 1995: 1), its legislative impact will be further enhanced and the promise of the procedure's early days will be fulfilled.

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