



European Communities

EUROPEAN PARLIAMENT

# SESSION DOCUMENTS

English Edition

1988-89

11 JANUARY 1989

SERIES A

DOCUMENT A 2-0351/88

## REPORT

drawn up on behalf of the Committee on  
Institutional Affairs

on the Conciliation Procedure

Rapporteur: Mr Derek PRAG

PE 119.038/fin.  
Or. EN

A Series: Reports - B series: Motions for Resolutions Oral Questions, Written Declarations, etc. - C Series: Documents received from other Institutions (e.g. Consultations)



= Consultation procedure requiring a single reading



= Cooperation procedure (second reading) which requires the votes of the majority of the Members of Parliament



= Cooperation procedure (first reading)



= Parliamentary assent which requires the votes of the majority of the current Members of Parliament

At its sitting of 14 September 1987, the European Parliament referred the motion for a resolution tabled by Mr Prout pursuant to Rule 63 of the Rules of Procedure on the conciliation procedure (Doc. B2-786/87) to the Committee on Institutional Affairs as the committee responsible and to the Political Affairs Committee, to the Committee on Legal Affairs and Citizens' Rights and the Budget Committee for opinions.

At its meeting of 1/2 December 1987, the Committee on Institutional Affairs appointed Mr Prag rapporteur.

The Committee considered the draft report at its meetings of 26 February 1988, 23 March 1988, 23 June 1988, 18 October 1988, 22 November 1988 and 21 December 1988. At the last meeting it adopted the motion for a resolution unanimously.

The following took part in the vote :

Mr Segre (chairman), Mr Sutra and Graf Stauffenberg (vice-chairmen), Mr Prag (rapporteur), Mr Bru, Mr Filinis (substitute for Mr Fanti), Mr Giavazzi, Mr Graziani (substitute for Mr Pajetta), Mr Herman (substitute for Mr Croux) and Mr Seeler.

The opinions of the Committee on Budgets, the Committee on Legal Affairs and Citizens' Rights and the Committee on Political Affairs are attached.

The report was tabled on 6 January 1989.

The deadline for tabling amendments to this report will appear on the draft agenda for the part-session at which it is to be considered.

C O N T E N T S

	<u>Page</u>
A. MOTION FOR A RESOLUTION .....	5
B. EXPLANATORY STATEMENT .....	9
ANNEX: Motion for a resolution Doc. B 2-786/87 .....	16
Opinion of the Committee on Budgets .....	18
Opinion of the Committee on Legal Affairs and Citizens' Rights .....	30
Opinion of the Committee on Political Affairs ....	33

A

**MOTION FOR RESOLUTION**

on the conciliation procedure

The European Parliament,

- having regard to the conciliation procedure (procédure de concertation) instituted by the Joint Declaration of the European Parliament, the Council and the Commission of 4 March 1975 (1)
  - having regard to the European Parliament's resolution of 9 July 1981 calling for the extension of the conciliation procedure to all of the Commission's proposals to which Parliament attaches especial importance (2),
  - having regard to the Stuttgart Solemn Declaration on European Union in which the European Council undertook to enter into talks with Parliament with the aim of improving and extending the scope of the conciliation procedure (3),
  - having regard to the Commission's proposal for a draft second Joint Declaration on the conciliation procedure (4),
  - having regard to the European Parliament's opinion on this proposal (5),
  - having regard to the Single European Act and in particular the cooperation procedure instituted by that Act,
  - having regard to the inter-institutional agreement on budgetary discipline (5a),
  - having regard to the motion for a resolution on the conciliation procedure (B 2-786/87),
  - having regard to the report by the Committee on Institutional Affairs and the opinions of the Committees on Budgets, on Legal Affairs and Citizens' rights and on Political Affairs (A 2-351/88),
- A. whereas the conciliation procedure has so far proved of limited value, but nonetheless retains the potential for developing into a valuable means of reconciling divergences of view between the Parliament and the Council ;
- B. whereas such a channel of negotiation can be used to reach compromises on the content of Community legislation in order to enable such legislation to be adopted with the approval of both the Council, in which national governments are represented and the European Parliament which represents the electorate as a whole ;
- C. whereas the new cooperation procedure has important similarities to conciliation;

---

(1) OJ C 89 of 22 April 1975

(2) OJ C 234 of 14 September 1981, page 52

(3) Stuttgart Solemn Declaration on European Union (19 June 1983), paragraph 2.3.6 EC Bull. 6 (1983) pp. 24-29

(4) COM (81) 816 final

(5) De Pasquale Report (Doc. 1-984/83)

(5a) OJ C 185 of 15 July 1988

- conciliation ;
- D. whereas it is desirable under the new cooperation procedure to avoid the rejection of legislation in second reading either by Parliament (by an absolute majority) or by the Council (by failing to approve or amend before the deadline) ;
  - E. whereas it would therefore be helpful if compromises could be reached wherever possible between Parliament and Council, and conciliation is the only existing formal procedure enabling such compromises to be negotiated ;
  - F. whereas the current volume of legislation makes it physically extremely difficult to hold separate conciliation meetings on all important legislation
  - G. recalling that the Commission's proposal for extending the procedure is still on the table and that the Member States through the Solemn Declaration are committed to negotiating on a new Joint Declaration ;
  - H. considering that the existing procedure could be improved notably to make it more effective and also to ensure its smooth combination with the cooperation procedure ;
  - I. aware that Parliament's own preparation for conciliation could also be further improved ;
  - J. whereas participation in and chairmanship of conciliation meetings is based on equality between Council and Parliament.
1. calls on the Council and the Commission to resume consideration of this matter and reach agreement with Parliament , before the European elections of 1989, on a second Joint Declaration on the conciliation procedure, and authorizes its President to conduct the negotiations in accordance with the Triologue procedure established in the Joint Declaration of 30 June 1982;
  2. considers that the procedure should be extended to cover all major Community legislation including those areas subject to the cooperation procedure,
  3. believes that the procedure should be initiated at the request of any of the three institutions concerned, and considers that Council participation in the legislative planning procedure established by Parliament and the Commission would facilitate decisions on whether conciliation is necessary, enable conciliation to be carried out effectively and without delays and also permit several legislative proposals in a particular area to be dealt with at a single conciliation meeting ;
  4. considers that, where conciliation has been requested, it is highly desirable that preliminary contacts should be established (at the level of the President-in-Office of the Council and the President of Parliament who may be accompanied or represented by the Chairman or rapporteur of the parliamentary committee primarily concerned) before Council agrees on its position, thus obviating the need for conciliation if positions converge sufficiently

5. believes that, for this purpose, the agreement between Council and Parliament of 4 October 1971 should be reactivated (5b),
6. believes that better technical preparation by Parliament and Council secretariats should allow the meetings themselves to concentrate on the vital points at issue,
7. considers that, where Council and Parliament are in agreement, the recitals of the legislation adopted should refer to this agreement, notably when there is agreement on the budgetary implications of the legislation,
8. considers that, when Council and Parliament remain in disagreement after conciliation, Parliament should be able to deliver a new opinion to this effect ; the Commission would still be in a position to modify its proposal in light of Parliament's new opinion, and should do so in the same spirit as it does for second readings under the cooperation procedure,
9. points out that the Council, in its Decision of 24 June 1988 concerning budgetary discipline, acknowledged that the financial implementation of any Council decision is subject to its being compatible with the budget and the financial estimates contained in the Interinstitutional Agreement; therefore considers it essential that the Commission, Parliament and the Council should decide, by mutual agreement and by means of the conciliation procedure, on the financial consequences of legislative acts;
10. regards it as essential that Council respects its commitments to keep Parliament systematically and comprehensively informed of the course of relevant proceedings in the Council, and in particular of the reasons which caused Council to diverge from Parliament's opinion,
11. decides for its part to improve its own preparation of conciliation meetings, notably by :
  - making more complete use of the procedure wherever it is Parliament's judgement that the subject warrants its use as a result of the political importance of the question, the significance of the divergence between Parliament and Council, and the likelihood of achieving progress through negotiation.
  - ensuring that a proper report on the outcome of conciliation meetings is presented to the plenary in accordance with Rule 43 Par. 4 of the Rules of procedure ; such a report could lead to the adoption of a second parliamentary opinion, as provided for in par. 7 of the Joint Declaration,

---

(5b) When the report from the Committee of Permanent Representatives to the Council differs significantly from the opinion of Parliament, the President of the Council shall establish contact with the President of Parliament who may be accompanied or represented by the chairmen and/or the rapporteur of the competent committee of Parliament. He shall submit a report on this exchange of views to the Council.

- taking care to choose the composition of its delegation not only in function of its internal political balances but also bearing in mind the composition of Council,
- coordinating more effectively the positions adopted by its various bodies, in order to ensure they are consistent and can be implemented within the budgetary resources available,
- stepping up the interaction between legislative procedures (legislative opinion, cooperation procedure and assent) and budgetary procedures (updating of financial perspectives, establishment of budgets, transfer and carrying-over of appropriations and discharge),
- providing its conciliation secretariat with an administrative structure and resources comparable to those of a small parliamentary committee, able to coordinate the conciliation procedures involving the various parliamentary committees.

12. instructs its President to forward this resolution to the Commission, the Council and, as regards its internal aspects, to the Bureau of Parliament.

## EXPLANATORY STATEMENT

1. In this report, we examine the conciliation procedure (procédure de concertation) as used in the legislative procedure (for legislation with budgetary significance). Conciliation in the budgetary procedure as such is not the subject of this report. The report has been drafted in light of the valuable opinions provided by the Budget Committee, the Legal Affairs Committee and the Political Affairs Committee.
2. The conciliation procedure in the legislative process has often been criticized and it has even been suggested that the procedure could be quietly forgotten, at least in those areas now covered by the cooperation procedure. This report argues that such an attitude would be a mistake. Notwithstanding its manifest limitations, the conciliation procedure does have certain advantages, actual and potential, which should not be thrown away. Indeed, they could be developed.
3. The text (6) of the 1975 Joint Declaration of the Parliament, the Council and the Commission which agreed upon and defined this procedure is as follows :
  - 1) A conciliation procedure between the European Parliament and the Council with the active assistance of the Commission is hereby instituted.
  - 2) This procedure may be followed for Community acts of general application which have appreciable financial implications, and of which the adoption is not required by virtue of acts already in existence.
  - 3) When submitting its proposal the Commission shall indicate whether the act in question is, in its opinion, capable of being the subject of the conciliation procedure. The European Parliament, when giving its opinion, and the Council may request that this procedure be initiated.
  - 4) The procedure shall be initiated if the criteria laid down in paragraph 2 are met and if the Council intends to depart from the opinion adopted by the European Parliament.
  - 5) The conciliation procedure shall take place in a 'Conciliation Committee' consisting of the Council and representatives of the European Parliament. The Commission shall participate in the work of the Conciliation Committee.

---

(6) See OJ No C 89, 22.4.1975



- 6) The aim of the procedure shall be to seek an agreement between the European Parliament and the Council.

The procedure should normally take place during a period not exceeding three months, unless the act in question has to be adopted before a specific date or if the matter is urgent, in which case the Council may fix an appropriate time limit.

- 7) When the positions of the two institutions are sufficiently close, the European Parliament may give a new opinion, after which the Council shall take definitive action."

It is couched in terms that imply a certain number of obligations for Council. For example, it states that the 'procedure shall be initiated if the criteria laid down ...are met'. Its aim is 'to seek an agreement between the European Parliament and the Council'. It is up to the Council to take a final decision 'when the positions of the two institutions are sufficiently close'.

In reality, implementation of the conciliation procedure has been somewhat removed from this apparent obligation to negotiate and seek agreement. Mrs Veil as President of the European Parliament, already in November 1981 summarized the position as follows :

Before direct elections, only three conciliation procedures were carried out in full, whereas eight were suspended and one was turned down by the Council. Since direct elections in 1979, the situation has deteriorated further : thirteen applications have been submitted, and the only follow-up has been two rejections" (7).

The main reason that has been quoted for this lack of success of the conciliation procedure is the frequently very long time taken by the Council to formulate a common position after the Parliament has requested the opening of the conciliation procedure. For example, it was not until the end of 1986 that the Council transmitted a common position on a Commission proposal of July 1982 for a modifying regulation on 'own resources' on which the Parliament had submitted its opinion in December 1982.

Moreover, as the ultimate power to legislate has up to now been almost entirely in the hands of the Council, the procedure has in practice been merely an attempt by MEPs to beg Members of Council to think again. The parliamentary delegation has no bargaining position vis-à-vis Council other than, possibly, delaying tactics, which are frequently unsuitable, since enough delay occurs in Council without Parliament wishing to cause further delays. Council therefore has had little incentive to negotiate with Parliament, especially when this would re-open negotiations within Council itself, and quite

---

(7) Speech by Mrs Veil to Joint Meeting of the EP Bureau and Foreign Ministers , See EP Bulletin no 50, 14 December 1981, page 18

possibly endanger a compromise which Council may have reached only with the greatest difficulty. Only since the entry into force of the Single European Act has this situation changed (see paragraph 9 below).

4. Nevertheless, the conciliation procedure in its current form has not always ended in failure. There have been some notable examples of successful or partially successful conciliation. Among these are :

a) the Food Aid Regulation adopted in 1986, recently described in an article in the Revue du Marché Commun (8) in which Parliament ultimately achieved satisfaction on almost all of the twelve substantive amendments it had proposed, including a transfer of the power to decide on food aid quantities from Council to the Commission.

b) Regulation on the fourth New Community Instrument (NIC IV) on 9 March 1987 on which, in the words of its delegation leader Mr Dankert :

'For the first time ever a conciliation procedure between the Council and Parliament has resulted in total agreement'

Parliament obtained concessions on receiving information directly from the European Investment Bank on the implementation of the NIC, on the permanence of the new regulation (need for a new Commission proposal) and on its application to undertakings other than small and medium-sized undertakings (SMUs).

c) New regulation on agricultural structures, in which the conciliation meeting on 19 June 1987 agreed on one change to the text of the regulation (concerning its scope) and also adopted a 'Joint Declaration of the Parliament, the Council and the Commission'. The latter laid down a number of considerations with regard to the role of structural policy in the reform of the CAP, stating that these orientations could be considered as laying down a set of reference values for the implementation of the measures adopted.

These three examples are recent ones. There are others from earlier years, notably the conciliation on the Financial Regulation in 1977, in which Parliament obtained a number of significant concessions which strengthened its powers in the budgetary procedure.

5. These examples show that it is possible to achieve some positive results from the conciliation procedure. A moderately successful conciliation is worth more than a dozen parliamentary resolutions urging the Council to take action. Despite the considerable number of failures, the procedure is worth maintaining as :

---

(8) Claude Berger : Un exemple de concertation réussie : Le Règlement no 3972/86 du Conseil in RMC no 305, Page 161

- it is the only procedure permitting a direct confrontation between Parliament and Council as a whole. Ministers are confronted by the physical presence of MEPs, and it is possible to make a direct input to Council that has not previously been filtered by national officials (or by the Commission)
- it would be difficult for Council systematically to refuse all Parliament requests
- Council is not monolithic and it is sometimes possible to re-open discussions within Council.

6. It is possible to envisage a number of ways in which the procedure as it now stands could be improved. Among these are the following :

- a) Parliament should make more systematic and complete use of the present procedures. It should call for the opening of the conciliation procedure for all major and appropriate items to which it might be applicable, and it should ensure that, in accordance with Rule 43(4) of its Rules of Procedure, a proper report on the outcome is presented to plenary. Such a report could lead to the adoption of a second parliamentary opinion as provided for in par. 7 of the Joint Declaration. This would also enable such concessions as joint declarations to be formally adopted by Parliament.
- b) Parliament should choose the composition of its delegation not only in function of its own internal political balances but also in function of political balances in the Council. An important factor in the successful Food Aid conciliation could have been the fact that the leader of Parliament's delegation and the President-in-Office of the Council were members of the same national political party. A selection of some of the members of Parliament's delegation in the light of the composition of the Council could prove useful.
- c) Preliminary contact should be established, if possible as soon as Parliament has requested conciliation and before Council has adopted its common position. Such contacts, if successful, might obviate the need for a full conciliation procedure. These contacts should be established on the basis of the agreement of 4 October 1971, when Parliament and Council agreed that "when the report from the Committee of Permanent Representatives to the Council differs significantly from the opinion of Parliament, the President of the Council shall establish contact with the President of Parliament who may be accompanied or represented by the chairmen and/or the rapporteur of the competent committee of Parliament. He shall submit a report on this exchange of views to the Council."
- d) The legislative planning procedures, if enlarged to involve Council, could be used to deal with general questions regarding conciliation (coordination, timetable of meetings, etc.)

PE 119.038/fin.

- e) Parliament's conciliation secretariat should be provided with an administrative structure and resources comparable to those of a small parliamentary committee (i.e. a small division) able to coordinate the conciliative procedures involving the various parliamentary committees. With their colleagues from the other institutions, these officials should be responsible for the minutes of conciliation committee meetings and for the drafting of joint declarations at the end of the procedure.
  - f) The chairmanship of conciliation meetings should alternate between Parliament and Council.
  - g) It should be possible to deal with several legislative proposals in a particular area at the same meeting.
  - h) Parliament's delegations should always have at least one preparatory meeting.
7. In addition, Parliament has made two sets of proposals to extend the conciliation procedure to all particularly important matters. The first were set out in a resolution of 9 July 1981 :

The European Parliament,

- Urges the Council to extend the conciliation procedure laid down in the declaration of 4 March 1975 to all of the Commission's proposals to the Council to which Parliament attaches especial importance and on which it requests that the conciliation procedure be opened when it delivers its opinion ; and considers that the legal acts which might be the subject of conciliation should include those concerning the further constitutional development of the Community and decisions on specific Community policies ;
- Takes the view that the requested extension of the areas in which conciliation may be held should be accompanied by a tightening-up of procedures and a more efficient organization of work within the conciliation committee ;
- Calls upon the Council to deliver its 'common guidelines' in future within a period fixed by Parliament in the opinion in which it requests conciliation ;
- Calls upon the Council always to be fully represented in the conciliation procedure and to give sufficient powers to its representatives to enter into negotiations ;
- Intends for its part to do its utmost to increase the efficiency of the contribution of Parliament's delegation to the work of the conciliation committee ;
- Demands that the Council give an undertaking to take a decision following conciliation within a period fixed by the conciliation committee ;"

PE 119.038/fin.

Meanwhile, the Commission had started work on a second Joint Declaration and submitted a draft to Parliament. It proposed that the conciliation procedure should be applied to all important Community acts, as requested by Article 58 of the Parliament's Rules of Procedure, and should be instituted at the request of any of the three institutions involved.

In the De Pasquale report (9), Parliament substantially modified the Commission text but accepted its main points. It put forward three main demands :

- extending the field of application of the procedure ;
- the possibility for the procedure to be initiated at the request of the Council or Parliament
- the immediate holding of the first conciliation meeting between Parliament and the Council, with the active collaboration of the Commission, before they have adopted their respective positions on the proposal under discussion.

8. The question of extending the procedure is still on the table. In the Stuttgart 'Solemn Declaration', the European Council undertook to 'enter into talks with the European Parliament and the Commission with the aim, within the framework of a new agreement, of improving and extending the scope of the conciliation procedure' (10). The Commission, the Parliament and all the Member States except Denmark have since agreed on the principle of extending it to include all significant Community legislation. Parliament should now return to this question and try to put pressure on Council to take a decision in an area in which it can, after all, act by a simple majority.
9. A review of the conciliation procedure is perhaps most important of all with regard to its possible combination with the new cooperation procedure. Here, an entirely new dynamic could apply. Parliament's powers under the cooperation procedure to reject a text in the second reading (rejection which can only be overridden unanimously by the Council) means that Parliament has a reasonable bargaining position provided at least one Member State shares its point of view. If its amendments were difficult to accept for other Member States in the Council, it would be desirable to seek compromises acceptable to Parliament before Council adopts its common position.

Various methods of contact and negotiation between Parliament and Council can be envisaged. They may prove difficult to establish, however, and the conciliation procedure has the merit of existing and taking place at the right moment in the procedure (i.e. after Parliament has given its opinion and before Council adopts its

---

(9) Doc. 1-984/83

(10) Stuttgart Solemn Declaration on European Union (19 June 1983), paragraph 2.3.6. EC Bull.-6 (1983) pp. 24-29

common position). As both Council and Parliament have an interest in having an effective mechanism for negotiating compromises, they both have an interest in extending the conciliation procedure to cover all items included in the Cooperation Procedure. Such an extension need not lead to an undue proliferation of conciliation meetings if the measures proposed in par. 6 c), d) and g) above are implemented. In any case, Parliament should test the possibilities in those areas where they can already be combined, such as on individual research programmes.

MOTION FOR A RESOLUTION (DOC. B 2-786/87)  
tabled pursuant to Rule 63 of the Rules of Procedure  
by Mr PROUT  
on the conciliation procedure

---

The European Parliament,

- A. having regard to the less than satisfactory functioning of the conciliation procedure on legislative proposals with budgetary implications,
- B. having regard to the Solemn Declaration of Stuttgart, in which the European Council undertook to enter into talks with the European Parliament and the Commission with the aim, within the framework of a new agreement, of improving and extending the scope of the conciliation procedure provided for in the Joint Declaration of 4 March 1975<sup>1</sup>,
- C. having regard to the Commission proposal<sup>1</sup> to give effect to this proposal and Parliament's opinion<sup>2</sup> on it,
- D. whereas the Council has not been able to adopt a common position in order to enter into negotiations on this matter, owing to the obstructionism of one national delegation,
- E. having regard to the new cooperation procedure, in which Parliament has the right to reject legislation in its second reading (such rejection only surmountable by unanimity in the Council),
- F. having regard, therefore, to the need for a mechanism enabling Council and Parliament to negotiate compromises in order to avoid difficulties in the second reading,
- G. whereas the conciliation procedure is the only existing mechanism permitting such negotiations,
- H. whereas the conciliation procedure does not apply to the articles covered by the cooperation procedure,
- I. having regard to other deficiencies in the conciliation procedure,
  1. Calls upon the Council to open negotiations with Parliament and the Commission in order to improve and extend the scope of the 1975 agreement;
  2. Considers it essential to extend the scope of the conciliation procedure, at least to include all those subjects covered by the cooperation procedure,
  3. Resolves to improve its own internal procedures for preparing and following up conciliation meetings, notably :
    - a. by making more systematic and complete use of the existing procedures, notably by invoking the conciliation procedure for all major legislative items to which it might be applicable,

<sup>1</sup>COM 81(816) final

<sup>2</sup>OJ C 10 (1984) p.34

- b. to ensure that its plenary session receives adequate reporting and draws adequate conclusions from the results of conciliation procedures in accordance with Rule 43(4) of its Rules of Procedure,
  - c. more carefully to choose the composition of its delegations in order to take account, inter alia, of the personalities and political balances within the Council,
  - d. to ensure that Parliament delegations systematically have preparatory meetings,
  - e. to seek to establish preliminary contacts with the Council at the level of rapporteurs or officials,
  - f. to insist on rotating chairmanship of the conciliation committee and joint minuting of its results.
4. Instructs its President to forward this resolution to the Council and the Commission.



OPINION

(Rule 120 of the Rules of Procedure)

of the Committee on Budgets

Draftsman: Mr P. Dankert

On 1 December 1987, the Committee on Budgets appointed Mr Dankert draftsman of the opinion.

The Committee considered the draft opinion at its meetings of 26/27 January 1988 and 21/22 September 1988 and at the last meeting adopted the conclusions unanimously.

The following were present at the vote: Mr Cot, Chairman; Mr Dankert, draftsman; Mr Arias Canete, Mr Bird, Mr Caamano Bernal, Mr Calvo Ortega, Mr Colom i Naval, Mr Hackel, Mrs Hoff, Mr Louwes, Mrs Scrivener, Mrs Theato, Mr Tomlinson, Mr Vanlerenberghe and Mr von der Vring.

1. The rapporteur has described the origins of the conciliation procedure and the suggestions made in the past for improving it in a working document (PE 124.443). The procedure is governed by a Joint Declaration of the European Parliament, the Council and the Commission of 4 March 1975 (1). The way in which the procedure operates in practice has been described in a note produced by the Secretariat (PE 124.445). In the light of these background notes and the provisions of the Single European Act and of the Interinstitutional Agreement of June 1988, this opinion aims to make suggestions for further improvements in the legislative consultation procedure.

2. The Single European Act has substantially altered the legislative procedure for a number of decisions covered by the Act (2) by adding a new paragraph to Article 149 of the EEC Treaty (see Annex), which introduces a procedure in two readings. The first reading, in both Parliament and in the Council, follows exactly the same pattern as for 'standard' legislation which does not fall within the scope of the Single European Act and for which a conciliation procedure is requested, with the one difference that the Council decision in first reading in the cooperation procedure (Single European Act) is referred to as the common position whereas under the conciliation procedure (1975 Declaration) reference is made to a 'common orientation'.

3. After the Council has communicated its common position, Parliament has three months in which to deliver an opinion in second reading and, possibly, propose amendments adopted by an absolute majority of its component members. The Council then has to deliver an opinion on Parliament's amendments. If the Commission has accepted Parliament's amendments, unanimity is required for the Council to amend them; if the Commission does not accept Parliament's amendments, the Council may nonetheless adopt the amendments but must do so unanimously.

4. This new procedure is a promising development insofar as it relates to proposals which the Council also regards as being of some urgency. However, where the Council fails to secure the majorities required to change or adopt Parliament's amendments, Article 149(2)(f) stipulates that the Commission proposal shall be deemed not to have been adopted.

5. The similarities between the cooperation procedure and the conciliation procedure are obvious: both allow a three-month period of reflection after the Council's first reading, in the first case for Parliament's second reading and in the second for conciliation between the Council and Parliament followed by Parliament's second opinion. Unlike the Single European Act, the 1975 Declaration does not stipulate by what majority the Council is required to take its final decision after Parliament's second opinion.

(1) Treaties, 1987 edition, Part I, p. 1097 (annex to working document)

(2) Decisions can be taken by the Council by a qualified majority pursuant to:

- Art. 7: Ban on discrimination on grounds of nationality,
- Art. 49: Freedom of movement for workers,
- Art. 54(2) and Art. 56(2): Freedom of establishment,
- Art. 57: Mutual recognition of diplomas,
- Art. 100a and 100b: Internal market,
- Art. 118a: Improvements in the working environment,
- Art. 130e: ERDF implementing decisions,
- Art. 130q: Specific research programmes

6. Consequently there is no reason to assume that the change in Article 149 of the EEC Treaty introduced by the Single European Act was in any way designed to curtail the conciliation procedure or, more specifically, to abolish the possibility of conciliation meetings between the Council and Parliament during the cooperation procedure. Such discussions could be extremely valuable when there are signs that there may be stalemate in communications between the two institutions during the second reading.

7. It would be physically impossible to hold a separate conciliation meeting for each of the some 300 legislative decisions that have to be taken to implement the Single European Act. If this difficulty is to be overcome, Parliament will have to define its priorities for legislation much more precisely and then display a degree of caution and pragmatism in assessing whether or not the Council's views are at variance with Parliament's opinion. At the same time arrangements will have to be made to deal with different items of legislation at a single conciliation meeting where necessary. It is clear that the priorities established must go further than the 'institutional development' of the Community or the implementation of the Single European Act. In particular, they should indicate what is regarded as feasible within broad areas of policy, such as agriculture, research or the environment.

8. Finally, it should be noted that under the Single European Act the conclusion of Association Agreements pursuant to Article 238 of the EEC Treaty will in future be conditional upon the assent ('avis conforme') of the European Parliament. This aspect will not be discussed here.

## II. OTHER IMPROVEMENTS

### A. Power to initiate legislation

9. It was indicated above that the Joint Declaration of 30 June 1982 gave Parliament a kind of right of initiative as regards legislation. Very little advantage has been taken of this possibility so far. However, more generally it can be said that the Commission has been increasingly willing not only to give sympathetic consideration to Parliament's legislative initiatives but actually to take them over. Parliament has so far put this willingness to the test with requests formulated in rather general terms and, from time to time, with detailed draft regulations, etc. The draft treaty for the European Union which gave rise to the Single European Act and the draft Joint Declaration which led to the Interinstitutional Agreement on budgetary discipline and improvements in the budgetary procedure are outside the scope of the usual legislative procedure but would appear to be good examples of this approach.

### B. Amendments to Commission proposals

10. In paragraph 9 it has already been explained that when approving the Joint Declaration of 1975 Parliament expressed the view that the Council should not be able to change Parliament's amendments (after conciliation) unless by a unanimous decision. The Council has never agreed to do so. This approach has since been abandoned, firstly as a result of the Single European Act and secondly through Parliament's Rules of Procedure.

11. Rule 40(2) of Parliament's Rules of Procedure states that where the Commission does not intend to adopt all Parliament's amendments to its proposals the Commission proposal can be referred back to the relevant parliamentary committee. If one of Parliament's amendments is incorporated into the Commission proposal, a unanimous decision is required pursuant to Article 149 of the EEC Treaty for the Council to depart from it.

12. The ECOFIN Council has opted for a similar procedure to enable it to exercise control over the Agriculture Council. Under the Council decision concerning budgetary discipline (3), the Commission may not submit price proposals if their financial implications exceed the agriculture guideline. If the Council nonetheless wishes to set higher prices, it can only do so by amending the Commission proposal, which requires a unanimous decision.

13. There is nothing to prevent this procedure from being extended to Parliament's second opinion after the conciliation procedure. This would bring the conciliation procedure more closely into line with the cooperation procedure set out in the Single European Act where, if the Commission accepts Parliament's amendments from the second reading, any decision by the Council to adhere to its original text amounts to a change in the Commission proposal which cannot be made except by a unanimous decision.

14. The significance of this procedure should not be exaggerated. Many Council decisions not covered by the cooperation procedure in the Single European Act nonetheless require a unanimous decision in the Council. Such cases include:

- reform of the structural funds (Article 130d of the EEC Treaty),
- the framework programme for research and technological development (Article 130i) and the setting up of joint undertakings in this context (Article 130o),
- basic decisions for Community action on the environment (Article 130s),
- decisions pursuant to Article 235 where the Treaty has not provided specific powers for the Community (for example the basic regulation on food aid and cooperation with non-associated developing countries).

However, even outside the cooperation procedure laid down in the Single European Act there are areas in which the Council can take decisions by a qualified majority, for example:

- the Common Customs Tariff (Articles 20 and 28),
- agricultural policy (Article 43),
- transport policy (Article 75) provided that the provisions would not be liable to have a serious effect on the standard of living and employment in certain areas and on the operation of transport facilities.

### C. Legislative programme

15. Following the entry into force of the Single European Act Parliament has introduced the concept of the 'legislative programme' into its Rules of Procedure (Rule 29(4)). This move reflects a recognition that it will not be possible to complete the single market by 1992 unless the necessary decisions are taken according to a strict timetable and a concern to improve planning to give Parliament a more reasonable period in which to deliver its opinion.

16. Insofar as the Commission and the Council are involved in drawing up the legislative programme, this new procedure may solve a problem which has arisen in the past i.e. the delay between the adoption of Parliament's opinion and the adoption of a common position/orientation by the Council. There have been fewer delays of this kind recently, apart from the 1988 budget and the revision of the Financial Regulation.

---

(3) Decision of 24 June 1988, OJ No. L 185, 15.7.1988

17. The debate preceding adoption of the legislative programme could provide an opportunity for establishing priorities and criteria for determining whether a conciliation procedure is necessary.

#### D. The Interinstitutional Agreement

18. The Interinstitutional Agreement on budgetary discipline and improvement of the budgetary procedure has established a multiannual financial framework for Community policy. What is more, the agreement requires (Articles 10 and 12) Parliament's approval for a revision of the financial perspective, even in the case of 'compulsory' expenditure. This provision is explicitly confirmed by the Council Decision of 24 June 1988 concerning budgetary discipline, Article 16 of which states:

'The financial implementation of any Council Decision exceeding the budget appropriations available in the general budget or the appropriations provided for in the financial estimates may not take place until the budget and, where appropriate, the financial estimates have been suitably amended according to the procedure laid down for each of these cases.'

19. To prevent differences of opinion arising in the application of this article and, subsequently, in the budgetary procedure, it is crucial that Parliament, the Council and the Commission should agree on the financial implications of each legislative decision. The institutions will thus be required to make much more thorough preparations for the conciliation procedure than has hitherto been the case. They will have to take the necessary in-house measures to ensure that their various departments work together effectively within the priorities established in consultation with the other institutions.

20. Thought should therefore be given to measures to improve the financial and economic analysis of legislative proposals and decisions. At the same time, the institutions should work out a way of incorporating their joint assessment of the financial implications of an item of legislation into the relevant decision.

21. The Commission systematically includes a financial record sheet in all its legislative proposals. Despite commendable efforts to improve the information provided, it is still inadequate. The wording and the methods of calculation and reliability differ from sector to sector. Additional data is provided in documents whose legal status is sometimes dubious. Moreover the data is not always updated when a proposal is amended. Parliament is hardly ever notified of the financial implications of changes made by the Council to a Commission proposal. For such information Parliament generally has to wait until the next preliminary draft budget or, more specifically, the section of it giving a line by line analysis.

22. The financial record sheet could be improved by matching the data now given with the information provided in the preliminary draft budget and adding a section on the economic impact of the proposed measures. The combined statements for the budget and for legislation could be issued in loose-leaf form. The record sheets enclosed with proposals for legislation and the analyses in the preliminary draft budget could then be inserted as supplements and replacements in this loose-leaf edition. This would also make it easier for Parliament to weigh up the financial implications of its own amendments.

23. The information provided obviously has to give a full picture of the financial implications of the proposal throughout the period covered by the Interinstitutional Agreement. Consequently, it must also provide a basis on which the Council and Parliament can establish the extent of the financial implications. The present situation is unsatisfactory in that discrepancies often arise between the estimated financial implications of a regulation and the final decisions taken in the budget. In connection with the 1988 budget, Parliament has already indicated that in future its budget amendments will not necessarily tend to exceed the estimates of expenditure set out in the regulation. The limits imposed on various categories of expenditure by the Interinstitutional Agreement mean that Parliament will inevitably make greater use than hitherto of offsetting amendments, i.e. increases in appropriations for priority measures will be offset by reducing expenditure in areas with a lower priority. In these circumstances, it is in the interests of both the Council, the Commission and Parliament that precise agreements should be reached and referred to in the relevant regulation.

24. The Community's present institutional structure does not allow sections of legislation to be presented in the form of a joint decision by the Council and the Parliament. However there is nothing to prevent a reference being made to the existence of such an agreement in the preamble to a Council decision. The conclusion of agreements of this kind will call for considerable efforts within Parliament in terms of the preparation and coordination of different legislative procedures and of the legislative and budgetary procedures. If financial agreements with the Council are confirmed in Parliament's second reading, it is logical that this should be by the qualified majority required for budget amendments. This is automatically the case in the cooperation procedure laid down in the Single European Act. It would be an innovation in the conciliation procedure.

#### E. Information on Council activities

25. Despite all the good intentions and solemn declarations, the explanations given by the Council during the conciliation procedure as to why it has departed from Parliament's opinion are still extremely vague and generally come down to the fact that there was no majority in the Council in favour of Parliament's proposals.

26. The Single European Act allows the Commission itself to obtain information on what actually happened within the Council (Article 149(2)(b)). Thus there is no longer much point in the Presidency of the Council confining itself to non-committal statements. Consequently, there has been real progress in the various sectors where the cooperation procedure laid down in the Single European Act is applied. However, the information given does not go as far as to discuss the vote on each amendment, as requested in Parliament's resolution approving the 1975 Joint Declaration.

27. The texts governing the standard conciliation procedure are no less clear than the Single European Act as regards the Council's obligation to disclose information. Consequently there is no reason why the improvements seen in decisions coming under the Single European Act should not be extended to all legislative procedures. The recent conciliation meeting of 19 April 1988 on Council decisions in the agriculture sector marked a significant step forward. The President of the Council, Mr KIECHLE, provided information on the majority within the Council and on the position of the minority blocking further progress. The Joint Declaration winding up the conciliation procedure included the following statement:

'Due account will be taken of the Opinions of the European Parliament and the latter will be fully associated with future revisions of regulations concerning agricultural stabilizers, with the conciliation procedure being used if necessary. To this end, the President of the Council will maintain appropriate contacts with the Committee on Agriculture of the Parliament and will keep the Parliament informed of progress in the Council's proceedings.'

#### F. Starting the conciliation procedure earlier

28. The last part of the declaration quoted above also means that the conciliation procedure can be started before the Council arrives at its common position/orientation. This part of the conciliation procedure should involve the Presidency of the Council and the relevant parliamentary committee, the latter ensuring that representatives of the committees asked for their opinions are invited to the meetings well in advance.

29. Parliament itself could also take steps to bring forward the conciliation procedure. It could appoint its delegation to the conciliation meeting at an earlier stage, for example as soon as the conciliation procedure has been requested, i.e. immediately after the vote on its opinion to the Council.

#### G. Technical preparatory work

30. A number of conciliation procedures require formal or informal preparatory work of a technical nature, either by the rapporteur and the President of the relevant Council or involving the Secretariats of the two institutions. The formula used is the Trialogue, both for the Joint Declaration of 29 June 1982 and for the Interinstitutional Agreement of 29 June 1982; it was also used in the conciliation procedure on the future financing and reform of the structural funds and proved extremely successful.

31. At various stages in the negotiations, the delegations of the three institutions referred back to a technical working party composed of expert officials from the three institutions. This working party was also given detailed terms of reference ranging from the analysis of the points of agreement and disagreement to outlining possible solutions to the key issues and drafting an agreement with the wording of contested paragraphs in brackets, partly based on proposals made by Commission representatives. At a certain juncture it emerged that a meeting between Parliament's rapporteur and the President of the relevant Council was necessary to point the working party in the direction in which it should proceed. The officials of each institution obviously reported back to their political authorities which were not of course in any way committed by the views put forward on their behalf in the working party during the conciliation procedure.

32. In view of the success of this arrangement, it has since been extended to other legislation on the future financing of the Community and reform of the structural funds. This particular conciliation procedure was expanded to take in no less than nine legislative proposals. Despite the fact that there was only a period of a few days between adoption of the common orientation by the Council and the conciliation meeting, the meeting was a success. First of all clear priorities were established at a preparatory meeting of Parliament's delegation. As a result, two of the nine proposals were virtually finalized. For the remaining seven regulations, the technical working party was instructed to try to find a solution acceptable to all the institutions as regards drafting problems and then to clarify to what extent each of the institutions was prepared to make concessions and, if possible, to work out a possible compromise. It emerged that although the Council was unable to give

way on any of the essential elements of the compromise reached by the European Council in Brussels, such as the annual ceiling on revenue, a separate Council decision on budgetary discipline and the arrangements for agricultural surpluses, it was prepared to make significant concessions on other points of concern to Parliament in return for a speedy conclusion of the procedure.

33. Agreement was thus reached on changes to the texts of the six regulations and decisions but not in the case of the regulation on agricultural surpluses. Some improvements were purely technical in nature but in most cases fundamental political issues were at stake, such as:

- change in the legal basis and in various recitals of both the decision on own resources and the decision on budgetary discipline, it being stipulated that the Council must create adequate own resources to cover all foreseeable expenditure and a firm legal basis being created for the Interinstitutional Agreement;
- far-reaching changes in the article of the own resources decision dealing with the supervisory powers of the Commission and the Court of Auditors;
- change in one recital and one article of the decision on budgetary discipline whereby compulsory expenditure in sectors other than agriculture is also subject to the Interinstitutional Agreement; insertion of an article making the implementation of any legislative decision conditional upon the availability of funds over which Parliament has joint control through the budget and the Interinstitutional Agreement;
- change in two articles in the regulation on the structural funds strengthening the link between structural policy and completion of the internal market and stepping up cooperation between the Commission and local and regional authorities.

In addition, in the case of a whole series of articles, statements by the Council and/or Commission were recorded in the minutes setting out an interpretation consistent with that advocated by Parliament, for example on further improvements in the management of agricultural expenditure by month and by COM or on the possibility of carrying over appropriations from year to year to meet the targets set in the financial perspectives.

34. In all, 17 recitals or articles were amended and statements were recorded on 11 other points. Apart from preparation, other factors undoubtedly contributed to the success of this conciliation procedure, for example the pressure on the Council to complete the future financing package before the European Council meeting in Hanover, the skill and political determination of the Presidency of the Council, Parliament's concentration on issues that either followed on naturally from the Interinstitutional Agreement or which sought to make objective improvements to the texts and the frank but sometimes tough way in which it had put forward its views and challenged those of the Commission at an earlier stage both in the debate in the plenary and in meetings between the rapporteur and the relevant Member of the Commission.

35. Not all conciliation procedures are as complex as the Interinstitutional Agreement or require extensive technical preparation. However, if conciliation meetings were to become part of the cooperation procedure laid down in the Single European Act, meetings would inevitably have to deal with more than one item of legislation. During conciliation meetings in practice it is seldom possible to discuss more than a few major issues in depth and it would therefore be easier to arrive at a compromise on these points if



acceptable solutions had already been found to the other less vital issues and if the main elements of a possible compromise could be submitted in advance so that the conciliation meeting could then concentrate on them.

36. Parliament therefore needs to strengthen its Secretariat for the conciliation procedure. At present the Director and one senior administrator of the joint secretariat of the Committee on Budgets and the Committee on Budgetary Control are responsible for the secretariat for conciliation meetings in addition to their normal duties. In 1987 this secretariat organized four conciliation meetings, each of which necessitated, in addition to preparatory meetings of Parliament's delegation and the conciliation meetings themselves, preparatory meetings with the Chairman of the delegation, the Secretariats of the committees responsible and sometimes with the Council Secretariat. In 1988 four conciliation meetings were held for the Interinstitutional Agreement alone and there were some eight meetings of the working party. In addition, there were four ordinary conciliation procedures during the first six months, two of which concerned a series of different items of legislation: agricultural structures and stabilizers, future financing and structural funds.

37. If the conciliation procedure were to be extended along the lines advocated here, the conciliation secretariat would have a workload comparable to that of a parliamentary committee secretariat. Not only would the number of conciliation meetings increase but the support required by Members would expand proportionately.

Since Parliament's delegation would be appointed at an earlier stage it would require more detailed analyses of the common orientation/position of the Council and would need to know the salient points of the legislative procedure underway and of the related files. It would have to be able to assess the financial resources that could be earmarked for the proposed measure, within the financial perspective set out in the Interinstitutional Agreement and in terms of Parliament's policy priorities for the relevant area of expenditure as a whole.

38. If the conciliation procedure is to be effective, preparatory work must commence well before Parliament delivers its opinion, particularly to ensure that the objectives pursued in first reading are consistent with the political and financial framework of the legislative programme, the budget and the multiannual financial perspectives.

This all depends on information permitting an assessment of the financial impact of amendments to the Commission proposal being available to parliamentary committees in drafting their report and, subsequently, to the political groups and individual Members when tabling amendments.

39. Strengthening the conciliation secretariat involves more than simply increasing the staff resources and computer hardware. If it is to operate effectively, the secretariat must bring together specialists from both the committee responsible for the legislative procedure for which conciliation has been requested and from the two budgetary committees. It must be able to count on the expertise acquired by the 'horizontal' service, i.e. the present conciliation secretariat. Only then will it be able to provide Parliament's delegation with the backup it requires during the conciliation procedure and, when necessary, organize a number of conciliation procedures which may run concurrently or be dealt with at a single conciliation meeting; such a structure would also ensure that Parliament was properly represented on technical interinstitutional working parties.

40. It would obviously be impossible to transfer all these officials to a 'vertical' department or to create so many new posts in Parliament's establishment plan. However it should be feasible to make one official in each of the committee secretariats responsible for monitoring progress in matters going to conciliation. They would form a group of specialist officials whose work would be coordinated by a permanent central unit. To do its job properly, the central unit would still require a separate administrative structure and more staff than it has now. This suggestion is in line with the requests repeatedly made by the Committee on Budgets since 1978 (4).

### III. CONCLUSIONS

41. In the light of this, the rapporteur concludes that some of the improvements in the conciliation procedure called for by Parliament in 1975 and 1983 have already come about, either because the entry into force of the Single European Act has dispelled the misgivings of certain Council delegations, or because the pragmatic application of the 1975 agreement has created convincing precedents. It should therefore be possible to modify the 1975 Declaration with a view to:

- extending its application to any legislative decision of a general nature, irrespective of the financial implications of the legislation in question,
- highlighting the importance of the legislative programme of Parliament and the Commission, in the preparation of which the Council should be more closely involved in order to avoid too long a delay between Parliament delivering its opinion and the Council adopting its common orientation,
- ensuring that Parliament is more systematically and fully informed of progress in the Council's proceedings and of the reasons which might have prompted the Council to depart from Parliament's opinion,
- creating an interinstitutional structure allowing:
  - . several legislative proposals to be dealt with at a single conciliation meeting,
  - . technical preparation of conciliation meetings so that the meetings themselves can concentrate on the vital points at issue.

42. To this end the Committee on Budgets suggests the following improvements in the conciliation procedure:

- the conciliation procedure should be remodelled on the lines of the cooperation procedure set out in the Single European Act by allowing Parliament to deliver a second opinion after conciliation, as it does in the second reading of the cooperation procedure;
- it should be possible to convene a conciliation meeting in the three months between the two readings in both the conciliation procedure and in the cooperation procedure;
- agreement should be reached on the improvements to be made to the financial record sheet contained in the Commission proposal and on a way of formally noting the fact that the three institutions agree on the financial implications of a legislative decision.

43. The credibility of improvements to be made to the conciliation procedure and interinstitutional cooperation will largely depend on the measures taken within each institution to strengthen cohesion in establishing priorities and to take proper account of the positions of the other institutions. The Committee on Budgets will deal with this aspect in a separate report covering among other things implementation of the Interinstitutional Agreement on budgetary discipline and the improvement of budgetary discipline.

44. The strengthening of the conciliation procedure implies a favourable response to the request made by the Committee on Budgets since 1978 that the conciliation secretariat should be given resources comparable to those of a parliamentary committee. It could bring together the officials responsible for monitoring conciliation procedures in their respective parliamentary committee and would be coordinated by a central unit with greater resources than at present.

Article 149(2) of the EEC Treaty,  
as amended by the Single Act

2. Where, in pursuance of this Treaty, the Council acts in cooperation with the European Parliament, the following procedure shall apply:

- (a) The Council, acting by a qualified majority under the conditions of paragraph 1, on a proposal from the Commission and after obtaining the Opinion of the European Parliament, shall adopt a common position.
- (b) The Council's common position shall be communicated to the European Parliament. The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's proposal.

If, within three months of such communication, the European Parliament approves the common position or has not taken a decision within that period, the Council shall definitively adopt the act in question in accordance with the common position.

- (c) The European Parliament may within the period of three months referred to in point (b), by an absolute majority of its component members, propose amendments to the Council's common position. The European Parliament may also, by the same majority, reject the Council's common position. The result of the proceedings shall be transmitted to the Council and the Commission.

If the European Parliament has rejected the Council's common position, unanimity shall be required for the Council to act on a second reading.

- (d) The Commission shall, within a period of one month, re-examine the proposal on the basis of which the Council adopted its common position, by taking into account the amendments proposed by the European Parliament.

The Commission shall forward to the Council, at the same time as its re-examined proposal, the amendments of the European Parliament which it has not adopted, and shall express its opinion on them. The Council may adopt these amendments unanimously.

- (e) The Council, acting by a qualified majority, shall adopt the proposal as re-examined by the Commission.

Unanimity shall be required for the Council to amend the proposal as re-examined by the Commission.

- (f) In the cases referred to in points (c), (d) and (e), the Council shall be required to act within a period of three months. If no decision is taken within this period, the Commission proposal shall be deemed not to have been adopted.

- (g) The periods referred to in points (b) and (f) may be extended by a maximum of one month by common accord between the Council and the European Parliament.

Opinion of the Committee on Legal Affairs and Citizens' Rights  
for the Committee on Institutional Affairs  
on  
the conciliation procedure

Draftsman: Mr JANSSEN VAN RAAY

At its meeting of 28 January 1988, the Committee on Legal Affairs and Citizens' Rights appointed Mr Janssen Van Raay draftsman of an opinion.

At its meeting of 12 and 13 July 1988, the committee held an exchange of views on the subject. It considered the draft opinion and unanimously adopted the conclusions thereof at its meeting of 28 and 29 September 1988.

The following took part in the vote : Mr Medina, acting Chairman;  
Mr Janssen Van Raay, draftsman; Mr Barzanti, Mr Cabanillas Gallas, Mr Casini,  
Mr Donnez, Mr Garcia Amigo, Mr Lafuente Lopez, Mr Marques Mendes, Mr Price and  
Mr Rothley.

EN(88)1902E

1. The Committee on Legal Affairs endorses the draft report on the conciliation procedure currently being considered by the Committee on Institutional Affairs. As a result of the entry into force of the Single Act, the need for a procedure to promote agreement between the institutions involved in the legislative process is becoming increasingly evident.
2. The need for agreements between Parliament, the Council and the Commission was demonstrated on several occasions during the first year of application of the treaty, particularly over the choice of legal basis and, in some cases, the desirability of extending the scope of the Commission's proposals, whether they related to secondary legislation or to international agreements.
3. There is quite clearly an urgent need for a procedure enabling Parliament and the Council to exchange views directly in the cooperation procedures during which Parliament must have the possibility of holding talks at the first-reading stage with the qualified majority which is liable to adopt the common position in the Council. It is even more obvious at the second-reading stage during which a compromise may be required for an agreement to be reached between the European Parliament and the Council (see in this connection the dialogue already provided for in Rules 47 and 51 of Parliament's Rules of Procedure).
4. A conciliation procedure is also urgently required within the assent procedure concerning international agreements pursuant to Articles 237 and 238 of the EEC Treaty, in accordance with the suggestions made by the Court of Justice in its examination of similar procedures under Article 58 of the ECSC Treaty (see judgment of 11 May 1983, cases 311/81 and 30/82).
5. A new conciliation procedure is equally necessary in the consultation procedures for acts with no financial implications, particularly those relating to the completion of the single internal market and measures additional to or connected with that aim.
6. The European Parliament's new powers relating to the completion of the internal market have also brought about a significant increase in 'ordinary' conciliation procedures, not to mention the new interinstitutional declaration in the budgetary field.

7. It is therefore totally wrong to ignore the political role of the European Parliament, which, through its involvement in progress towards the internal market, has a part to play in the whole range of Community activity.

8. Parliament has on several occasions, especially since the entry into force of the Single Act, expressed its interest in seeking a political compromise with the Council and Commission; a formal request should therefore be made as soon as possible to the Council and Commission to reopen interinstitutional negotiations for the purpose of drawing up one or more interinstitutional declarations on the basis of which the conciliation procedure may be opened between the three institutions wherever opinions differ on substantial aspects of a legislative procedure.

9. The Council should also be reminded that, if a unanimous decision cannot be reached on the new declarations, a majority vote should be deemed sufficient since:

- the rights of any State or States in disagreement are protected by the provisions of the Treaty governing the various procedures on which conciliation may be initiated;
- the main purpose of the conciliation procedure is to enable the Member States to facilitate 'the achievement of the Community's task' (Article 5 of the EEC Treaty) and any veto by one or more Member States would be contrary to the spirit of the Treaty.

10. Pending the new interinstitutional declarations, it would be desirable for the dialogue between the institutions concerned (as provided for in the second reading of the cooperation procedure) to be stepped up on specific issues through the parliamentary committees. This dialogue, especially between Parliament and the Council, could take place during the periodic meetings between the Council Presidency and the organs of Parliament and might, if necessary, be accompanied by appropriate formal guarantees (placing the relevant item on the agenda, possibility of joint minutes and statements).

## O P I N I O N

(Rule 120 of the Rules of Procedure)

of the Political Affairs Committee

Draftsman: Mr Coste-Floret

At its meeting on 27 January 1988 the Political Affairs Committee appointed Mr Coste-Floret draftsman of the opinion.

At its meeting on 25 May 1988 the committee considered the draft opinion and adopted the conclusions by 20 votes to one with two abstentions.

The following were present for the vote: Mr Ercini, Chairman; Mr Planas, 1st Vice-Chairman; Mr Coste-Floret, draftsman; Mr Amadei, Mrs Anglade (deputizing for Mr Boutos), Mr Barros Moura (deputizing for Mr Galluzzi), Mr Beyer de Ryke (deputizing for Mr Bettiza), Mrs Charzat, Mr Christiansen (deputizing for Mr Ford), Mr Croux (deputizing for Mr Penders, Mr Ephremidis, Mr Estgen, Mr Flanagan, Mr Haensch, Mrs van den Heuvel, Mr Langes (deputizing for Mr Klepsch, Mr van der Lek, Mr Medina Ortega, Mr J.B. Nielsen (deputizing for Mr De Gucht), Mr Normanton (deputizing for Lord Douro), Mr Perez Royo, Mr Pflimlin, Mr Toksvig, Mr von Uexküll, Mr Walter, Mr Welsh and Mr Wohlfart.



The motion for a resolution by Mr PROUT drew attention to the need to improve and extend the scope of the conciliation procedure 'at least to include all those subjects covered by the cooperation procedure'.

Following the entry into force of the Single European Act, some legal experts expressed the view that the conciliation procedure had become obsolete in those areas covered by the cooperation procedure introduced by the Single European Act. This is questionable since the declaration adopted on 4 March 1975 would only lose its legal validity if the conciliation procedure were specifically abolished. In the absence of a formal decision to that effect, we must assume that this joint declaration retains its present legal value.

However, the establishment of the new cooperation procedure does raise the question whether, in the circumstances, the conciliation procedure still serves a purpose. Before expressing an opinion on this matter, we must look at the reasons which led to the adoption of the joint declaration by the European Parliament, the Council and the Commission on 4 March 1975.

The conciliation procedure was originally introduced as part of the European Parliament's budgetary powers. Its aim and mechanism, which affect acts of general application with appreciable financial implications, are designed to involve the European Parliament more closely 'in the procedure for preparing and adopting decisions which give rise to important expenditure or revenue to be charged or credited to the budget of the European Communities' (Joint Declaration by the European Parliament, the Council and the Commission of 4 March 1975).

The conciliation procedure, as applied since then, has proved rather unsatisfactory. In the 1980s the European Parliament drew up a draft second joint declaration to improve and extend the system, which, given that its purpose is to enable the Council and Parliament to reach agreement, is still necessary. The draft joint declaration was submitted to the Council in 1984. Nine Member States agreed to the draft. However, Denmark was opposed to it and not its adoption.

The principal innovations proposed in the draft second joint declaration were as follows:

- to extend the scope of the conciliation procedure. It would longer be limited to Community acts having appreciable financial implications, but would also apply to all Community legislative acts of general application which are of major importance to the Community. The Commission of the European Communities would indicate to the Council and Parliament which acts would come under the conciliation procedure and the procedure would be opened on the initiative of the European Parliament or the Council;
- to add a preliminary phase to the procedure before the Council drew up its common position on the draft in question where preparatory work suggested that positions were liable to differ. During this stage, exploratory talks would be held on the Commission's initiative, between the Presidents of the European Parliament and the Council with the participation of the Commission.

In exchange for these two major concessions to Parliament, the Council requested that time limits be incorporated in the conciliation procedure so as to prevent any serious hold-ups in the Community's legislative process. The procedure was aimed at reaching an agreement within three months. It would close after a second meeting of the conciliation committee comprising the Council and members of the European Parliament.

In exceptional cases a third meeting might be arranged following agreement between the parties concerned.

The European Parliament would deliver an opinion on the results of conciliation. If the procedure did not lead to complete agreement, the Council would undertake to take account as far as possible of Parliament's opinions and would forward its reasoned decision to Parliament.

In 1984, Denmark considered these two major innovations unacceptable because extending the conciliation procedure to all important Community acts would, in its view, remove the link between conciliation and Parliament's budgetary powers. Moreover, exploratory talks before the Council produced a common position would encourage Parliament to exploit divisions between Member States and possibly enable a Member State to use Parliament to receive acceptance of its views.

We consider both reasons to be invalid. The first would have been valid in 1975, at a time when Parliament's involvement in the Community's decision-making process was limited to the budgetary field. However, by establishing the cooperation procedure, the Single Act has introduced a new arrangement which has revitalized the institutional system and increased Parliament's powers.

It is, however, a complex procedure which is liable to slow down the Community's decision-making process and even bring it to a standstill if the bodies involved in the procedure fail to agree. Extending an improved conciliation procedure would thus make it possible to negotiate compromises to prevent the process from being blocked at the second-reading stage.

Denmark's second objection implies that Parliament or a Member State might make improper use of the procedure: this would be inadmissible, given that the Parliament-Council-Commission institutional triangle can only function properly if each institution plays its proper role.

In conclusion, the Political Affairs Committee suggests that the Committee on Institutional Affairs include the following proposals in its report:

1. Following the entry into force of the Single Act, the conciliation procedure has retained its usefulness insofar as it seeks to draw the position of the three Community institutions closer together in the Community decision-making process;
2. Only an overall reform of the conciliation procedure and the introduction of less formal arrangements based on more direct contact between the partners will enable the European Parliament to be closely associated in the Community decision-making process and a continuous and fruitful dialogue to be established between the three Community institutions;
3. Rule 47(5) of the European Parliament's Rules of Procedure stipulates that the committee responsible, under the cooperation procedure, 'may request a dialogue with the Council in order to reach a compromise'. The purpose of this rule, introduced by the European Parliament, is to prevent a total deadlock from arising between the European Parliament and the Council at the second reading stage of the cooperation procedure. It represents a sort of last resort enabling the Council to adopt Community legislation without completely departing from the views adopted by the European Parliament or to ensure that Commission proposals do not lapse;

4. The scope of the conciliation procedure should be extended, the Council and Parliament should have the right to request the opening of the procedure, and the conciliation committee should meet as soon as conciliation is initiated;
5. The Political Affairs Committee calls for new negotiations to be initiated between the three Community institutions, on the basis of the above proposals, with a view to adopting a second joint declaration improving and extending the conciliation procedure.