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The Life and Times of the European Union's Co-operation Procedure*

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Abstract

Using the analytical headings provided by John Fitzmaurice in his initial analysis of the co-operation procedure in 1988, this article examines the perceptions of leading actors within the European Parliament (EP), and some of the officials most closely involved in the detailed discussion of legislative proposals within the Commission, about the co-operation procedure in the 1989–94 parliament. It explores not only the assessment of 'insiders' of the EP's legislative 'effectiveness' in this period, but also maps out how key participants viewed the changing interinstitutional patterns attendant upon the co-operation procedure. The interviews in this study provide a unique perspective on what Fitzmaurice terms the 'ratchet principle' of institutional reform, and contribute to the historical record of institutional innovation within the EU.

I. Introduction

Writing in this journal in June 1988, John Fitzmaurice provided an instant analysis of the new powers conferred upon the European Parliament under the

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Single European Act (SEA). 'The institutional core' of the SEA was, for Fitzmaurice, the co-operation procedure (1988, p. 390) and the key elements of the procedure were identified as: the linkage of institutional change to the completion of the internal market; the extension of Parliament's formal involvement in the legislative process; important 'gate keeping' functions for the Commission (which were likely to 'involve it in delicate political arbitration'); and a continuing 'unbalanced' distribution of legislative power between Parliament and the Council of Ministers. Overall, Fitzmaurice (1988, p. 400) concluded that:

> Parliament has acquired important new powers to use creatively alongside the longer-standing 'advisory and supervisory power' … . This new broader armoury may enable Parliament significantly to increase its leverage across the broad spectrum of decision making in the Community. ... Only success can disarm its critics and pave the way for broader acceptance of its own ambitious proposals for institutional reform.

Subsequently the co-operation procedure has indeed been judged a success: both in simple arithmetical terms of the number of successful parliamentary amendments to Commission legislative proposals (see below); but, more importantly, as a stepping stone to legislative co-decision (see HC 99 1993, p. v; Westlake, 1994a, p. 37; Corbett *et al.*, 1995, p. 199; Earnshaw and Judge, 1995a). Indeed, the co-decision procedure introduced in the Treaty on European Union (TEU) has been acknowledged as 'essentially an upgrading of the co-operation procedure that had been introduced by the Single European Act' (Corbett *et al.*, 1995, p. 199).

Clearly, therefore, the co-operation procedure is of some significance both in terms of its practical legislative impact and also in terms of its contribution to the historical dynamic of the institutional development of the EU. While, after the TEU, the co-operation procedure continued to operate alongside the co-decision procedure, with the latter applying to most of the areas previously subject to the co-operation procedure, and with co-operation applying to most other areas where the Council acts by a majority vote, the 1989–94 Parliament marked the heyday of the co-operation procedure. If, as Westlake (1994a, p. 137) counsels, the European Parliament's route to legislative power can be conceived as a path, then this period witnessed, for the first time under co-operation, the formal opportunity for Parliament to step onto that path in limited policy fields and for limited periods. As an intermediate stage in the legislative development of the EU – building upon the consultation procedure and moving one step closer to some form of co-decision – the way the co-operation procedure worked in this period merits close scrutiny.

Indeed, academic attention has recently been attracted to the co-operation procedure in the analysis and explanation offered by rational choice theorists,

most notably by Tsebelis (1994, 1995) and Garrett and Tsebelis (1996). In their view, the procedure provides 'a formal expression of the conditional agenda-setting concept' (Tsebelis 1994, p. 139) and, as such, allows the EP to exert a 'surprising power' insofar as it could 'make proposals that, if accepted by the Commission, are easier for the Council of Ministers to accept than to modify' (Tsebelis 1994, p. 128). Moreover, recent empirical studies have confirmed the pre-Maastricht legislative impact of the EP, both through case studies (Judge, 1993; Earnshaw and Judge, 1995b, Corbett *et al.*, 1995) and through wider-ranging qualitative assessments of parliamentary amendments under the co-operation procedure (Earnshaw and Judge 1995a, b, 1996).

But what has been absent from most studies to date is an awareness of how key actors in the legislative process viewed the operation and impact of the co-operation procedure at the crucial stage of parliamentary development in the EU. This article seeks to rectify this shortcoming by examining the perceptions of leading actors within Parliament, and some of the officials most closely involved in the detailed discussion of legislative proposals within the Commission, about the co-operation procedure in the 1989–94 Parliament. It explores not only the assessment of 'insiders' of the EP's legislative 'effectiveness' in this period but also maps out how key participants viewed the changing interinsitutional patterns attendant upon the co-operation procedure.[1] The value of analysing the perceptions of participants is that it provides a unique perspective on what Fitzmaurice terms the 'ratchet principle' of institutional reform – where each reform serves as a springboard for pushing the debate forward. Ultimately, the analysis presented here is for the historical record, but the lessons of history are of particular relevance in a period of constitutional review in the EU in the late 1990s.

II. The Co-operation Procedure

The essence of the new co-operation procedure when it came into effect in 1987 was that it added a second reading onto the consultation procedure. The first reading remained almost unchanged, with Council consulting Parliament on the basis of a Commission proposal. Parliament still retained the *de facto* power of delay, as no time limits were involved at this stage, and Parliament continued to adopt amendments and forward these to the Council. However, under the co-operation procedure, Council's decision, adopted after having received Parliament's amendments, was no longer final. Instead, Council adopted a 'common

[1] All interviews were conducted in spring 1994 immediately before the June Parliamentary elections. The timing of the interviews was such that MEPs and Commission officials had at least a full parliamentary term in which to experience the operation of the cooperation procedure. There was also the added advantage that the codecision procedure had just been introduced, providing decision-makers with a broader perspective upon, and a point of comparision with, the co-operation procedure.

position', which it then referred back to Parliament for a second reading. Once the common position was forwarded to Parliament, a three-month time limit was activated, within which Parliament could, variously: unconditionally approve it or fail to take a decision; reject it by an absolute majority of its members; or amend the common position again by an absolute majority of its members.

If Parliament rejected the common position then the text fell, unless Council decided by unanimity (and with the agreement of the Commission) to adopt the act regardless of Parliament's rejection within a further three-month timetable. If Parliament's amendments were supported by the Commission and incorporated into a revised proposal, then Council could either adopt the revisions by qualified majority or, alternatively, modify the agreed proposal by unanimity. Any amendments not supported by the Commission required unanimity to be adopted by the Council.

Before entry into force of the TEU, the co-operation procedure applied to legislative proposals based on only ten articles of the EEC Treaty (Articles 7; 49; 54[2]; 56[2]; 57; 100A and 100B; 118A; 130E; and 130[Q]). Nonetheless, some two-thirds of the Commission's 1985 White Paper on the completion of the internal market fell under the co-operation procedure, and about one-third of all legislation considered by Parliament was covered by co-operation.[2]

III. Parliament's Impact under Co-operation

In a parliamentary resolution emanating from the EP's Committee on Institutional Affairs in 1992, it was noted that 50 per cent of Parliament's amendments under the co-operation procedure had been accepted by Council and that the legislative role of the EP had thus been 'transformed' by the procedure. Statistical confirmation of the 'success rate' of EP amendments came in figures produced by the EP in 1994 (see Table 1).

Nevertheless, the impressive success rate of EP amendments is such, especially when compared to Member States' Parliaments, that it is invariably assumed that some qualification is in order (see Jean Pierre Cot, DEP 3-396:78, 20 November 1990; OJ C42, 15 February 1993, p. 135; Tsebelis 1994, p. 136; Corbett *et al.*, 1995, p.199). The irony seems to be lost on many commentators that, whilst the raw figures showing the relatively limited impact of national Parliaments on domestic legislation are dismissed as 'misleading' for underplay-

[2] Following entry into force of the TEU, co-operation applied to Article 6 on the prohibition of discrimination on the grounds of nationality, Articles 75(1) and 84(2) on transport policy, Articles 103(5), 104a(2), 104b(2), 105a(2) on economic and monetary union, Article 118a(2) on workers' health and safety, Article 125 on the European Social Fund's implementing decisions, Article 127(4) on vocational training, Article 129d on trans-European networks (measures other than guidelines), Article 130e on European Regional Development Fund implementing decisions, 130s(1) on environment policy and Article 130w on development co-operation.

Table 1: Co-operation Procedure: Acceptance of EP Amendments by Commission and Council (332 proposals completed by December 1993)

	First Reading		*Second Reading*	
	n	*(%)*	*n*	*(%)*
EP amendments	4572		1074	
Amendments accepted by the Commission	2499	54.7	475	44.2
Amendments retained by the Council	1966	43.0	253	23.6

Source: European Parliament: 1994a, Les Avis legislatifs du Parlement Européen et leur impact, procédures de coopération.

ing parliamentary influence (see, for example Norton, 1993, p. 83), at the European level, raw figures are dismissed for overstating parliamentary influence.

IV. Interviews

To move beyond such rudimentary and contested quantitative data, this study seeks to evaluate the qualitative data provided by 36 interviews, conducted between February and June 1994 (see Appendix 1). A first phase of 30 interviews concentrated upon MEPs and Parliamentary officials. Members were chosen primarily from the four committees – Environment, Economic, Energy, and Legal Affairs – which collectively processed 88 per cent of all co-operation procedures in the 1989–94 Parliament (European Parliament, 1994). A second phase of interviews then focused upon six Commission officials who had detailed knowledge and experience of the drafting of important legislative proposals processed by these committees in this period.

Interviews with MEPs were semi-structured and were designed to be completed within 45 minutes. In the event, given the interest of members in the project, many extended well beyond this time limit. Moreover, the interviews were structured around the main political elements identified by Fitzmaurice (1988) at the inception of the co-operation procedure. Although Fitzmaurice's article was speculative, having been written very soon after the introduction of the procedure, it identified with considerable prescience the changed operating procedures and priorities required of the EP. In the following discussion, therefore, the 'opportunities' and 'challenges' of the co-operation procedure identified by Fitzmaurice are used to structure the analysis and, wherever possible, the words of MEPs and Commission officials are used to assess these opportunities and challenges.

(i) Preparation of Commission Proposals

> The Commission wants above all to avoid blockages which may lead to non-decision. … What it has sought primarily has been an approach which would reduce conflict between the institutions .. [this] means that the Directorates-General most closely concerned must be more politically sensitive towards the Parliament. … In the departments there must be an awareness of parliamentary attitudes from the preparatory stage of all proposals which fall within the context of the co-operation procedure. (Fitzmaurice, 1988, pp. 392, 394)

The Commission, while seeking to maintain its autonomy and independence, had a vested interest under co-operation to ensure that its own legislative initiatives did not stall because of interinstitutional rigidities or textual ambiguities in the Treaty itself. From the outset, therefore, it adopted a flexible attitude to Parliament, working out a number of interinstitutional agreements and informal understandings, as well as adopting a more formal 'code of conduct' in 1990 (Nicoll, 1996, pp. 275–7). Manifestly, what happened at the first reading stage, and even before, was the prime concern of the Commission.

The increased seriousness with which the Commission took Parliament after the SEA is reflected in Una O'Dwyer's (Commission, Secretariat General, interview 26 May 1994) comments:

> On legislative issues the first thing we did after the Single Act was to have a monthly meeting in the Secretariat General of the co-ordinators in each DG. … The co-ordinators are our first points of contact. We have a list of 23 co-ordinators – one for each DG, the Statistical Office and so on. We convene them once a month to look at the legislative work and agendas of the forthcoming committee meetings and the agenda of the plenary at the end of that month. … It's essentially their responsibility to communicate the results of these meetings further down the line in their own DGs. … We have encouraged that these people should be nominated at a high level. They should be A officials in the first instance, and relatively senior.

In practice, however, despite this general heightened awareness, Commission officials did not always appreciate fully the need to take cognisance of Parliament's views at the drafting stage of proposals. In fact, two of the officials who had experienced at first hand the most forceful demonstration of the EP's powers under the co-operation procedure – rejection of a common position – conceded in interview that they were not fully aware of Parliament's likely reaction to their draft proposals. Mathew Kestner of DG XVII recalled, for example, that at the start of the process of drafting the proposal on energy labelling of household appliances (white goods) (COM[91]285 final, SYN 356) Parliament's views were not at the forefront of his mind:

> It was clear that there was a political will, in general terms, and my focus in drafting [the proposal] was to draft something that would work as well as possible. I would say that I gave relatively little consideration to the political problems – which, quite frankly, I wasn't aware of at the beginning of the process. These were dealt with as they emerged during the formal process.

Similarly, André Slagmulders of DG III, in recalling his experience of the motorcycle power, speed and torque proposal (COM[91]497, SYN 371) noted that:

> We were not aware of the fact that there would be such a strong opposition [to the proposal]. We have to say that this opposition was caused by lobbyists. In fact the Federation of European Motorcyclists and the Federation of International Motorcyclists made a very good lobby with the Rapporteur, Mr Beazley and with Mr Barton, and they were open to their arguments. But, oh no, we did not expect those problems.

But Slagmulders remained uncertain if it would be possible to consult Parliament on an informal basis before the Commission produced a formal proposal: 'I don't know if that would be possible. But, maybe we should work on some kind of procedure whereby Parliament can be consulted when we are drafting proposals, and not after'.

(ii) Interinstitutional Dialogue

> Both [Parliament and the Commission] saw a greater degree of political dialogue between the institutions ... as essential to making the co-operation procedure work. (Fitzmaurice, 1988, p. 391)

One of the most important consequences of the SEA was that it enhanced the capacity of individual MEPs and Parliament's committees collectively to negotiate and bargain *informally* with other EC institutions. An increase in formal legislative powers thus increased the informal influence of the EP to a cumulatively greater degree than could be gauged simply by looking at the treaty-prescribed institutional relationship between Parliament and the Commission (Judge, 1993, p. 196; Judge *et al.*, 1994, pp. 45–7; Westlake, 1994a, pp. 142–3). Repeatedly in interviews the frequency and intimacy of the informal relationship between the two institutions was remarked upon. Thus Bouke Beumer (EPP/Neth, interview 17 March 1994), as Chairman of the Economic and Monetary Affairs and Industrial Policy Committee, noted that he encouraged rapporteurs to contact the Commission 'at a pre-formal stage'. He always asked the Commission if it wanted to have a preliminary discussion about its proposals and encouraged it to be 'as open and helpful as possible'. This meant that the Committee often knew the essential ingredients of a proposal before being asked

to consider it formally. This early contact gave the Committee more time, and provided more background information on the proposal: 'For example we have with some Commissioners a rather informal meeting to be briefed about what is going on and what we can expect in the near future, about what are the difficulties, about what you expect from us ... but they are not formal meetings. I like this way of working'. But he also recognized that the Committee 'must always be careful that there doesn't exist a dependent position'.

Peter Price (EPP/UK, interview 16 March 1994), as a former chairman of the Budgetary Control Committee, noted 'lots of informal contacts between the Commission and Committee members, not least simply talking to somebody in the corridor ... in which you may seek to inform each other or persuade each other. It isn't contrived ... there are clearly discussions outside the formal framework [of the procedure].'

Similarly, Fernand Herman observed from his experience on the Committee on Economic and Monetary Affairs and Industrial Policy (EMAC) that 'the Commission – that's where you go immediately you have a report. You discuss with the secretariat of the Committee and the thing you do is to meet the people in the Commission. ... My experience is that the Commission is not pushing very hard on us to make change. We do however get approached by different DGs and their views are not always the same'.

Equally, Tom Spencer (EPP/UK, interview 17 March 1994), a member of the Committees on the Environment and External Economic Relations, was in no doubt that:

> When you are handling a big report, the relationship between Commission and Parliament is very intimate and it's not clear who is lobbying who. The theoretical model, which says that the Commission proposes and Parliament discusses and amends, seems to me to be absolutely defective – because a lot of parliamentary influence is actually exercised before the Commission proposal appears. [At that stage] you are working on the differences inside the Commission, which is not a monolithic entity, and comparing what is happening there to the position inside the European Parliament and the Council. It is important, therefore, to look at the tryptic of the institutions. Understanding what is going on inside the Commission is essential to managing the parliamentary process.

Ultimately, the most positive acknowledgement of the changed relationship between the two institutions was provided by ex-Commissioner and Chairman of the Committee on External Economic Affairs, Willy de Clercq (LDR/B interview 14 March 1994):

> Yes, the Commission realizes more and more that the Parliament is not just the normal ally of the Commission in the daily battle against the Council; but that it is an indispensable ally and an indispensable interlocutor. ... already before

> Maastricht, through the co-operation procedure, when Parliament got the double reading, it was evident that the Parliament played a bigger and more important role. And the Commission gradually took Parliament more and more seriously. You should see now, for instance, the attitude of a man like Sir Leon Brittan. I don't have to invite Sir Leon Brittan to my Committee. He invites himself and he comes regularly; much more than his predecessor, and much more than I came to the European Parliament when I was Commissioner for External Economic Affairs. ... that's just a development of the increase and significance of the European Parliament.

Other members, whilst acknowledging the close contacts between Commission and Parliament, were more sceptical about the extent to which co-operation had prompted Commission officials to take Parliament more seriously. Caroline Jackson, for example, made the point: 'they only start to take members of the Committee seriously when the members of the Committee start amassing information which is parallel to that which the Commission holds'. She was also wary of those Commission officials of 'a fairly low level who came along to Committee meetings and said, "Can I help you with your report?" And I say, "No you can't because I am reporting on your ideas, so if I need any clarification I will come to you" ... If, as a rapporteur, I want to move an amendment on something, then I might try it on the Commission to see if they like it or not'.

(iii) First Reading

> Parliament from a different starting point has reached an approach which is basically very similar [to that of the Commission]. Here too the emphasis is placed upon the first reading. (Fitzmaurice, 1988, p. 392)

From the outset, senior MEPs and officials within Parliament were acutely aware of the strategic political implications of the procedure. They were anxious to fuel the new interinstitutional dynamic that had been created by the procedure; and to maximize the effect of the SEA by changing institutional priorities and working routines within Parliament. Hence, MEPs appreciated the new reality that the first reading stage was crucial to the success of the co-operation procedure and that dialogue between Commission and Parliament was the key to making the procedure work.

In these circumstances Parliament immediately focused its attention upon the first reading. As the co-operation procedure was activated by the Commission's choice of legal base for its legislative proposals, potentially this choice could turn into a matter of acute political controversy. Parliament was vigilant, therefore, to ensure that, where there was scope for interpretation, the Commission would use the Treaty articles requiring co-operation rather than consultation. In 1986, Parliament changed its rules (Rule 36[3] 1987, now Rule 53 1994) to allow for the verification of the legal basis of new proposals on a case-by-case basis, so that

the relevant committee, after consultation with the Legal Affairs Committee, could report straight back to plenary on the matter if necessary. In practice, however, there have been relatively few major disagreements between Parliament and Commission over the legal base (most notably in 1988 over maximum permitted levels of radioactivity in foodstuffs). Moreover, both institutions, jointly, have been willing to challenge Council when it has overturned their prior agreement on the choice of legal base (as in the *Titanium Dioxide* ruling of 1991; see Corbett *et al.*, 1995, p. 208).

In recognition of the importance of the first reading, Parliament's 1986 rules acknowledged (in Rule 36[5] now Rule 58[2] 1994) the need to ensure that legislative resolutions focused specifically on procedural points rather than providing a discursive commentary on the text. In addition, provision was made to facilitate the construction of stable political majorities early in the co-operation procedure. This was essential if the necessary treaty-prescribed absolute majorities were to be secured to amend the Council's common position at second reading. Hence, the new rules introduced the provision that amendments at second reading stage would be admissible only if they sought to restore Parliament's first reading amendments, or sought to amend a part of a common position which differed substantially from the original proposal presented to Parliament (see below), or were compromise amendments representing an agreement between Council and Parliament. It is worth remembering that this was effectively a 'self-denying' ordinance on the part of Parliament, and that the best proof of the importance of this rule is that, as Westlake notes (1994a, p. 141), 'representatives of the Council and Commission still sometimes inadvertently hold the European Parliament to account [for its first reading] undertakings as though they were obligations flowing from the treaties'.

(iv) Priority Afforded Co-operation

> Matters which fall within the co-operation procedure will in theory have an absolute priority for consideration in committee. (Fitzmaurice, 1988, p. 393)

Opinion on this matter clearly divided the committee members interviewed for this study. When asked whether they, as individual members of a committee, distinguished between legislation according to whether it was processed under consultation or co-operation, it became apparent that even members of the same committee held divergent views about their priorities. In the Environment Committee, for example, Pauline Green (Soc/UK, interview 6 April 1994) stated categorically that: 'In the Environment Committee people do not distinguish between proposals according to whether they are co-operation or not'.

Other members of the Committee, however, disagreed, with Caroline Jackson (PPE/UK, interview 14 March 1994) maintaining that:

> With anything that isn't based on the co-operation procedure but on the simple consultation procedure – then one rather gives up hope at the start, because then all the cards are in the hands of the Commission. And however damning a report may be, and whatever amendments one may move, essentially you are back at the start of the Parliament's history where we were consulted and anything we said could be dismissed as soon as said. ... It is a symptom of the development of any Parliament that its power really resides in either denying supply or else in simply being awkward when it comes to legislation. And I think that the co-operation procedure has given the Parliament extra opportunities to be awkward, in the sense of prolonging the agony, or in embarrassing the Commission.

Ian White (Soc/UK, interview 14 March 1994) went even further and argued that: 'I as a member look at the legal base and go for co-operation procedures because Parliament has more power. I think that consultation ought to be chucked out, I can't see the point of consultation. It seems to me to be a remnant of the old notion of an assembly rather than a Parliament'.

When the Chairman (Ken Collins, Soc/UK, interview 15 March 1994) was asked whether members of the Environment Committee perceived co-operation procedure proposals to be more important than consultation procedures, his reply was:

> I think that that perception is growing. I think at the beginning it probably wasn't the case, because in the early years after the Single European Act there really wasn't very much appreciation of what the Single European Act had done, and that was true especially in 1989 to 1990 (as there was very little appreciation of it). There were one or two people in the Committee who understood it and the rest had to be taught as it were. But now there is a growing appreciation ...

When pressed whether committee members in the 1989–94 Parliament sought co-operation reports rather than consultation reports Mr Collins had no hesitation in answering 'yes'.

The learning curve of MEPs on the co-operation procedure was also remarked upon by a group co-ordinator on EMAC, Fernand Herman (EPP/B, interview 17 March 1994). He noted that 'progressively members are becoming more and more aware that there is a relation between the procedures and the value of a report, but this is very recent'. Another member of EMAC, Ernst de la Graete (Green/B, interview 1 March 1994), openly displayed this awareness:

> I certainly think that it is more important [to get a co-operation procedure report] because the influence of Parliament is greater. … If you have the power you can negotiate, and this is different [from consultation] where you can have a nice conversation with the Commission, but with co-operation your authority is bigger and so it is more important.

(v) Parliament–Council Relations

> There has been discussion of more Council openness with Parliament … Parliament has been severely critical of the information given by Council. (Fitzmaurice, 1988, p. 395)

From the interviews conducted for this study, it is apparent that Council remained closed to MEPs under the co-operation procedure throughout the 1989–94 Parliament. In practice, Council's common position represents the outcome of usually lengthy, and always complex, negotiations between delegations of the Council. The policy environment within which negotiation occurs is invariably 'disaggregated and competitive', and founded on a 'dissonance of values, confused lines of authority, conflicting interpretations of the legitimate scope of EC policy and uncertainty about the delivery of programmes'. In this environment, even modest agreements have to be viewed 'as a major achievement' (Wallace, 1983, p. 65). Moreover, the process is opaque, with parliamentarians usually having to rely, in the words of Bouke Beumer, former Chairman of the EP's Committee on Economic and Monetary Affairs and Industrial Policy, on the Commission to 'drop a few morsels of information our way' (DEP 3-396:89, 20 November 1990). Indeed, criticism of Council's secrecy was uniformly expressed by interviewees. Dagmar Roth-Behrendt (SPD/D, Socialist Group Co-ordinator, Environment Committee, interview 1 March 1994) noted at length the difficulties of obtaining information from the Council:

> Contacts with the Council before Maastricht really were in the minus area, just in the freezing area. Naturally, when I had my reports with two readings I always tried to get some information out of the Council, in the stage before the common position and [to find out] what the common position is, ... for me, as a member and a co-ordinator since 1989, it is very difficult to get information from the Council. In my own reports it is possible, with some tricks, but as a normal member and co-ordinator it is nearly zero. The Council would never ever approach me or any other member. They are not interested.

She did point out, however, that it was possible to obtain some information by informal means:

> My [male] assistant might know a young lady who is writing minutes or protocols in the Council. Or he knows someone from playing football with someone else in the Council. And he calls this person asking, 'when is the issue being discussed by COREPER or when is it on the agenda?' because we don't get this information. Or we call the German Permanent Representation asking them what is happening, and they will tell us, if they are the good guys and side with the Parliament. If they are the bad guys themselves they are very cautious, because they know I would use this politically.

Another German Member, Thomas Von der Vring (Soc/D, interview 12 April 1994), pointed to the advantages stemming from his relationship with his own Länder government:

> I was the first in this Parliament who got Council minutes, because my Land government sent me, on the first day when I was in Parliament, what they call the 'minutes of the Land representative in Council'. In the beginning I had to copy it for my members. Today it is distributed. ... And now I get a lot of fax information, for example, from the Embassy.

But for a UK member, Ian White, no such 'domestic' political assistance was available. His answer to the question: 'To what extent are you aware of what is going on in Council?' was: 'Almost nil. If I had to express it in percentage terms I would say half of one per cent. I have to rely on newspaper reports'.

Even as Chairman of EMAC, Bouke Beumer had difficulty in finding out what happened in Council on a day-to-day basis. He too noted that, 'I have to read the newspapers', but then proceeded to outline several other, informal, sources of information:

> Our main source is the Commission, we always ask the Commission 'do they have difficulties with this proposal in Council'; they [then] inform us more informally than formally what is the situation in Council. We also have some contacts with COREPER where we can get, more often than not on a confidential basis, how far they are going. And most of the Rapporteurs are playing this game. It is important for the Rapporteur who has to make amendments to know what is the situation in Council to know if something is absolutely not possible, or if there is divided opinion. So mostly it is the rapporteur who tries to find out. Sometimes we have direct meetings with the Council and we invite ministers to inform us about what is going on.

Another member of EMAC, Alman Metten, replied that: 'If you really want to know' what is happening in Council then 'the only way is to contact either the permanent representative or to try to find out via the Secretariat of the Committee. My route is mainly via the Secretariat of the Committee or the Secretariat of the Socialist Group – they have contacts with national delegations.

The Chairman of the Social Affairs Committee, Willem van Velzen (Soc/NL, interview 16 March 1994), confirmed the general problem of the secrecy of the Council:

> My permanent representation – the Dutch – is giving us a lot of good briefings, written briefings, so I have good information about what's on the agenda; about what is the opinion of my own country, etc. But it is always very difficult to know or to understand what is happening, what is going on in the Council. That is absolutely secret, so what you have to do is to discuss with people in the Commission, with the Commissioner, with different members of the Council. That costs you a lot of time and work. … but it's very difficult to understand

> what's accepted, but people are very much afraid to mention real names, to say that it is the United Kingdom or it is Spain. You have to combine your information. It is a real problem.

Whilst all interviewed members were able to cite examples of how they obtained information informally – through national delegations, permanent representations, personal contacts, or lobbyists – all of them lamented the secrecy of the Council. There was one notable exception, Fernand Herman, who had 'no difficulty in knowing what happened in the Council ... I have my informants, but my case is a privileged one. My privilege is that I live in Brussels, I know personally a hundred high civil servants, most of them being my friends. Plus, all the people in the Belgium permanent representation are my friends. So I have no difficulties in finding out what happens in Brussels'. He then stated jokingly that this was his 'monopoly' and he did not want to damage his fortunate position.

(vi) Monitoring

> Article 41 describes how preparation of the common position by the Council is to be monitored by the rapporteur and chairman of the relevant committee ... monitoring serves to check that the Commission is keeping its promises on amendments and effectively upholding amendments it has accepted. (Fitzmaurice, 1988, p. 395)

There can be no doubt that adoption of the common position is the crucial stage of the co-operation procedure. The new rules adopted by Parliament in 1986 envisaged a monitoring procedure (Rule 41, [now Rule 61]) whereby the preparation of a common position by Council would be monitored by the rapporteur and chairman of the relevant committee. It was hoped that committee secretariats, along with Parliament's *Suivi des Actes Parlementaires* (Fitzmaurice 1988, p. 395), would obtain information from Council and Commission about their responses and reactions to the amendments adopted at first reading.

Through its own insistence, and with the collusion of the Commission and the reluctant acceptance of the Council, Parliament gradually gained the right to be reconsulted if Council's common position differed markedly from the text considered by the EP at the first reading stage. While Council has accepted this right in principle, particularly if major changes have been incorporated into the text by Commission or Council, difficulties have still arisen in practice (see Corbett *et al.*, 1995, p. 190). Equally, the centrality of the common position to the operation of the procedure was acknowledged in Article 149(2b) of the SEA (Article 189c[b] of the TEU). Under this article, both Council and Commission were required to inform Parliament fully of the reasoning behind the adoption of a common position. Council had no objections to outlining the justification of its common position in writing to Parliament. But this positive principle was

mitigated, on its first practical application, by Council cavalierly stating that the preamble to the draft directive constituted the justification of its common position. Not surprisingly, Parliament found Council's response to be unacceptable and pressed through its then President, Lord Plumb, to secure 'as a minimum [that] the Council should provide a specific and explained reaction to each of Parliament's amendments' (OJ C318 30 November 1987, p. 41). Thereafter, Council's explanations of its common positions improved to the extent that they noted Council's view on each substantive change made to draft proposals. Council did not see fit, however, to list the position taken by each Member State in its collective deliberations, nor to publish its reasons. Until 1993, Council refused to distribute its reasons publicly, making them available only to the EP. The latter, in turn, distributed them along with Council's common position. In the interinstitutional declaration on Democracy, Transparency and Subsidiarity, of October 1993, Council finally undertook to 'publish the common positions which it adopts under the procedures laid down in Articles 189b and 189c, and the statement of reasons accompanying them'. This is now done in the Official Journal.

There remains, however, an absence of effective general monitoring of legislation and this fact was lamented by Pauline Green:

> No, we don't do it. It is one area where there is a massive gap. Once [a proposal] has gone through Parliament there is a collective sigh of relief. We need reports back to the Committee about Council deliberations. These could be prepared by the staff of the Committee – a formal report back. Staff also need to inform members about what is going on in the future. There will be more interest in this in the future. This will also make it easier for the Group to act on issues, which will also be much more important in future. It is more important also to know what is going on in Commission. The Commission plays a clever game, what we need to identify is the political dynamic and to check whether the Commission delivers.

Alman Metten observed that on those topics of special interest to him he would check the Official Journal to see the final form of the text. But he also remarked, 'I am the exception' and he was in no doubt that: 'Parliament should track its amendments more closely'. Bouke Beumer also emphasized the need for Committees to take their monitoring role more seriously: 'It could be done better. … When the final directive is there we tend simply to say OK let's take the next one'. Indeed, Annemarie Goedmakers (Soc/NL, interview 6 April 1994) maintained that monitoring should be a routinized part of committee activity: 'We should try to make sure that debate doesn't end with plenary. The Secretariat should do it with the rapporteur. Political groups shouldn't do it. The President of Committee could do it instead of rapporteur'. Lord Plumb (EPP/UK, interview 28 April 1994) also noted the increased necessity for Parliament to track the

success of its own amendments in a period when 'the implementation of legislation is becoming more of an issue. People are starting to quote EC legislation at you. This is a complete change from when Brussels and nation-state were seen as two different worlds'.

(vii) Comitology

> Choice of the type of Committee (Comitology) to be involved in management functions (delegated legislation) is also contentious. Parliament usually, but not always, seeks maximum delegation to the Commission and therefore dislikes any committee type except consultative committees. (Fitzmaurice, 1988, p. 394)

The Council frequently establishes advisory, management or regulatory committees to assist the Commission in implementing and supervising Community policies. Throughout the 1989–94 Parliament, MEPs consistently criticized this system for making democratic scrutiny and public accountability of Community decisions more difficult to effect. The importance of comitology for Parliament was emphasized in interview by Bouke Beumer:

> We have to struggle with the Council and the Commission about comitology. Now the situation is that the Council creates regularly Committees ... and we haven't any influence because we can't see. In the field of comitology we want to check the technical adaptations to the legislative process. We want: (a) to be informed, and (b) to say to the Commission it is important that you come with a new proposal. And the Council don't want to give us this power. But this power is important.

The issue of comitology featured prominently in the decision to reject the common position on a proposal relating to energy consumption of household appliances in July 1992 (see below). From the perspective of the Commission official directly involved in drafting this proposal, Mathew Kestner of DG XVII, the interinstitutional conflict was an unwanted distraction from the technical merits of the proposal itself:

> There was a fight about the sort of committee and that was the essential element over which there was a dispute. They [MEPs] had various other things that they didn't terribly like about it, in the sense that they felt that we should make one or two changes; but I don't think those were heated issues. And I don't believe they would have rejected it over that, and there might have been some room for more compromises on some of these issues.
>
> But the real issue as far as they were concerned was the issue of the type of committee. Quite frankly from my point of view I don't think it made the slightest difference. There is this theology of the Commission under Article 100A directives to propose consultative committees, type I committees. From

> the Commission's point of view we could have accepted a type III. Unfortunately we were not going to propose a type IIIA, or that was going to be difficult in terms of what the Commission was doing. Because this directive is unusual in that it gives the Commission the power to make directives – very technical directives in merely laying down the information to be given on a label, so it is not an earth shattering thing that is being done – for that reason the Council, or certainly a number of Member States, would have accepted it as a type IIIA, but one or two were insistent on a type IIIB. The Commission was not going to propose a type IIIA so there had to be unanimity in Council and they would only get unanimity on a type IIIB. ... The Council thus amended it unanimously to a type IIIB at common position stage and that went to Parliament which then rejected it. From a practical point of view the type of committee didn't make much difference ... these are technical issues and we ought to be able to come to an agreement.

From Parliament's perspective, however, the type of committee is of great importance, and certainly does make a difference to the processing of proposals. Indeed, even in the view of the UK's House of Lords Select Committee on the European Communities, the EP's inability to scrutinize implementing decisions is 'a serious gap in the Community's democratic structure' (HL 88-I 1988, para 154). In the event, however, the EP's rejection of the energy labelling common position was subsequently overruled through Council's unanimous adoption of it shortly afterwards.

(viii) Rejection

> Parliament is also given an explicit power to reject a proposal which can then only be approved in Council by a unanimous vote. ... Thus Parliament could ... obtain some negotiating leverage, providing the Council wanted the legislation to pass. Experience with Parliament's budgetary powers has shown a historical cycle from constructive amendment, through rejection to frustration. The same cycle could recur here. It is a real danger which it should be in the interests of the other institutions, especially the Commission, to avert. (Fitzmaurice, 1988, p. 398)

Parliament has used its power of rejection sparingly. Only rarely has it sought to reject a common position and on only four occasions up to July 1994 did it succeed. The first rejection came before the start of the 1989–94 Parliament, on a proposed directive on the protection of workers from benzene in the workplace (OJ C290 14 November 1988, p. 36). The second came in May 1992 with the rejection of the common position on a proposal for a directive on artificial sweeteners (Earnshaw and Judge, 1993). The third rejection came on a proposal relating to energy consumption of household appliances in July 1992. And in October 1993, on the basis of a recommendation by the Committee on Economic

and Monetary Affairs, Parliament rejected a fourth common position on the speed, torque and maximum power of motorcycles (Earnshaw and Judge, 1995b). In December 1994 two further common positions were rejected under the co-operation procedure, which Council promptly overruled.

In view of Fitzmaurice's prognostication above, MEPs were asked why Parliament had exercised such restraint in rejecting Council's common positions. Derek Prag's (EPP/UK, interview 12 April 1994) answer was that:

> Parliament doesn't like rejecting. ... It follows that the Parliament will always avoid rejection if it can. Parliament comes badly out of rejection if legislation is needed. It's better to have legislation that we regard as partially unsatisfactory or inadequate rather than no legislation at all.

In addition, the Chairman of the Budgets Committee, Thomas Von der Vring (Soc/D, interview 12 April 1994), pointed to the political considerations to be borne in mind when answering the question, 'why has Parliament rejected so few common positions?':

> There are different reasons. Firstly, the majorities within the Council and Parliament are not so different as you could imagine. If you need a qualified majority of 260 votes, and 330 people are present, 70 people can block it. So Parliament could only stand for rejection if there was a broad majority across the big groups. If this majority exists it is not normal that in the Council there is no majority along the same lines. If Council knows there is a majority against, but no absolute majority, that is a weakness of our position.

Conclusion

In 1988 Fitzmaurice observed that under the co-operation procedure the Commission 'sits uneasily between Council and Parliament. … It must try to carry both institutions with it' and that what had emerged overall was 'a more complex interinstitutional puzzle' (1988, pp. 398–9). In practice, what the interviews conducted for this study serve to illuminate is the fact that the co-operation procedure served to 'hyphenate' the relationship between Parliament and the other two institutions and so to transform the Council–Commission dialogue into an asymmetrical Council–Commission–Parliament trialogue. However, in strict constitutional terms, Parliament still remained the 'outsider' in this relationship. Nonetheless, the true importance of the formal procedure was that it facilitated the exertion of greater *informal* parliamentary influence over EU legislation. Thus, in interview, MEPs and officials alike pointed to the importance of informal negotiations between Parliament and the Commission in determining the eventual legislative impact of the EP.

There were, however, clear limits to the closeness of the interinstitutional contacts which developed as a result of the co-operation procedure. Presciently

in 1988, Fitzmaurice commented that with the introduction of the SEA: 'it would be wise [for the Commission] to take account of not only what will "play" in Council, but also what will play in Parliament' (1988, p. 398). The present study reveals, however, that such 'wisdom' was not always fully inculcated amongst those Commission officials initially responsible for the preparation and drafting of legislative proposals. The attention of such officials remained primarily focused on the Council and, in particular, on Council working groups comprised of national civil servants. At this level Parliament often featured only in the 'peripheral vision' of Commission officials.

In 1988 Fitzmaurice also noted that 'Parliament has been severely critical of the information given by Council' (1988, p. 395). Again, the interviews for this study reveal that the co-operation procedure did little to reduce the opaqueness of the Council's proceedings. From the Council's early reluctance to explain its common positions in any detail, to its frequent refusal to divulge information about the negotiating processes in COREPER and Council working groups, the EP remained an onlooker. Direct interaction between Council and the EP remained limited and, when it did occur, usually took place only through the mediation of the Commission.

One undoubted success of the co-operation procedure was that it provided 'a strong basis from which to move forward on its long march ... [towards] institutional reform' (Fitzmaurice 1988, p. 400). The operation of the co-operation procedure provided Parliament with the opportunity to revise its internal rules both to maximize its legislative impact, and also to demonstrate its wider legislative 'responsibility'. In this sense, it was clearly a transitional procedure allowing for institutional experimentation and effectively disarmed many critics of enhanced parliamentary involvement in the EU legislative process. The interviews conducted for this study bear testimony to this fact and also have a wider resonance for the debates on institutional reform within the EU in the late 1990s.

Appendix 1: Interviews

All interviews were conducted before the elections of June 1994. Membership of Committees and the positions of office holders listed below refer to those held before June 1994.

Members of the European Parliament

Gordon Adam (Soc, United Kingdom) Vice Chairman, Energy, Research and Technology

Peter Beazley (EPP, United Kingdom), Economic and Monetary Affairs and Industrial Policy

Bouke Beumer (EPP, Netherlands), Chairman, Economic and Monetary Affairs and Industrial Policy
Sir Fred Catherwood (EPP, United Kingdom), Social Affairs, Employment and the Working Environment
Ken Collins (Soc, United Kingdom), Chairman, Environment, Public Health and Consumer Protection
Willy de Clercq (LDR, Belgium) Chairman, External Economic Relations
Brigette Ernst de la Graete (Green, Belgium), Economic and Monetary Affairs and Industrial Policy
Annemarie Goedmakers (Soc, Netherlands), Budgets; Energy, Research and Technology
Pauline Green (Soc, United Kingdom), Environment, Public Health and Consumer Protection
Fernand Herman (EPP, Belgium), Economic and Monetary Affairs and Industrial Policy
Caroline Jackson (EPP, United Kingdom), Environment, Public Health and Consumer Protection
Alman Metten (Soc, Netherlands), Economic and Monetary Affairs and Industrial Policy
Ben Patterson (EPP, United Kingdom), Economic and Monetary Affairs and Industrial Policy
Carlos Pimenta (LDR, Portugal), Environment, Public Health and Consumer Protection.
Lord Henry Plumb (EPP, United Kingdom), President of the European Parliament 1987–89; Agriculture, Fisheries and Rural Development
Derek Prag (EPP, United Kingdom), Institutional Affairs
Peter Price (EPP, United Kingdom), Budgetary Control
Dagmar Roth-Behrendt (Soc, Germany), Environment, Public Health and Consumer Protection
Madron Seligman (EPP, United Kingdom), Energy, Research and Technology
Tom Spencer (EPP, United Kingdom), Environment, Public Health and Consumer Protection. (External Economic Affairs)
Willem van Velzen (Soc, Netherlands), Chairman, Social Affairs, Employment and the Working Environment
Thomas von der Vring, (Soc, Germany), Chairman of Budgets Committee
Ian White (Soc, United Kingdom), Environment, Public Health and Consumer Protection

European Parliament Secretariat and Group Secretariat

Jeff Coolegem, Secretariat of the Committee on Environment, Public Health and Consumer Protection
Richard Corbett, Group of the Party of European Socialists
Willem Hoogsteder, Directorate General for Research and Documentation
Francis Jacobs, Secretariat of the Committee on Economic and Monetary Affairs and Industrial Policy

Michael Shackleton, Directorate General for Committees and Delegations: relations with the Parliaments of Member States
James Spence, Secretariat of the Committee on Energy, Research and Technology
Roy Worsley, Directorate General for Information and Public Relations

Officials of the European Commission

Robert Hankin, DG III, Industry
Mathew Kestner, DG XVII, Energy
Una O'Dwyer, Secretariat General
André Slagmulders, DG III, Industry
Martin Westlake, Secretariat General
David White, DG III, Industry

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