

Moving on without the Constitution (paper for EUSA Conference in Montreal, May 2007)

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Introduction

The Constitution would have consolidated the EP's legislative powers, extending them, in particular, to new areas such as agriculture, and ensuring that codecision would become the normal EU legislative procedure. In the continuing absence of such a Constitution, the Parliament has not been sitting still, but has continued to be highly active in both legislative and related fields. Parliament has thus responded in three principal ways, which are all explored in the present paper.

Firstly, it has sought to maximize its existing legislative powers, by playing decisive roles in areas of exceptional legislative complexity such as the Services Directive and the REACH chemicals legislation and by occasionally pushing out the frontier of existing rules such as in two recent first reading "rejections" of Commission legislative proposals.

Secondly, it has also been carving out a stronger role for itself in other areas which have become of ever greater importance at a time of low legislative activity by the Commission. Among these are the legislative planning process itself, cross-cutting issues such as the Lisbon Agenda and the Sustainable Development Strategy, and also the Better Regulation Agenda (simplification, impact assessment, implementation, etc) which has been so heavily pushed by the Barroso Commission. It has forged stronger links than ever before with national parliaments. It has also been seeking to improve its own internal procedures, not least through its recently established Working Party on the Reform of EP Working Methods.

Finally, the Parliament has pushed for new inter-institutional agreements (IIA's) to resolve a number of practical problems that have arisen, and to help codify existing rules. In this context, it has already reached agreement with the other institutions on important new groundrules on comitology, falling short of what is in the Constitution, but still representing a significant advance on the EP's previous powers in this area. The Parliament has also reached agreement with Commission and Council on an updated joint declaration on practical codecision procedures.

1. The Constitution and the European Parliament

There continues to be great uncertainty about what will happen to the draft Constitution, and how much of it will survive in any successor agreement. If it had come into force in its present form it would have had considerable impacts on the existing powers of the European Parliament. Firstly; it would have turned the existing codecision procedure into the normal EU legislative procedure, removing the existing anomaly whereby significant areas of policy, notably agriculture, are still subject to the single reading consultation procedure. Secondly it would have significantly reinforced the EP's budgetary powers, requiring all EU expenditure, without exception, to have Parliament as well as Council approval and removing the arcane and undemocratic distinction between compulsory and non-compulsory expenditure, giving the EP a more powerful role in approving the longer-term financial perspectives, and even giving the EP a formal say for the first time on the revenue side. The EP would also have been given proper rights as regards the scrutiny of EU delegated legislation, thus removing its weaker position vis-a-vis the Council as regards comitology. A large number of other steps would have been taken to reinforce the position of the Parliament.

In its resolution of 12 January 2005 the EP endorsed the Constitutional Treaty, and called for its ratification. It is now looking at the way forward, with its Constitutional Committee currently examining a draft report by co-rapporteurs Brok and Baron on a "Road Map for the Union's constitutional process".

Pending any more lasting agreement on the way forward, the EP has sought to play the fullest possible role within its existing powers.

2. Maximizing its existing powers in the legislative process

Even in the absence of a Constitution the EP now has very considerable legislative powers, and has been making good use of these powers over the last couple of years. The biggest publicity for the Parliament has come on the two major legislative files of the Services Directive and the REACH chemicals legislation, on both of which the EP has been deemed to play the decisive role on controversial files which could well otherwise have failed. Among the other recent developments of particular interest in the legislative field have been Parliament's first use of its power to reject a common position at second reading stage, the splitting up of Commission proposals into separate proposals at first reading phase, two first reading "rejections" of Commission proposals in spite of the EP not having the formal right to do so, and further evolution in codecision procedures.

(i) The Services Directive

This has been an immensely controversial proposal, being called the Frankenstein Directive by some of its detractors, being cited as a significant factor in the French debate on the draft Constitution and mobilising 25,000 demonstrators in Strasbourg when the EP voted its first reading. Intended as a horizontal measure to open up the EU internal market in services, and to remove cross-border barriers to trade in such services, it quickly became part of the wider debate on alleged Anglo-Saxon ultra-liberalisation of the economy, and on globalisation, with widespread fears that consumers would suffer as a result of service providers being subject to the law of the country of origin of the services provider, and that companies would relocate to new Member States with lower social standards, and lower levels of workers protection.

The proposal was drawn up by Commissioner Bolkestein in the 1999-2004 Commission; but EP consideration of the proposal was pushed back to the 2004-2009 Parliament, where it was considered by the Internal Market Committee as the lead committee, and with Evelyne Gebhardt as rapporteur.

The EP adopted its first reading in February 2006, with the EP essentially removing the country of origin principle, removing the provisions specifically relating to the posting of workers, and considerably extending the list of excluded services to such new areas as health, audiovisual activities, gambling and social services. The EP thus proposed major changes to the concept of the original directive. It did, however, support the idea of a services directive, considering that a large number of practical steps should still be taken to extend the principle of freedom of establishment whose importance had been undercut by the over emphasis on the country of origin principle.

The position adopted by the Parliament then formed the basis of a final deal, with the Council's common position reflecting the compromise that had been found within the Parliament. Only three technical amendments were made by the EP in its second reading, and final agreement was then reached with the Council without having to go to conciliation, a remarkable achievement on such a difficult issue.

The EP thus played a vital role in ensuring that there would be a services directive, and that the EU market for services will be opened up by 2010. Without the Parliament it is highly unlikely that there would have been a successful outcome. The Commission' original proposal was clumsily presented, and the Commission underestimated the hostility to full application of the country-of-origin principle. The Commission then decided to abdicate from playing a leading role, and to wait until a majority position had emerged within the Parliament, and subsequently to support that position, on the grounds that it was better to have a watered-down version of their original proposal than no directive at all. The Council was severely divided both between old and new Member States, and between "state interventionists" and "Anglo-Saxon liberalizers", and found it extremely hard to adopt a united position. On the other hand, the EP, while also having its own internal divisions, proved better equipped to overcome these divisions. A High Level Working Group was established to find a compromise between the two biggest groups. This was successfully achieved, and a strong majority was then found within the Parliament to ratify the compromise, and to induce the Commission and Council to accept the result.

(ii) REACH

The other major piece of legislation that has been recently resolved was REACH, the new regulation on chemicals. Yet again the EP played a fundamental role in brokering an agreement. The Commission had first put forward a White Paper on this issue in the previous Parliament and the sensitivity of the matter was shown by the fact that several hundred amendments were tabled to the rapporteur's draft report on a text which was not yet of a legislative nature. The Commission's formal legislative proposal was eventually put forward at the end of October 2003. There was a tough contest as to which of three EP committees would be appointed as the lead committee. In the end the Environment Committee was accepted as the lead committee, with Guido Sacconi as rapporteur, but in enhanced cooperation not just with the Internal Market but also with the Industry Committee. There was also agreement that there would be no accelerated treatment for the proposal, and that it would not be concluded before the June 2004 EP elections.

The EP returned to the issue after the elections when the Environment Committee and Mr Sacconi were confirmed in their respective roles. Besides the two committees in enhanced cooperation, almost half the committees of Parliament were involved in drawing up opinions on the legislative proposal. The issue continued to be highly controversial, with green NGOs and others considering that it was vital to adopt a strong proposal in order to tackle the problem of insufficiently tested older chemicals, whereas others, and notably the German chemical industry, argued that the measure would cost a large number of jobs, and threaten EU competitiveness. Many third country governments also got involved in the debate, many to lobby against the proposal. The issue also proved to be highly divisive in all the institutions.

The Commission had, of course, put forward the proposal, but there were clear differences of emphasis between DG Environment and DG Enterprise, and the respective Commissioners, Dimas and Verheugen. The initial proposal had been accompanied by an extended impact assessment, but the Commission later conceded the need for a further complementary impact assessment. Moreover, texts circulated within the Commission that would have changed the balance of the original text. There was also a wide range of views within the Council.

Such a range of views was also found within the Parliament, not least between the Environment Committee and the two committees in enhanced cooperation. The Environment Committee rapporteur, Guido Sacconi and the Committee chairman, Karl-Heinz Florenz, realized that special working methods would be required to overcome these differences. A joint hearing was organized by the three committees. A working group was also established that started meeting on a very frequent basis, and that included not only Sacconi and Florenz and the shadow rapporteurs from all

the political groups, but also Hartmut Nassauer, the draftsman of the opinion of the internal Market Committee, and Lena Ek, who was drafting the opinion of the Industry Committee.

The starting point of their discussions was a list of priority issues drawn up by each political group, and which permitted the identification of those issues on which agreement could be found easily, and those on which it would be more difficult to achieve. The rapporteur then made a Power Point presentation to his colleagues in which he outlined those issues which initially appeared to be less controversial, such as the powers of the Chemical Agency, those which were more difficult, such as the duty of care, the principle of One Substance One Registration, the issue of substitution and that of the required animal testing, and finally the apparently most difficult issues, such as prioritisation, requirements for low volume usage of chemicals, data protection and substances in articles. The rapporteur then announced that he would be looking for a joint proposal starting from the least controversial points, and gradually tackling the more difficult ones.

As the months went by there were many difficult discussions, but the degree of cooperation and exchange of information between the three main committees remained exceptionally close. After the vote in the Environment Committee, at which over 1,000 amendments were considered, considerable differences still remained on the crucial issue of registration, and the separate approaches of the three main committees on this point were all sent off to the plenary along with the report of the Environment Committee. Until shortly before the plenary vote in first reading in November 2005 it was uncertain whether a majority would be found for the proposal, but an agreement between Sacconi and Nassauer on the registration issue acted as the final catalyst. Many of the supporters of a strong REACH, notably on the left and among the Greens, were disappointed with the terms of this agreement, and again it looked as if they might vote against the compromise, helping to ensure its defeat along with the pro-industry opponents of the whole REACH system. In the end, however, many on the left, and even some Greens, decided that they preferred a watered-down REACH to no REACH at all. A large first reading majority was then found.

This agreement, in its turn, helped to spur adoption of a political agreement within the Council in December 2005. A formal common position was subsequently adopted in June 2006. Intense negotiations then took place under the Finnish Presidency in the autumn of 2006, with considerable differences still remaining, but a global compromise package was finally presented to the Parliament at the end of November, and addressing the most sensitive points, such as registration/data sharing and authorisation/substitution. Final agreement was then reached, which was endorsed by the Parliament on 13 December 2006 with a handsome majority of 529 in favour to 98 against and 24 abstentions. The EP had again shown that it could surmount its own internal differences to obtain an overall compromise, so that a hugely sensitive bit of legislation could already be resolved at the second reading stage, and without conciliation being necessary.

(iii) second reading rejection

The introduction of the codecision procedure gave the EP to reject legislative proposals at the second reading or conciliation phases. The real significance of this was that it gave the EP real bargaining power, and a greatly increased capacity to amend EU legislative proposals. Actual EP rejection of texts remained extremely rare, and was restricted to the post-conciliation phase. This is now no longer the case, with the EP using its power to reject in second reading a proposal on the patenting of computer-implemented inventions.

This was a proposal which would have harmonized the way in which national patent laws dealt with inventions using software. It was first put forward by the Commission in February 2002, and the EP gave its first reading in September 2003. The Council reached a political agreement on the proposal in May 2004, just before the European elections of that year. The issue thus re-emerged before the

newly elected Parliament. The Parliament's own Rules of Procedure permit it to request re-consultation, and hence a new first reading, on any legislative proposal if elections have taken place since the EP first considered a matter, and if the legislative procedure has not been concluded. In March 2005 the EP decided to request re-consultation in the case of this proposal. Since such a procedure is not expressly laid down in the Treaties this request could be ignored by Commission and Council. The Council did just this, and adopted a formal common position on the proposal on 7 March 2005. The Commission indicated it could go along with the common position, and thus took the side of the Council.

The EP was then left with no practical alternative but to give its second reading on the proposal. The EP committee considering the proposal, with Michel Rocard, the former French Prime Minister, as its rapporteur, voted to approve the common position, but the outcome was then very different in the plenary. Smaller companies were among those lobbying the Parliament against the proposal on the grounds that patenting would raise legal costs. Of greater importance, however, was the institutional challenge posed to the Parliament by the Commission and Council's ignoring of its request for re-consultation. The EP thus closed ranks and rejected the common position on 6 July 2005 by a massive vote of 614 to 14 with 18 abstentions.

(iv) first reading "rejections "

If the second reading rejection of the proposal on the patenting of software showed the Parliament asserting its formal rights under the Treaties, the two recent rejections of proposals at the first reading phase have brought the Parliament into new and uncharted territory. The codecision procedure does not give the EP the right to do this, and it is not even clearly set out in Parliament's own internal Rules of Procedure. On the other hand why waste valuable legislative time in considering a proposal which is not going to be adopted by the EP or the Council? The alternative of not taking action (since neither the EP nor the Council are bound by any deadlines at the first reading stage), and waiting for the Commission to withdraw a proposal that is going nowhere, can also be pointlessly time-consuming. There is thus a strong logic in favour of such first reading "rejections" even if they are of an informal rather than formal legal character.

The first two cases of this in the current Parliament followed in close succession in late 2005. In the first instance, the Commission, as part of a rail services package, had submitted a proposal for a system of compensation in case of non-compliance with contractual quality requirements for rail freight services, for which Roberts Zile of Latvia was appointed as rapporteur within the Transport Committee. On 27 September 2005 the Parliament voted down the proposal largely on the grounds that it was unnecessary and would not result in an improvement in quality in this sector. The matter was then referred back to the Transport Committee for consideration. The procedure that was followed to do this was that originally envisaged to maximize Parliament's weak institutional position under the one reading consultation procedure, whereby the EP would stop short of a final vote on the legislative resolution and refer the matter back to committee in order to elicit a position from the Commission., and to obtain the maximum amount of leverage before its final decision. The Zile report was then brought back to plenary on 25 October 2005, and the EP took a final vote. As the minutes state: "The rejection of the proposal was thereby confirmed and the procedure brought to a close". This would, of course, not have been the case if the Council had disagreed with Parliament's position, and wished to continue with the procedure.

The other case took place on the basis of a report from the Environment Committee on an issue of animal protection, and concerned implementation by the Community of the agreement on international humane trapping standards (doc. 98/142/EC, doc. 98/487/EC). In 1996 the Community had concluded two identical agreements on trapping standards, the first with Russia and Canada, the second with the United States. The EP had considered the first of these agreements in 1997, and had

opposed it on the grounds that it was motivated by trade rather than animal welfare reasons. In 1998, however, the two agreements had been approved by the Council. Since EU national laws on this point continued to differ, the Commission then put forward a proposal in July 2004 to harmonize EU laws, and thus to enable the EU to fully comply with these agreements.

The Environment Committee appointed Karin Scheele as rapporteur, and adopted a report recommending rejection of the proposal. This position was supported by the plenary in November 2005, and, as in the case of the Zile report, the matter was referred back to committee before a final vote. The issue returned to plenary on 13 December 2005, when the EP confirmed its rejection on a massive vote of 472 to 32 with 10 abstentions. This large majority on rejection of this innocuous-sounding proposal was due to a mixture of institutional and substance-related reasons. The EP now had codecision, and could not be overridden as in the case of the original agreements. Meanwhile, on the substance, some members felt that it went too far, and others that it contained insufficient protection for animals. Finally the Parliament was also aware that the Council attached very little importance to the Commission proposal, and would not try to revive it.

A third case where rejection may occur in the near future is on the issue of clean road transport vehicles. The Commission put forward a proposal aimed at allocating a minimum quota of 25% of their annual procurement of heavy-duty vehicles to environmentally friendly vehicles meeting certain minimum standards. This sounded a good idea but the Commission did not prepare the ground in advance, and sprung the idea on the Austrian Presidency at the last moment. It soon became apparent that it did not enjoy much support within the Council.

The Environment Committee appointed Dan Jorgensen, who discussed the issue with the shadow rapporteurs from the other groups, and with the Council. While sympathizing with the objectives of the proposal, he concluded that it was inappropriate in this form, and that the Commission should come forward with a new set of proposals. A final vote on rejection is now scheduled for the June 2007 plenary, but may be further postponed.

It is increasingly clear that any future revisiting of the codecision procedure should envisage the possibility of formal rejection of a proposal by Parliament or Council at the first reading stage, which would be a quicker and more efficient way of killing off unwanted Commission proposals. In the absence, however, of such a formal possibility, the EP has developed informal procedures to achieve the same objective, and these can be very effective when the Parliament and the Council are on the same wavelength.

(iii) Splitting up of Commission proposals at first reading

The Parliament's greater assertiveness in legislative matters is not just evident in its rejections of specific proposals, but also in its greater willingness to tamper with Commission texts in other respects, notably splitting them up into separate proposals. The Council has been prepared to do this for some time, for example by creating two common positions out of one text submitted by the Commission. Until recently the EP had been more reluctant to do this, but this has now changed. One example was in the case of revision of TSE legislation in 2004-5 where the EP rapporteur, Ms Roth-Behrendt, successfully pushed for the part of the proposal dealing with the prolongation of existing measures to be separated out from the rest of the proposal, and dealt with first. The second and more technical part of the proposal could then be tackled on a less hurried basis, with the rapporteur taking detailed evidence (for example in a seminar with the chief veterinary officers of most of the member states), and it was only completed in 2006.

The second and even more interesting case was that of the Commission's proposal in early 2005 on a "Programme of Community Action in the field of Health and Consumer Protection 2007-2013". This replaced two separate programmes on health and on consumer issues, and the Parliament was not convinced by the supposed synergies and other substantive arguments for combining them within one programme, believing, instead, that it was being done for primarily budgetary reasons. Moreover, health and consumer issues fell within the remit of separate EP committees. The two committees held informal discussions, and reached agreement that the combined programme should again be split, with the health aspects being treated by a rapporteur in the Environment Committee (Mr Trakatellis) and the consumer aspects by a rapporteur in the Internal Market Committee (Ms Thijssen). This was technically more complex than in the case of the TSE measures, as it required restructuring of the Commission's proposal. This was then carried out under the supervision of the two rapporteurs, and the splitting up of the proposal was then ratified on 30 June 1995 by the EP Conference of Presidents.

The key to such initiatives by the Parliament is close contact with the Council, to ensure that the latter is in agreement or at least not hostile to the proposed action. In pre-codecision days there were few such contacts between Parliament and Council at the first reading phase, and most communication passed through the Commission. This is no longer the case, and the existence of systematic contacts between the EP committees and the relevant Council working groups helps to ensure that there is much better understanding of each other's point of view.

(iv) Negotiations between the Council common position and EP second reading

Even when the rules of the game have not been altered by formal Treaty change or by the soft law route of an Inter-Institutional Agreement, legislative procedures have continued to evolve on a day-to-day basis. A good example of this is in the exchange of letters between EP and Council in the context of concluding first or second reading deals in the codecision context. As first pioneered within the EP Environment Committee, this took the form of a letter from the Council Presidency to the Parliament saying that a deal would be reached if the EP voted on an agreed set of amendments. at first or second reading . The Transport Committee then developed a variant of this, whereby the EP would send a letter to the Council Presidency on the basis of negotiations after the EP first reading to say that there would be agreement between the two institutions if the Council were to incorporate a particular set of amendments in its common position. Such a procedure helps to promote serious negotiations between EP and Council between the EP first reading and adoption of a Council common position and to facilitate an early second reading agreement between the two institutions. Both these variants are now being included in the proposed new inter-institutional guidelines on the codecision procedure (see part 4 below).

3. Maximizing its influence in other areas

Besides making full use of its legislative powers, the EP has also been seeking to maximize its influence in other areas, to build more effective links with other actors, such as the decentralized agencies and the national parliaments, and finally to re-examine its own internal workings and procedures to make it more effective in the future. Some examples of this are given in the next section of the paper.

(i) Legislative planning

The issue of EU legislative planning is obviously of considerable importance, in terms of EU agenda setting, and what is considered, or not considered, by EU policy makers. There is no one model for how this occurs, and all the institutions play a role. The Commission, with its right of initiative, clearly plays a central role, especially through its Annual Legislative Programme.

Individual Council Presidencies have a less structured but also key role in trying to shape the agenda during their 6 month period of office, and medium-term Presidency Programmes are also now being developed, with the latest example being the three Presidency working programme jointly put forward by the German, Portuguese and Slovene Presidencies.

In recent years the EP has sought to reinforce its influence in this area. The most structured relationship is with the Commission, with the Commission presenting its draft annual programme to the Parliament, meetings then taking place between individual EP Committees and their corresponding Commissioners to discuss the relevant elements of the annual programme, comments from the committees, and a final EP vote on the programme towards the end of the year. By this means the EP both tries to have an input into the overall priorities of the programme, but also on the legislative and other details.

Relations with the Council and with individual Council Presidencies are less structured, although the relevant Presidency Minister meets with the Conference of EP Committee chairmen at the outset of each Presidency, and individual sectoral Ministers attend EP committee meetings for exchanges of view on their Presidency priorities. These contacts are important, but normally come too late to shape a Presidency's priorities. Of great significance, therefore, are the informal contacts between EP committees and their counterparts from forthcoming Presidency countries, so that the latter can have a clearer idea, up to a year or more before their Presidency, whether a particular priority can be achieved, or might run into practical difficulties within the Parliament. This is another example of how the legislative codecision powers of the Parliament is having a spillover in terms of more general influence on EU agenda-setting.

(ii) Cross-cutting issues (Lisbon Agenda, Sustainable Development Strategy, Climate Change)

Many of the most important areas of EU activity cross boundaries between policy areas, and involve difficult coordination between policy actors in all three institutions with different policy traditions and priorities. In the case of the EP it might have codecision on some of the individual legislative measures which are required, but does not have the same weight when it comes to decisions on the overall process. How it seeks to maximize its contribution and influence in such cases will be of great importance for the EP's future credibility. Three brief examples are given below.

The first is that of the Lisbon Process. After a number of generally unsuccessful attempts at coordination the EP decided to set up a special Lisbon Coordination Group with 33 members drawn from the various EP committees with particular involvement in Lisbon-related issues. The main responsibility of the Coordination Group has been to prepare Parliament's resolution on the annual progress made on the Lisbon Strategy in time for EP views to be sent to the other institutions before the Spring European Summit which considers the Lisbon Process. The Coordination Group has worked through two co-rapporteurs, obtains input from the EP sectoral committees, and also has an annual meeting with counterparts from national parliaments. The main focus of its activities is thus early in a year, but the Group is kept alive throughout the year, with meetings of its coordinators often taking place in Strasbourg and the meetings of the full group normally in Brussels.

In 2006-7, for example, the Group met monthly through the autumn of 2006, and a first draft of the resolution was produced before the end of the year. The Working Group then voted in January, and the third annual meeting with national parliamentarians was held on 5-6 February 2007, with specific working groups on sustainable energy, on internal market and innovation and on human capital (education, job creation and social aspects). The resolution was then voted in plenary in February, in time to be fed into the European Summit meeting on 8-9 March.

A second example was that of the re-examination of the EU Sustainable Development Strategy in early 2006, and on which the then Austrian Presidency attached a high importance. The Austrians approached the EP in late 2005 to see whether the EP could provide input into this process in time for a decision on the matter by the end of the Austrian Presidency. This was too late to seek authorisation for, and draw up, an own initiative report on the issue, and it would have been hard to involve a large number of committees in this process. Again the solution was to create an open working group, with leadership from the Environment Committee, but with participation of members from a wide range of EP Committees, such as Industry, Economic, Social, Transport and Development Policy. The working group met on a number of occasions, was given briefings by the Commission and by the coordinators within the Austrian Presidency, and eventually prepared a cross-cutting resolution for consideration and adoption by the plenary. The process was not ideal, but did show that the EP could respond quickly and flexibly to a new policy challenge.

A third example is on the highly topical issue of climate change, which is formally within the area of responsibility of the EP Environment Committee but, in practice, overlaps the responsibilities of a large number of other committees as well. There are currently two major challenges in this field, firstly to monitor implementation of existing EU and national commitments under the existing Kyoto Protocol, and secondly to come up with new ideas and impetus for the post-2012 international climate change regime. The EP has been sending members to take part in EU delegations to the UN Conferences on climate change for many years, and their numbers have been growing over time. The EP has now taken the decision to establish a new Temporary Committee on Climate Change, not to take away legislative responsibilities from existing sectoral committees, but to ensure that there are better-prepared and more thorough debates on this issue over the crucial period to come before agreement on a new post-2012 regime.

(iii) Better Regulation Agenda

One of the issues which has had a high profile over the last few years has been that of Better Regulation, of ensuring that the quality of EU legislation is improved, that alternatives to legislation are better explored, that EU initiatives are subject to more systematic impact assessments, that implementation of legislation is better monitored, and that legislation not meeting its purpose or duplicating other legislation is amended or repealed. These are important but technical tasks, and yet it is essential to ensure that they are subject to proper democratic accountability. The Inter-institutional Agreement on Better Law-Making, signed in December 2003, also commits the EP, along with the Commission and Council, to tackle many of these issues. The EP is thus currently actively exploring how it can make a greater contribution on these points.

- Impact Assessment

The IIA on Better Lawmaking committed the three institutions to a more systematic use of impact assessments, and this was followed up in 2006 by agreement on a common approach by the EP, Commission and Council toward implementing this commitment.

The EP's role in this process is still an evolving one, but it is basically a two-fold one, firstly to examine, comment on, and make use of, the Commission's initial extended impact assessment on any major new EU initiative, and secondly, where appropriate, to carry out impact assessments on its own substantive amendments in the legislative process.

The former role is still by far the most significant one, as the Commission has both more time and more resources to carry out its initial impact assessments than the other two institutions have at their disposal once the legislative process is further underway, especially when second reading and

conciliation deadlines are at stake EP Committees are thus already being encouraged to spend more time debating the quality of the initial Commission impact assessment alongside the proposed new EU legislative or other proposal, and to look not only at the administrative costs, but at the wider balance between economic, environmental and social criteria, and between short and long term costs and benefits. The EP will have to look at whether all the relevant options have been fairly covered, where there appear to be gaps in the evidence, and whether all important stakeholders have been consulted. If necessary, the Committee can then ask for clarification by the Commission, or even for additional impact assessments by the Commission.

In a few exceptional cases the EP may also have to carry out impact assessment on its own "substantive" amendments. This has already been carried out on a handful of occasions, notably within the Environment and Internal Market Committees, but the scope for such assessments will often be restricted by lack of time and resources. Many key issues have still not been teased out in this respect, such as what is a substantive amendment, and who decides on carrying out such an assessment.

In spite of these difficulties, the EP is now giving a greater emphasis to these tasks than in the past. The EP Policy Departments are being asked to help committees in these tasks, and there is a dedicated budget line for committees to use.

- Implementation

This is a difficult issue for the Parliament, but one which it is gradually taking much more seriously. The problem is that the EP has no formal role on monitoring implementation to compare with its codecision powers on new legislation. It is also slow and painstaking work, and it tends to be crowded out by more pressing tasks. And yet, the Commission, the guardian of the Treaties, needs all the support that it can get. Moreover, as the volume of new legislation gradually slows down, and as the emphasis shifts towards assessing whether EU legislation is being properly applied, or, indeed, whether it is meeting its original objectives or not, the task of monitoring implementation is becoming of greater importance for the Parliament.

Many EP committees are involved in this work. The Budgetary Control Committee specializes in one aspect of this task, and the Legal Affairs Committee looks at horizontal problems of transposition and implementation (and has just held a joint hearing on this issue with members of national parliaments). The Petitions Committee is particularly active in following up complaints from individual citizens for non or inadequate implementation of EU law. Meanwhile the sectoral committees look, with varying degrees of application, at problems of implementation, and whether the legislation is proving fit for purpose.

Committees have a number of instruments at their disposal in this task, including hearings, implementation question time in committee (the Environment Committee now has three different such sets of question time, on environment, on public health, and on food safety), delegation visits to look at specific problems in the member states, and so on. Another idea which has been put forward is for EP rapporteurs on new legislation not to stop their work when the legislation is adopted, but to continue to monitor the transposition and implementation phase as well.

- Simplification

The simplification of EU legislation is an important new task for the Commission, and for other EU-policy makers. It covers a wide range of options, from withdrawing proposals that are going nowhere, codifying or re-casting existing legislation, combining existing bits of legislation which overlap with each other, or even repealing existing legislation which is redundant, or not meeting its objectives. So far the Commission's bark on these points has been louder than its bite. The EP is

slowly getting more involved in this task, and is informed and consulted on the Commission's rolling plan of simplification. The EP is still at a relatively early stage of reflection as to how it could make a real contribution on this point, with more systematic use of rapporteurs a possible option in this regard. This will be an important new challenge for the EP in the near future, not least because fear of over-regulation and bureaucracy is one of the motivating factors for Euroscepticism in certain Member States.

(iv) Relations with decentralized EU agencies

The EP's relations with decentralized agencies vary greatly from agency to agency, with the EP tending to have few formal links with the first generation of such agencies, and much closer formal and informal links (as ever these two tend to go hand-in-hand) with many of the more recent agencies.

In a number of cases the EP now has nominees on the Management Boards of such agencies, has a say in the selection of other members of the Management Board, gives its view on the nominee to be Executive Director of an Agency, can ask agencies for scientific opinions or other information, has regular dialogues in committee with the Executive Director, makes regular visits to an Agency and, of course, helps to provide the budget of each Agency, and to sign off on the use of an Agency's budget over the previous year.

The EP is continuing to build on these developing links. A committee like the Environment Committee now not only holds confirmation hearings for nominees to be Executive Directors of certain agencies, but also holds hearings to choose the EP's own nominees to the Management Board. It is currently discussing whether to consider criteria for judging possible conflicts of interest for nominees on Management Boards. In one case (with the European Environment Agency) it has had an exchange of letters with the Agency in order to set benchmarks for the future relationship between the Committee and the Agency. The Committee is also being encouraged to give its views on the annual or longer-term work programme of individual agencies.

There have been attempts to provide a more coordinated overall institutional framework for these agencies, but these have so far come to nothing. In their absence, the EP is not sitting still, and relationships with individual agencies, while still somewhat patchy, are gradually becoming more systematic and more intense.

(v) Links with national parliaments

The Constitution would have reinforced the position of the national Parliaments in the EU legislative process. Even in the absence of the Constitution, however, the EP has increasingly come to see the importance of strengthening its contacts with the national parliaments, its partners in ensuring democratic accountability of EU activities. In the past the links between the EP and national Parliaments have been sporadic and "ad hoc", but they have continued to become much more systematic in recent years.

The EP now has its own Directorate for Relations with National Parliaments, with a former national Parliamentarian from Poland as its Director. Two of the EP Vice-Presidents, Edward McMillan-Scott and Pierre Moscovici, have been given specific responsibility for overseeing EP-national Parliament relations. In addition to the Conference of Speakers of the Parliaments of the EU, which meets annually, there are also twice annual meetings of the COSAC, the Conference of Community and European Affairs Committees of Parliaments of the European Union. These meetings have taken place for a considerable time, but COSAC has gradually become of greater importance, and

now has its own small permanent secretariat based in Brussels. A more recent structural change of considerable significance is the development of national Parliament liaison offices based at the EP in Brussels. A few years ago these did not exist, but the Danish Parliament became the first to send one of its national parliamentary officials to Brussels, and other parliaments have subsequently followed its example. There are now such liaison officers from 23 of the 27 EU Member States, with several of the parliaments having liaison officers from both houses of their national parliaments.

Meetings between MEPs and national parliamentarians do not just take place within the above contexts, but are now proliferating at all levels of the parliament. Individual committees, such as the Foreign Affairs Committee, which meets twice yearly, and the Environment Committee, which has annual such meetings, are now meeting regularly with their counterparts in the EU member states, and invite national parliamentarians to their meetings. Joint Parliamentary Meetings are now taking place on a practically monthly basis. In the first few months of 2007 alone these have included joint meetings on the future of the Lisbon Strategy, on immigration and progress and shortcomings in the areas of freedom, security and justice, on the Northern Dimension, on economic policy, on EU energy policy and the candidate countries, on the application of Community Law, and on foreign policy and security issues. No less than 12 major inter-parliamentary meetings are planned in the course of 2007, either being organized by the Parliament or by the Council Presidency.

(vi) Improving its own internal procedures (Limelette, Working Party on EP Working Methods)

The EP is thus seeking to extend its influence in a whole range of way which are independent of the current debate on the future of the Constitution. It is also aware, however, that to maximize its effectiveness, it needs to review its own internal structures and procedures. These efforts have intensified over the last couple of years. Firstly, former President Borrell put forward a number of ideas for reform, and these were examined by the Political Group leaders. The Conference of Committee chairmen then met in a location outside Brussels (Limelette) to examine a wide range of proposals, including improving enhanced cooperation between committees (the procedure used in the REACH and services directive, but which could still be improved in a number of respects), procedures and quotas for drawing up non-legislative reports within the Parliament, the calendar of Parliament activities, reinforcement of the EP impact on the Better Regulation agenda (the points examined above), and reinforcement and better coordination of the EP involvement in both legislative and budgetary programming.

No final decisions were taken on these points before the half-way point in the legislature in January 2007, when Pottering took over from Borrell as Parliament President.. One important decision was taken, however, at this stage, namely to formally constitute a Working Party on the Reform of Parliament Working Methods. It was to consist of a personal representative of each political group chairman, with no substitutes allowed, and to be chaired by former EP Vice-President, Dagmar Roth-Behrendt. It was asked to submit an interim report by September 2007, with a final report by June 2008 at the latest.

The document establishing its mandate also summarized its raison d'etre: "The process of discussing and adopting proposals on wide-ranging and complex issues has shown that up to now Parliament has sometimes been better able than the other institutions to foster consensus-building, and thus enable the European Union to act. If it is to retain that ability, Parliament must also take a critical look at its own working methods and identify the scope for improvement..."

The working party was thus requested to "focus on matters relating to the work of the committees and the plenary sitting, in particular with a view to streamlining procedures, improving their

effectiveness and raising public awareness of them, and on matters relating to the safeguarding of multilingualism and the Council's and the Commission's accountability to Parliament." A wide range of specific topics for consideration were then outlined., including the structure, remit and composition of the committees, the links between them and EP delegations, ways of improving EP impacts in the legislative and better lawmaking fields (including many of the topics outlined in this paper), ensuring livelier debates in plenary, review of the calendar of EP meetings, review of the effectiveness of the framework agreement with the Commission and current arrangements governing its relations with the Council, as well as a range of other points.

The Working Party has already held a number of meetings, but it is still too early to anticipate its findings.

(vii) Expertise budgets

The EP has often been over-dependent in the past either on the Commission or on the best-organized lobbyists. The EP is thus trying to complement the above reforms by increasing its own staff and budgetary resources that are devoted to providing the necessary objective, background information on the proposals, often very technical in nature, that it is considering. In each issue area there are now special Policy Departments to back up the work of the normal committee staff. Moreover, committees are now given their own expertise budgets which they can use in appropriate ways, for example, by setting up panels of policy experts, entering into framework contracts to provide technical analysis of new Commission proposals, or to carry out detailed policy studies on particular points.

4. New Inter-Institutional Agreements (IIA's)

A further development over the last year has been that the Parliament has pushed for new inter-institutional agreements (IIA's) to resolve a number of practical problems that have arisen, and to help codify existing rules. One of these is in the area of comitology, an issue which would have been tackled in a different and far-reaching way if the Constitution had come into force, and the other dealing with some practical co-decision arrangements that would have come up even if there had been a Constitution. The two cases are thus rather different in nature, but in neither case do they represent attempts to get parts of the Constitution by the back door.

(i) Comitology

Over the years comitology issues have been among the principal causes of conflict between the institutions, with the EP arguing, in particular, that it was illogical for the codecision process on primary legislation not to be matched by equal rights for the EP on implementing measures. The Constitution would have changed this situation, and introduced a new system that would have been much closer to Parliament's wishes. In the continuing absence of a Constitution the issue was raised again in the inter-institutional context, and serious negotiations then began with the Austrian Presidency, with Joseph Daul and Richard Corbett being the two negotiators for the Parliament. Eventually an Inter-institutional agreement was agreed between EP, Commission and Council, was approved by the EP on 7 July 2006, and was then reflected in a Council Decision of 17 July 2006 amending Decision 1999/468/EC laying down the procedures for the exercise of implementing measures conferred on the Commission.

The new Council Decision introduces a new procedure entitled the "regulatory procedure with scrutiny"). which considerably extends the EP's role, but only in the case of measures of general scope designed to amend non essential elements of legislation adopted in codecision (the so called

"quasi legislative measures".. Essential elements will have to be adopted or amended through normal legislative procedures, and other implementing measures will fall under existing comitology instruments, such as the right of scrutiny or the right of information.

When the new procedure does apply the European Parliament or the Council can oppose the adoption of draft comitology measures when it considers that:

- a) the draft exceeds the implementing powers provided for in the basic legislation;
- b) the draft is incompatible with the aim or the content of the basic legislation;
- c) the draft does not respect the principles of subsidiarity or proportionality.

Parliament decisions to oppose a draft measure pursuant to the "regulatory procedure with scrutiny" are to be adopted by absolute majority within three months from the date of referral. If Parliament or Council opposes the draft measure, the Commission can no longer adopt it, but may put forward an amended draft of the measure or a legislative proposal on the basis of the Treaty.

This new procedure constitutes a considerable advance on the status quo, but falls somewhat short of what would have been in the Constitution. For the first time it gives the EP the power to block an implementing measure if it disagrees with the substance, but it does not yet apply to all cases, and the former right of scrutiny and right of information will still remain. Moreover, there are still cases where the EP will not even be automatically informed of a measure (in the case of implementing measures, such as many in agriculture, stemming from the consultation rather than codecision procedure). Nevertheless, the EP can generally be well satisfied with the outcome.

The new agreement is unlikely, however, to resolve all comitology problems, and these are already emerging in the attempts to align existing legislation to the new Decision. Parliament, Council and Commission had identified 25 pieces of existing legislation to be adjusted as a matter of priority to the new procedure, with the Commission requested to submit legislative proposals for the amendment of these pieces of legislation so as to introduce the "regulatory procedure with scrutiny".. All other existing legislation would also be examined by the Commission, with a view to them being adapted, if necessary, to the new procedure by the end of 2007. Pending legislation would be adapted in the course of the ongoing legislative procedures.

All this is fine in theory, but there are already disputes between EP and Commission as to what measures are "quasi-legislative" in nature, and thus covered by the new procedures. Moreover, Commission procedures for informing the Parliament still need to be improved (a couple of years ago the EP discovered that no less than 50 measures that should have been transmitted to the EP under the old procedures had not been done so, and other problems had emerged of user-unfriendliness, and lack of clarity as to what measure was being transmitted, and at what stage of the procedure. Some of these issues will be covered in negotiations with the Commission on revision of the existing bilateral agreement between the EP and the Commission to cover practical implementation of the new comitology decision. Negotiations have already begun at technical level, and are just beginning at political level at the moment of writing.

The new procedure, as well as the forthcoming implementing agreement with the Commission, should help to serve as a catalyst to improve the whole system of management of comitology measures. The EP will also have to devote more resources to this issue, and become more professional in its handling of implementing measures if it is to live up to its new responsibilities.,

ii) Updated Joint Declaration on Codecision

Codecision procedures implementing the basis provisions of the Treaties have tended to evolve in

an organic way through trial and error in individual case. EP committees have thus learned from problems encountered by others, a practice encouraged by the exchange of experience which takes place at regular codecision seminars prepared by the EP's conciliation service. There have also been occasional inter-institutional seminars between EP, Commission and Council, which have included participants at a more political level.

A good example of a lesson learnt was when the Industry Committee thought that it had negotiated a binding deal with the Council only to find that it subsequently fell through. The Environment Committee learnt from this lesson, and developed the practice of requesting a letter from the Council confirming the terms of a deal. As described earlier on in this paper, the Transport Committee later built on this practice in itself pioneering confirmatory letters from itself to a Council Presidency.

At a certain point, it may become worth codifying the good practices that have developed, in order to make procedures more predictable, and to give guidance to those with less experience on codecision. At the same time, if this is done too early, it risks making procedures less flexible and prevents innovation.

The EP's conciliation service first attempted to establish internal guidelines for EP committees, and then later sought to reach agreement on a new joint declaration on codecision with the Commission and the Council.

At first the discussions went very slowly, as the Austrian Presidency were more interested in solving the problems on comitology that were outlined above. Discussions intensified, however, under the Finnish Presidency. Besides technical meetings at secretariat level four meetings were held at political level, with the EP participants being the three Vice-Presidents then responsible for conciliations (Mr Vidal Quadras, Mr Trakatellis and Ms Roth-Behrendt), the chairman of the Conference of Committee Chairmen (Mr Daul) and the Chairman of the Constitutional Affairs Committee (Mr Leinen). Agreement was finally reached, and was then examined by the Constitutional Affairs Committee, which is given the responsibility under Rule 120 of the EP Rules of Procedure, to sign off on proposed IIAs. It is now expected to be formally ratified by the EP at the May 2007 plenary session.

The proposed new text does not introduce radical changes, but does clarify and codify a number of points that have been developed in recent years, including the practice of confirmatory letter from the Council at first or second reading stage, or from the EP between the EP first reading and the Council common position. The new text refers to the practice of informal trilogues. On the issue of timetabling, it states that the institutions shall "seek to establish an indicative timetable for the various stages leading to the final adoption of different legislative proposals., while fully respecting the political nature of the decision-making process".

A sensitive issue that has never been resolved is that of Council presence in EP committees, although this has developed considerably in recent years. The new text comes up with nicely cautious wording in this respect. "The Presidency will endeavour to attend the meetings of the parliamentary committees. It will carefully consider the requests it may receive to provide information related to the Council position, as appropriate".

The text also contains a number of other practical additions or clarifications, such as procedures when corrigenda are required, reference to a A and B Points at conciliation meetings, and encouragement of joint press conferences by EP and Council in cases of successful outcome of a legislative process at first, second reading or conciliation stage.

The new joint declaration, when it comes into force in the near future, will thus reflect developing practice on codecision negotiations, notably the growing tendency to conclude agreements at the first and second reading stages, and provides useful guidance, while not being overly prescriptive

Concluding comments

The Parliament has thus not been inactive during the "pause for reflection" over the Constitution, but has sought to make the most of its existing legislative and non-legislative powers, to reconsider its own working methods, and to reach inter-institutional agreements on a couple of problem areas that have arisen. It still has a long way to go, but is steadily improving its capacity to maximize its role with or without a Constitution or other form of fundamental Treaty revision.