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REPORT

on unilateral statements entered in the minutes of Council meetings
(2011/2090(INI))

Committee on Constitutional Affairs

Rapporteur: Rafał Trzaskowski

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**on unilateral statements entered in the minutes of Council meetings
(2011/2090(INI))**

The European Parliament,

- having regard to the letter of 8 December 2009 from the Chair of the Conference of Committee Chairs to the Chair of its Committee on Constitutional Affairs,
 - having regard to the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation¹,
 - having regard to the answers by the Council and the Commission respectively to Written Question P-3977/2010 and E-3981/2010,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs (A7-0269/2011),
- A. whereas the Court of Justice has the clear and exclusive competence to rule on the interpretation of Union law, be it primary or secondary,
- B. whereas the Court of Justice has repeatedly confirmed that declarations are not legally binding,
- C. whereas the Council has the duty to inform Parliament fully of its position in the context of legislative procedures²,
- D. whereas under the Treaty the institutions are required to practise mutual sincere cooperation³,
- E. whereas unilateral statements by Member States or the Council might adversely affect Parliament's legislative powers, are damaging to the quality of Union legislation and undermine the principle of legal certainty,
- F. whereas no statement entered in the minutes of meetings of the Council or of the conciliation committee at any stage of the legislative procedure can pre-empt the outcome of negotiations between the two branches of the legislative authority,
1. Reaffirms that statements and declarations which are not incorporated into a legal text but which concern it, regardless of whether they are issued by one or more Member States, have no legal force and may undermine the coherence of Union law and its clear

¹ OJ C 73, 17.3.1999, p. 1.

² Article 294 TFEU (at first reading).

³ Article 13 TEU.

interpretation;

2. Insists that unilateral statements must not diminish or compromise the need for all States to observe systematically the discipline of publishing correlation tables, setting out the ways and means EU law is to be transposed into domestic law, in the interests of the efficient and transparent implementation of legislation across the whole of the Union;
3. Calls for all statements to be notified to Parliament, and with regard to statements by Member States, for them not to be published in series L of the Official Journal of the European Union;
4. Calls on the Council to forward the minutes of the legislative part of its meetings to Parliament at the same time as to the national parliaments and Member State governments;
5. Reserves the right to use any lawful means at its disposal should unilateral statements have been deliberately intended to produce legal effects;
6. Calls on the Council and Commission to enter into negotiations with Parliament, on the basis of Article 295 TFEU, with a view to updating the Joint Declaration on practical arrangements for the codecision procedure (now ordinary legislative procedure) in order to take account of the entry into force of the Treaty of Lisbon and to clearly delimit the scope of unilateral statements;
7. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

This report originates in a request by the Conference of Committee Chairs addressed to the Constitutional Affairs Committee in order to clarify the position of Parliament as regards the meaning and legal status of unilateral statements entered in the minutes of Council meetings.

Several committee chairs expressed their concerns about the proliferation of such statements, in particular in the framework of the codecision procedure where they could weaken the legal force and scope of the adopted acts, and so possibly affect Parliament's will as a co-legislator.

It has to be stressed in this regard that the contentious statements are mainly originating from one or several Member States since they are in charge of the transposition of legislative acts at national level. An attempt to interpret those acts in a way which could be divergent from the result achieved by common agreement of the two legislators would indeed undermine the necessary coherence of application of the Union law.

Other statements when made by an institution as such or the Council Presidency or trio Presidency may reversely be useful to record parallel engagements or announce further steps. It is why Parliament sometimes also make statements and attaches them to the acts it adopts (together when appropriate with statements by the Council and/or the Commission), which are published in series C of the Official Journal of the European Union.

The case-law of the Court of Justice confirms that no reliance may be placed on such unilateral statements when it comes to interpret a Union legal act. They may be used to this end only where reference is made to its content in the wording of the relevant act.

Indeed legal acts should be self-explanatory and any elements required for their interpretation flow from their enacting terms or recitals.

As a co-legislator on an equal footing with the Council, Parliament should also be fully informed of any unilateral statements by the Member States entered in the minutes of the Council meetings and this all along the different stages of the legislative procedure.

It appears that since the entry into force of the Lisbon Treaty the amended Rules of Procedure of the Council provide for a direct transmission of the minutes of the legislative deliberations' part of Council meetings to both Member States' governments and national Parliaments, while no mention is made to the European Parliament. This places the national Parliaments in a better position as far as information is concerned than the European Parliament, although the latter is co-legislator with the Council.

At the same time however and in order not to give them more significance, unilateral statements by Member States regarding legal acts should not be published in the Official Journal of the European Union.

The preceding observations obviously call for an updating of the Joint Declaration on practical arrangements for the codecision procedure in order to ensure that the recourse to

unilateral statements is avoided as far as possible and that full information is provided by Council to Parliament at all stages of the legislative procedure.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	12.7.2011
Result of final vote	+ : 17 - : 3 0 : 0
Members present for the final vote	Carlo Casini, Andrew Duff, Ashley Fox, Matthias Groote, Roberto Gualtieri, Zita Gurmai, Gerald Häfner, Daniel Hannan, Stanimir Ilchev, Constance Le Grip, David Martin, Morten Messerschmidt, Paulo Rangel, Algirdas Saudargas, György Schöpflin, Søren Bo Søndergaard, Indrek Tarand, Rafał Trzaskowski, Luis Yáñez-Barnuevo García
Substitute(s) present for the final vote	Evelyn Regner