THE NEW CODECISION PROCEDURE
FOLLOWING THE TREATY OF AMSTERDAM
PREFACE

The Amsterdam European Council of 16 and 17 June 1997 finally reached agreement on the draft treaty proposed by the Dutch Presidency which, after being revised and harmonized, was signed as the Treaty of Amsterdam on 2 October 1997. The new Treaty comprises a total of 15 articles grouped into three parts, an Annex comprising the tables of equivalences referred to in Article 12 of the EU Treaty and the Treaty establishing the European Community, 13 protocols, a Final Act, 51 declarations annexed to the Final Act and an additional 8 declarations of which the conference took note and which are also included as an annex to the Final Act. Part One of the Treaty, comprising five articles, contains the substantive amendments introduced by the Treaty of Amsterdam. Part Two, comprising Articles 6 to 11, concerns simplification. Finally, Part Three contains general and final provisions.

With regard to the EP, the Treaty of Amsterdam contains provisions on legislative procedures, simplification of the codecision procedure and the EP’s organization and composition. In the area of legislative procedures, the codecision procedure is of particular importance. The Treaty of Amsterdam extends its scope to 24 new cases. A further 16 cases relate to provisions which already existed in the Treaty and which were previously subject to different procedures.

The Treaty of Amsterdam has also simplified the codecision procedure, and there can be no doubt that this represents a far-reaching reform. The Treaty of Amsterdam amends Article 189b of the EC Treaty - Article 251 of the consolidated version - in order to streamline the procedure by enabling the text to be definitely adopted at the end of the first reading if the Council and EP agree on an identical text, simplifying the second reading and abolishing the stage of intention to reject, and above all eliminating the third reading. In practice, this will simplify the procedure considerably and represents one of the EP’s few really decisive achievements during the IGC. Thanks to the new procedure, the EP has acquired genuine status as co-legislator on an equal footing with the Council at procedural level.

For this reason, and with the aim of contributing to the parliamentary work underway within the European Parliament’s various committees and bodies following the end of the 1996 Intergovernmental Conference, the Division for Political and Institutional Affairs within the Directorate-General for Research has drawn up this working document on the new codecision procedure.

The general objective of this study is, first of all, to carry out an in-depth analysis of the procedure and provide a detailed explanation of its various stages, which are summarized in the form of tables designed to make the procedure more quickly and easily understood. It also aims to provide the reader with a quick overview of the changes made in the procedure following the Intergovernmental Conference. Finally, this study also seeks to deal in the clearest, most precise and simplest way possible with a legislative procedure which, given its complexity, has traditionally been seen as the antithesis of the simplification and transparency which is a desideratum for all the European Union’s legislative procedures.
The new codecision procedure, now regulated by Article 251 under the Treaty adopted in Amsterdam on 3 October 1997 and still to be ratified by the national parliaments of the 15 Member States, supports and reaffirms the position occupied by the European Parliament in the Community structure. The European Parliament has achieved, at least in part, two of the objectives which it set itself in relation to this legislative procedure in the 1996 Intergovernmental Conference, i.e. that Community decisions adopted under the codecision procedure should be ever closer to its citizens' and that thanks to its simplification, the procedure has not only been made more effective but some of the imbalances which affected the previous codecision procedure have been removed.

This working document was drawn up by Ms Loreto Gil-Robles Casanueva during an unpaid traineeship within the Division for Political and Institutional Affairs in the Directorate-General for Research under the direction and supervision of Mr José Javier Fernandez Fernandez, Coordinator of the European Parliament's 1996 IGC Task Force and an official in that division. It provides a meticulous, detailed and accurate analysis of all the questions and problems arising with regard to the procedural and substantive aspects of the new codecision procedure. If it makes some contribution to setting out the European Parliament's points of view on the procedure and fostering the political and legislative debate on the topic currently underway within the Institution, this document will have fulfilled both the aspirations of its author and the objectives of the Institution under whose patronage and direction it has been prepared.

DIRECTORATE-GENERAL FOR RESEARCH

Luxembourg, November 1997

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1 In the view of the President of the European Parliament, Mr Gil-Robles, 'the added value of this procedure is that it applies to areas which are of key importance for Europeans, such as education, culture, measures to protect the environment, etc. (...) And that, since 1993, citizens are able to influence legislation through their elected representatives in the European Parliament (...). Codecision has become a means for citizens to express themselves.' (Seminar on the operation of codecision, 25 September 1997).
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1. ORIGINS OF THE NEW CODECISION PROCEDURE

1.1 A new procedure in the Treaty on European Union

If we had to choose one of the key political aspects of the codecision procedure introduced under the EU Treaty, one of the most obvious examples would be the existence of a close link between that procedure and the creation of economic and monetary union² (as was also the case with the introduction of the cooperation procedure in the Single Act following the launching of the internal market).

The idea that a new legislative procedure should be created was considered by the representatives of the Member States at IGC-I (UP)³, during which a range of proposals were put forward.

The European Parliament's demands as regards legislative matters focused on two issues: firstly, the establishment of a legislative hierarchy within the system of sources of Community law and secondly, the introduction of a new legislative procedure, the codecision procedure, to strengthen its position in the Community legislative process. Parliament's intention here was that, in areas subject to codecision, the institution made up of representatives of the peoples of the Member States should share decision-making powers with the other institution holding legislative power within the Community, i.e. the Council. Parliament's demands regarding the latter issue took the form of two specific proposals containing two important novelties:

- the Commission would not be able to withdraw or modify its proposal after Parliament had held its first reading; and
- the European Parliament would acquire a subsidiary right of initiative if the Commission had not acted at the end of a period of six months after Parliament had called on it to act. In that case, the codecision procedure would continue on the basis of the original text proposed by the European Parliament as a substitute at first reading.

Of these two proposals, only part of the second, Parliament's subsidiary right of initiative, would be acted on. With regard to the first proposal, the Commission insisted during the intergovernmental negotiations that Parliament's competences should not be strengthened to the detriment of the Commission and persuaded the delegations to agree that the Commission would maintain its right of initiative and capacity to modify or withdraw its proposals throughout the entire procedure.


³ The abbreviation used to denote the Intergovernmental Conference on Political Union held in the course of 1991 in parallel with IGC-I (EMU), i.e. the Intergovernmental Conference on Economic and Monetary Union. For a full overview of both IGCs, as regards both the preparatory phase and the actual conferences, see Cloos Jim, Reinesch Gaston, Vignes Daniel and Weyland Joseph, 'Le Traité de Maastricht. Genese, analyse, commentaires', Bruyland, Brussels, 1993, pp 49-112.
The Commission proposals at the 1991 IGC-UP were based on the cooperation procedure and centred on:

- granting Parliament and the Council the possibility explicitly to reject a proposal, with the result that it would be rendered null and void,
- setting time-limits for the various readings in the procedure and, finally,
- introducing a conciliation procedure which might result in the adoption or final rejection of the proposed legislative act.

The text which was finally embodied in the Treaty on European Union was based on a Luxembourg proposal chiefly incorporating the Commission proposals, i.e. based on mechanisms which partially replicated those of the cooperation procedure, with the sole guarantee not envisaged by the Commission being that no act could be adopted in the face of final opposition from the European Parliament⁴.

In contrast to the cooperation procedure, the new legislative procedure adopted in Maastricht in 1992 made two substantial innovations: the establishment of a Conciliation Committee (proposed by the Commission) at second reading comprising an equal number of Members of the European Parliament and of the Council, and the introduction of a third reading at which Parliament could, by a majority of its Members, reject the act which was the subject of the codecision procedure. This meant that the chamber of representatives of the European peoples was for the first time in possession of a right to have the 'final say' on legislation under codecision.

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⁴ Some of the criticisms voiced by Parliament with regard to the 1991 Luxembourg text were used as a basis for the 1996 Intergovernmental Conference (Parliament resolution of 14 June 1991 on the Intergovernmental Conference on Political Union, OJ C 183, 15/7/1991).

⁵ One of the main discussions which arose during the Intergovernmental Conference on Political Union was the final designation of the procedure as 'codecision procedure'. Neither of the two possibilities put forward, i.e. the formula 'in codecision with' (by analogy with 'in cooperation with' as already used for the cooperation procedure) or the use of terms such as 'in colegislation' or 'in strengthened cooperation with' or 'in association with' bore fruit (both the British and Dutch delegations refused to accept the proposed terms). The solution eventually adopted was restricted to a reference to the article which lays down the mechanism by which this procedure is applied. Nevertheless, it should be pointed out that in later practice the term 'codecision procedure' prevailed. This term provided the basis for the work of the 1996 Intergovernmental Conference, even though in the end, despite Parliament's proposal that the term be maintained, the procedure was officially designated the 'procedure referred to in Article 251'.
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1.2 The 1996 Intergovernmental Conference

The evaluation of the codecision procedures completed from its adoption in the Treaty on European Union up to the 1996 Intergovernmental Conference indisputably produces a positive conclusion. Of the 52 cases concluded under this procedure following its entry into force in 1993, the situation may be summarized as follows:

- **In 29 cases the Conciliation Committee did not need to be convened.** Of these, 17 cases were adopted without any amendments by Parliament because:
  * No amendments were tabled (15 cases), or
  * The amendments tabled fell due to the lack of the required majority (2 cases), while the 12 remaining cases were concluded without conciliation because the Council accepted all the amendments adopted by Parliament.

- **The Conciliation Committee had to be convened in 19 cases.** Of these:
  * Conciliation resulted in mutual agreement on the final text in 16 cases;
  * One case (Kaleidoscope) remains under negotiation within the Committee;
  * In two cases (voice telephony and biotechnology) no agreement was reached, as the first failed to be adopted and the second was explicitly rejected (the objective was to oblige the Council to reconsider the provisions on the adoption of implementing or comitology procedures, and the strategy proved effective, since the Council did indeed do so).

- **In the four remaining cases, the Committee has not yet been able to agree on a joint text but it is hoped that it will do so in the medium term.**

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6 In the reports 'on the operation of the Treaty on European Union' submitted to the Reflection Group by the Council and Commission in the first half of 1995: the Council took the view that 'under this new procedure, some 20 legislative acts have been adopted within reasonable periods of time. laid down by the Treaty as from the second reading' (report of 6 April 1995). The Commission considered that 'contrary to certain fears resulting from its complexity and its length, the codecision procedure has worked well so far. Decisions have been taken fairly quickly as a result of a good working relationship between the institutions'.

7 Statistical data provided by Parliament covering only the period 1993-96. Doc ES/DV/321/321322.

8 These were: 'stock exchange listing COD 451 (Janssen van Raay report)' and 'Vehicle emissions COD 448' (Vittinghoff report). It should be stressed that such cases are exceptional, and no other such case has occurred since June 1994.

9 It became increasingly clear that, as their experience grew, both Parliament and the Council avoided the conciliation procedure. Consequently, the tendency was for informal agreements to be reached before the second reading, although this depended on the strategy adopted by the Council presidency.
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The rates of acceptance by the Commission and Council of amendments adopted by Parliament at first and second reading and the number of amendments accepted at meetings of Conciliation Committees for acts adopted under the codecision procedure were as follows:

- number of amendments adopted by Parliament: 621 at first reading and 132 at second reading and third reading,
- number of amendments endorsed by the Commission: 272 (44%) at first reading and 99 (75%) at second and third reading,
- number of amendments accepted by the Council: 252 (40.6%) at first reading and 99 (75%) at second and third reading.

In spite of this positive result, the practical implementation of the codecision procedure has nevertheless been complex in some cases. In view of this complexity, combined with the provisions of Article 189b(8) on widening the scope of the procedure, the Community institutions called for the procedure to be simplified in anticipation of the 1996 intergovernmental conference.

The 1996 Intergovernmental Conference set itself two main objectives with regard to the codecision procedure:

1. The European Parliament should move towards full legislative capacity in order to ensure that decisions are taken as closely as possible to the citizen (extension of the codecision procedure);

2. The IGC should contribute to the general objective enshrined in Article B of simplifying the decision-making process 'with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community' (simplification of the codecision procedure).

The final outcome of the 1996 IGC, which is described in detail in the following chapter, comprises the following basic elements:

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19 Reply to question no 39/97 by Mr R. Corbett (PE 259.385/BUR).

21 A finding which, in the opinion of Mr Gil-Robles, President of the European Parliament, 'should be reiterated with particular emphasis, since there was no unanimity either when the Treaty on European Union was signed or during the first period of the Treaty's application. Sceptics believed that the conciliation procedure would slow down or block decision-making'. Mr Oreja, Commissioner responsible for institutional affairs, has also expressed similar views (both at the seminar on the operation of the codecision procedure, 25 September 1997).

22 These two parameters - democracy and effectiveness of the institutions - which were to guide the 1996 Intergovernmental Conference were identified by the Commission in its May 1995 report 'for the Reflection Group'. Article A states that "this Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen'. Article B states that one of the Union's immediate objectives is to 'maintain in full the acquis communautaire and build on it with a view to considering (...) to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community'.

8 PE 167.109
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- the possibility to adopt a legislative act under the codecision procedure at first reading without the need to adopt a common position;
- abolition of the intention to reject stage or 'mini-conciliation on the common position' at second reading;
- setting of a time-limit of six weeks between the end of the second reading and the start of conciliation;
- restriction of the scope of negotiations of the Conciliation Committee to 'the amendments proposed by the European Parliament';
- abolition of the third reading in the Council where conciliation has failed and, consequently, removal of Parliament's power to reject the act adopted by the Council, thus removing once and for all the imbalance which previously affected the final stage of the previous procedure to the advantage of the Council;
- setting a maximum period following Parliament's second reading;
- unilateral extension of deadlines (a final declaration on the subject is also included); and finally
- deletion of Article 189b(8) and consequently a relative increase in scope.

2. ANALYSIS OF THE NEW CODECISION PROCEDURE INTRODUCED BY THE TREATY OF AMSTERDAM UNDER NEW ARTICLE 251

In contrast to the question of extending the scope of the procedure, the Commission did not submit any formal text on simplifying the codecision procedure during the 1996 Intergovernmental Conference. Nevertheless, it did draw attention on a number of occasions to the need to simplify decision-making and made it more democratic 'notably by determining time-limits for first readings, by dropping the announcement of the intention to reject a proposal at the second reading stage, and by dropping the third reading'.

The wording of the article proposed by Parliament was a reflection of the three fundamental proposals which it supported in its various resolutions before and during the 1996 Intergovernmental Conference:

1. The phase of intention to reject the common position followed by a fresh vote of rejection should be brought together in a single vote which would allow Parliament to reject the common position at second reading (maintaining voting by an absolute majority of Members);

2. Where the Council and Parliament are in agreement on the same text at first reading, a second reading would be unnecessary. If the Council accepts at first reading all the amendments tabled by Parliament at its first reading, or if Parliament at its second reading approves the Council common position, the text should be adopted at that stage, without needing to undergo fresh readings;

3. Paragraph 6, which enabled the Council to adopt a text at third reading unilaterally where conciliation negotiations had failed unless Parliament subsequently rejected it by an absolute majority, should be deleted.

It was difficult to obtain the necessary consensus on the part of the national delegations with respect to paragraph 6, since some delegations wished to maintain paragraph 6 as an incentive for Members to accept an agreement in the Conciliation Committee. Parliament rejected this argument because it took the view that Parliament's delegation would automatically have an incentive to reach an agreement with the Council throughout the codecision procedure since, if no agreement were reached between the two institutions, the consequence would be that the legislative act would not be adopted. Parliament had shown in previous instances where the codecision procedure had been applied that it favoured adopting the legislative act during the conciliation phase since, otherwise, Members of the Council could be tempted not to endeavour to reach a compromise but rather to seek to impose their own text, which would merely provoke final rejection by Parliament, as had occurred in the only case in which the Council had attempted such a strategy: Parliament took the view that it would be much better to avoid such a risky policy, which had the support of some delegations, by deleting Article 189b(6) of the EC Treaty so that both the Parliament and the Council delegation in the Conciliation Committee would be aware and understand that they needed to achieve a positive result in that phase, otherwise the legislative act would not be adopted. Such an amendment would have the effect of encouraging all the parties concerned to endeavour to find

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14 The Bourlanges/Martin resolution (17 May 1995) stated that: 'The codecision procedure should also be simplified. The following changes could be envisaged: (i) End the procedure when there is agreement between Council and Parliament at first reading stage. (ii) Drop the phase of intention to reject. (iii) Introduce at the end of the first reading a simplified conciliation procedure. (iv) Give the Commission the power to propose and put to the vote in the two conciliation committee delegations a compromise between the conflicting positions. (v) Harmonize the majorities required for rejecting the final text (regardless of the results of conciliation). (vi) Eliminate the possibility for the Council to act unilaterally (by reconfirming its common position) in the event of conciliation failing to reach agreement'. The Dury/Maij-Weggen resolution (13 March 1996) added: 'The codecision procedure should be simplified, in particular by dropping the phase of intention to reject and by ending the procedure either when there is agreement between the Council and Parliament (even at first reading stage) or when there is no agreement between the Council and Parliament in a conciliation committee'.
an acceptable solution. The new Article 251 of the Treaty establishing the European Community thus stipulates:

*Article 251(1) former Article 189b(1)*

'where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply...'

It might nevertheless be noted that the text proposed by Parliament at the 1996 Intergovernmental Conference also contained an explicit reference in Article 189b(1) to the 'codecision procedure' which in Parliament’s view would have supported the reduction of legislative procedures to three: codecision, assent and consultation

2.1 First reading of the codecision procedure

*Article 251(2) former Article 189b(2)*

*The Commission shall submit a proposal to the European Parliament and the Council.*

The first reading under Article 251(2) follows the same steps as the cooperation procedure (Article 250, previously Article 189c, which has been relegated to the sole area of economic and monetary union following the Treaty of Amsterdam): the *Commission is responsible for drawing up the legislative proposal, which it submits simultaneously to the Council and Parliament.*

As in the previous procedure, simultaneous forwarding of the proposal to the Council and Parliament is the first distinctive feature of the codecision procedure: the Commission does not confine itself, as had been its practice until the entry into force of the EU Treaty and as continues to be the case for the remaining decision-making procedures, to forwarding its proposal to the Council, but is required from the first phase of the procedure to treat Parliament and the Council equally as regards forwarding its proposal.

Under this paragraph, the Commission is the sole institution enjoying a direct right of initiative on measures subject to the codecision procedure. The Commission may submit a proposal for a

15 A further proposal was put forward in the document by Konrad Schwaiger (PE221.688): ‘where the adoption of a legislative act is necessary pursuant to this Treaty, the following procedure shall apply unless otherwise stipulated elsewhere in this treaty’. The aim of this proposal was to stress the applicability of the codecision procedure to all legislative acts.

16 The right of initiative is a power which can be subjected to the scrutiny of the Court of Justice in the event that the Commission fails to exercise it, through the failure to act procedure (Article 175 of the EC Treaty) at the request of the Council or Parliament.
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directive and/or regulation, provided that it considers it necessary to act in a particular field. Even though the right of legislative initiative belongs to the Commission, both Parliament and the Council (by virtue of Articles 192(2), previously 138b(2), and 208, previously 152 of the EC Treaty respectively) may ask the Commission to submit any appropriate proposal on matters on which it considers that a Community act is required. This is known as the right of invocation, in respect of which Rule 50 of Parliament’s Rules of Procedure lays down that such a request must be based on an own-initiative report from the committee responsible. Parliament requires that any such request be supported by a majority of its component members, while the Council requires a simple majority. The Commission proposal is published in the Official Journal of the EU (OJ) and is forwarded to the Council and Parliament.

This mechanism makes the Council and Parliament a ‘subsidiary engine’ in that they are able to ask the Commission to undertake any studies they consider desirable for the attainment of the common objectives and to submit to them any appropriate proposals.

Nevertheless, the Commission’s role does not end with the drawing-up of the proposal. The Council is bound by the substance of that Commission proposal. The Commission is the ‘privileged interpreter of the general interest’, and it must provide a vision which is inspired by the Community interest. The initial proposal is conceived and drawn up independently and autonomously by the Commission, even though it is the Council, which represents the particular interest of the Community, which takes the decision. It is this which is meant by the ‘Commission-Council tandem’ which shapes voting arrangements under this procedure (Articles 148 and 149 of the EC Treaty, now Article 205 of the Treaty of Amsterdam; Article 149 has been repealed).

The Commission is further empowered to modify its proposal at any time (the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act: Article 250, former Article 189a(2)) as long as the Council has not yet taken a decision on that proposal. This means that the Commission enjoys genuine powers of negotiation and conciliation within the Council during the codecision procedure, enabling it to help form qualified majorities or unblock the Council when the latter institution is unable to secure the necessary majority.

2.1.1 First reading in Parliament

Once the Commission proposal has been received, the President of Parliament forwards that proposal to the committee responsible and, where appropriate, to the other relevant committees for their opinions.

17 Nevertheless, the determination of the legal basis of proposals does not depend on the conviction of the institutions but on objective factors which admit of judicial review, including the objective and content of the act, as has been repeatedly established in the case-law of the Court of Justice since its judgment of 26 March 1987 (Case 45/86 Commission v Council).
Pursuant to Rule 53(1) of Parliament's Rules of Procedure, all Commission proposals are subject to verification of their validity and the appropriateness of the chosen legal basis by the committee responsible.

Rule 54 of Parliament's Rules of Procedure thus makes provision for examining proposals in order to ascertain whether they respect the principles of subsidiarity and sufficiency of the financial resources provided and the fundamental rights of citizens. If Parliament concludes that the proposal does not respect the above conditions, it requests the Commission to make the necessary modifications.

Rule 55 of Parliament's Rules of Procedure is designed to ensure transparency in the legislative process, calling for it to be kept informed about the progress of proposals during their examination: the Commission is thus responsible for informing Parliament on a regular basis regarding the fate of its proposals in the other fora in which they are considered. This responsibility derives directly from the Commission's right to attend Council meetings; in exchange, the Commission undertakes to provide information on the stage reached with regard to its proposal, any changes which are being or may be made, compromises reached with the Council, etc.

Consideration begins in Parliament's competent committee, which appoints a rapporteur from among its members or permanent substitutes who will be responsible for considering the relevant Commission proposal and presenting a draft report to the committee.

In that draft report, the rapporteur summarizes the Commission proposal and sets out the reasons which led the Commission to submit its proposal and the views expressed by the parties concerned. Where appropriate, the rapporteur may table amendments. The committee then opens the debate on the Commission proposal. As a rule the Commission is offered an opportunity to defend its proposal and reply to questions put by members at a meeting of the relevant committee. During its consideration of the proposal, the committee responsible asks the Commission and Council to keep it informed about the progress of their deliberations, particularly regarding any compromises which might substantially amend the original proposal or any intention of the Commission to withdraw its proposal.19

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18 A problem arises here concerning dual legal bases for a single act arising from successive reforms. Such reforms add new procedures to the existing ones without the necessary reforms having been accomplished, which gives rise to interinstitutional disputes and legal uncertainty. Parliament and the Commission reached an agreement on this problem in their 1995 Code of Conduct, which establishes that the choice of legal basis must be founded on 'factors which admit of judicial review, including, in particular, the objective and content of the act'. Judgment on the Chernobyl regulation of 4 October 1991 (C-70/88) and judgment on the student directive of 7 July 1992 (C-295/90).

19 Rule 56(1) and (2) of Parliament's Rules of Procedure stipulate that if the Commission intends to alter its proposal on the basis of the debate within the committee responsible or within the Council, or on its own initiative, the committee responsible shall postpone its examination of the proposal until it receives a new text. Attention might be drawn once again to the Commission's right to modify its proposal provided that the Council has not yet taken a decision. The previous Article 149(2) of the EEC Treaty stipulated that 'as long as the Council has not acted, the Commission may alter its original proposal, in particular where the Assembly has been consulted on that proposal'. (continued...)
The time lag between the debate in the Council and the debate in Parliament is a problem which has arisen with a degree of frequency in the codecision procedure and which has caused disputes between the two institutions. Parliament's tardiness in delivering an opinion has at times had the result that the Council has not taken its opinion into account and has merely awaited the presentation of its opinion as a formality. Nevertheless, "the Council's consultation of the European Parliament cannot be merely a matter of procedure (...) its opinion must be the subject of consideration in the Council - and in the Commission, in case it considers it desirable to amend its proposal - in order to involve the opinion of the peoples of the Member States to the greatest possible degree." If Parliament's competent committee considers it necessary, it may hold a hearing of experts to debate the proposal with the Commission. This was done, for example, during the deliberations on the proposals for directives on natural gas and electricity. Before closing the debate, a deadline is fixed for the members of the committee responsible to table their amendments. At a final committee meeting, a vote is held on whether to accept the Commission proposal in principle and on the amendments tabled. The rapporteur incorporates the outcome of the debate and the vote on the Commission proposal in a final report. That report comprises:

- the amendments to the Commission proposal adopted in committee;
- the draft legislative resolution;
- an explanatory statement.

In the draft legislative resolution, the committee responsible proposes to plenary that Parliament should approve or reject the Commission proposal. As a general rule, following the debates in committee, the draft legislative resolution recommends to plenary that it approve the Commission proposal with the amendments adopted. The committee responsible submits the report to plenary for the final debate and vote (amendments may also be tabled during the debates in plenary within the deadline set).

It should not be forgotten, however, that the debates held in committee cannot be considered in isolation, since in most cases the various political groups also examine the Commission proposals with a view to determining their respective standpoints in the debates held both within the committee responsible and in plenary.

Following the reforms introduced by the Single European Act and the Maastricht Treaty, the wording was changed slightly even though the content remained otherwise identical: 'as long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act' (Article 189a(2)). Following the signing of the Treaty of Amsterdam the article concerned is now Article 250, but the content is the same.

See, for example, the judgment of 10 May 1995 on the 'Tacis Programme' (C-417/93, European Parliament v Council) and the judgment of 29 October 1980 (C-138/79, Roquette et freres v Council).

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Immediately afterwards, in a vote which is generally prolonged, plenary considers and decides on the proposal in the following order, on the basis of the report drawn up by the committee responsible:

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<tr>
<th>EP President</th>
<th>Appropriate committees</th>
<th>Com. Responsible (rapporteur) · Report · Debate</th>
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The plenary decides on the following:

- the amendments tabled by the committee responsible;
- other amendments tabled in plenary;
- the Commission proposal as a whole, amended by Parliament or otherwise;
- amendments to the draft legislative resolution; and finally
- the draft legislative resolution as a whole, amended or otherwise.

In general, Parliament's approach has been to draw the Commission's attention to its amendments, since if the Commission takes up Parliament's amendments and modifies its proposal accordingly it will in practice be easier to ensure that they are adopted in the Council: Parliament's amendments are presented by the Commission, and the Council then votes by a qualified majority. If the Commission does not modify its proposal in line with the amendments adopted by Parliament, Parliament's amendments face a more uncertain fate, since if the Council wishes to take account of Parliament's opinion a unanimous vote is required, given that this would represent a proposal to alter the initial Commission proposal.

If the Commission proposal fails to secure a majority of the votes cast in plenary, the President of Parliament requests the Commission to withdraw its proposal; if the Commission does not do so, plenary may decide to refer the matter back to the committee responsible for fresh deliberations before voting on the legislative resolution, in which case the committee draws up a second report to be submitted to plenary. It is important to stress that, even though Parliament is not subject to a set time-limit for delivering its opinion following consultation, this does not mean that it enjoys any form of blocking power. Parliament is obliged to deliver its mandatory opinion on the Commission proposal in good time, since it is obliged to cooperate in good faith in the legislative

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22 In the view of Professor A. Mangas Martin, this is a 'form of penalizing the Commission by delaying the procedure', but it also represents a way of providing time to secure an understanding between the two institutions.
process\textsuperscript{23}. The only possible means of forcing Parliament to deliver its opinion is an action against that institution for failure to act\textsuperscript{24}.

Finally, the President of Parliament forwards the text of the proposal as approved by Parliament and the corresponding legislative resolution, embodying Parliament's opinion, to the Council and Commission\textsuperscript{25}. Following the signing of the new Treaty, new formulae are being analysed (see the paragraph on the 'practical consequences for Parliament of adoption at first reading') in order to improve the way in which Parliament functions at this stage of the procedure.

2.1.2 First reading in the Council

Article 251(2), second subparagraph (former Article 189b(2), second subparagraph)\textsuperscript{26}

The Council, acting by a qualified majority after obtaining the opinion of the European Parliament,

- if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act thus amended;
- if the European Parliament does not propose any amendments, may adopt the proposed act;
- shall otherwise adopt a common position and communicate it to the European Parliament.

The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position.

\textsuperscript{23} The case-law of the Court of Justice established in its 1980 'isoglucose' judgment (with regard to the cooperation procedure) left open the controversy regarding the possibility for the Council to do without Parliament's opinion if it had taken all the appropriate steps to obtain it. The case was urgent ('the Council and Commission may request an urgent debate in the event that opinions are delayed'): in normal cases, therefore, the EP's motion for a resolution must be awaited before the Council adopts its common position.

\textsuperscript{24} The EU Treaty modified Article 175 so as to include failure to act on the part of Parliament among the grounds for bringing a relevant action. This article confirms the explanation given in the previous paragraph since, if Parliament's opinion were of no importance, it would not have been necessary to introduce failure to deliver an opinion among the possible subjects of action before the Court.

\textsuperscript{25} Parliament's legislative resolution is the declaration by which it approves, rejects or tables amendments to the Commission's legislative proposal.

\textsuperscript{26} The second subparagraph of the previous Article 189b(2) read: 'The Council, acting by a qualified majority after obtaining the opinion of the European Parliament, shall adopt a common position. The common position shall be communicated to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position'. The second subparagraph of the new Article 251(2) thus contains the first differences by comparison with the previous procedure.
On receiving the Commission proposal, the Council refers it to the Committee of Permanent Representatives (Coreper), which considers it and prepares the Council decision.  

When the working party responsible for studying the Commission proposal has concluded its consideration, it draws up a report listing, in part I, factors on which an agreement has been reached and, in part II, those which will be put to Coreper. On considering the report, Coreper ratifies part I where it deems this appropriate and continues the debate on those points on which no agreement was reached in the working parties.  

Both at its formal meetings and during other possible contacts, Coreper seeks to reach new agreements on the Commission proposal in order to secure its modification. At the end of its deliberations, Coreper may choose between various courses of action:  

1. It may present the proposal under part A of the Council agenda. This means that Coreper recommends that the Council approve it wholesale and automatically, without debate. The main conditions which must be met are as follows: the wording of the proposal must be final, it must have been divided into articles and approved in the 11 versions and have received the agreement of the Permanent Representatives and the Commission.  

2. It may submit the proposal under part B of the Council agenda, recommending that it discuss and take a decision on a proposal which has not received the necessary majority either in the working party delegations or in Coreper.  

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\[27\] The Council President, assisted by the Secretary-General, assigns the proposal to Coreper II (Head of Representation level) for political matters or Coreper I (deputy level) for technical matters. Before starting to consider the proposal, that body in turn sends the proposal to one or more working parties for a technical study. These prenegotiations serve to define standpoints and secure initial agreements.  

\[28\] All the acts adopted under part A are legally attributable to the Council, even though consideration, discussion and position-taking on the vast majority of such acts takes place within Coreper.
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3. It may agree that the proposal be adopted under the written procedure, outside the normal agenda of meetings. This procedure makes it possible to register Member State votes in writing for urgent decisions, decisions of a secondary nature or decisions on procedure (Rule 8 of the Council's Rules of Procedure). Two conditions must be met for this procedure to be applied: unanimity among members of the Council or Coreper and the Commission's agreement if the decision concerns a Commission proposal.

After the corresponding opinion of Parliament has been delivered (and, where appropriate, the opinion of the Economic and Social Committee or the Committee of the Regions), a decision is adopted in the Council of Ministers:

- **If it approves all the amendments contained in Parliament's opinion or if Parliament does not propose any amendments:**

  The Council adopts the proposed act by a qualified majority without needing to proceed to a second reading. In the event of an agreement between Parliament and the Council at first reading, the Treaty of Amsterdam makes provision for the legislative act to be adopted in the form of the Commission proposal, where Parliament does not propose any amendments, or in the version amended by Parliament, where the Council approves by a qualified majority all the amendments proposed by Parliament. This is in contrast to the EU Treaty, under which no legislative act could be adopted without the adoption of a 'common position';

- **In all other cases, i.e. if it does not approve all the amendments tabled by Parliament,** it adopts a common position and forwards it to Parliament. The Council must inform Parliament fully of the reasons which led it to adopt its common position. The Commission must inform Parliament fully of its position.

When the Council adopts its 'common position', that document must be accompanied by a detailed explanatory memorandum. Depending on the legal basis concerned, the common position must be adopted unanimously or by a qualified majority (Article 250, ex. Article 189a). Where a qualified majority is required, the weighting of votes must comply with the provisions of Article 205 (previously Article 148(2) of the EC Treaty). 62 votes are required (out of a total of 87) where the act to be adopted has been proposed by the Commission. If the Council is unable to decide unanimously to amend a Commission proposal, the only options open to the Council are to adopt it by a qualified majority or to reject it (i.e. not to take any decision).

Many authors take the view that the Council's determination of the common position is a sign of imbalance. Nevertheless, even though it is true that it is the Council which determines the 'common position', it is equally true that the Council must do so on the basis of the Commission proposal and Parliament's opinion. Parliament therefore intervenes in the shaping of the 'common position' in that...
its opinion is mandatory (and not optional) and the Council’s failure to await its opinion would nullify the procedure. In theory at least, this implies that the Council should incorporate some of Parliament’s suggestions, possibly in a ‘swapping’ process. Otherwise, what should by definition be a common position would lose its meaning.

2.1.3 Practical consequences of the first reading under the new codecision procedure

If it is to make the best possible use of the new possibility introduced in the Treaty of Amsterdam for codecision texts to be adopted at first reading, Parliament must bear in mind above all that it will in future need to pay particular attention both to the content and wording of its amendments at first reading, given that the proposal drawn up by the Commission and amended by Parliament may become the definitive text. Consequently:

- from the procedural point of view, Parliament’s Rules of Procedures will need to be amended so as to enable the competent parliamentary committees to establish dialogues not only with the Commission (Article 250), but also with the Council with a view to securing future agreements on all the amendments which might be tabled at first reading. Such a dialogue might take the form of mini-conciliations or informal meetings (i.e. the ‘three-lane’ dialogues hitherto held in order to prevent blockages and conflicts within the Conciliation Committee) during the first reading;

- from the legal point of view, it would also be desirable to pay particular attention to the wording and content of Parliament’s amendments. Parliament should not confine itself exclusively to drawing up amendments to the Commission proposal but should also draw up a complete text of the amended proposal ‘in the form of a bill’. This would give the impression that Parliament as legislator has taken the necessary steps to adopt a legislative act (the Council’s role would be confined to approving the draft). This would provide Parliament with a fresh image;

- furthermore, as Parliament’s Legal Service has been at pains to point out, henceforth the Legal Service should regularly attend meetings of legislative parliamentary committees (nine committees are responsible for matters covered by codecision) at first reading in order to provide them with the necessary advice on the wording of amendments at a formal level, as well as on their substance (verification of their compatibility with existing Community law, etc.)

31 Many documents will now need to be revised, such as the Interinstitutional Agreement, the Bureau decision of 12 March 1996 on the procedure for monitoring acts adopted, etc.

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30 Note of 16 September 1997 by Mr Garzon Clariana for Parliament’s Legal Service on the consequences of the Treaty of Amsterdam for the codecision procedure (pp. 3-4).

31 Many documents will now need to be revised, such as the Interinstitutional Agreement, the Bureau decision of 12 March 1996 on the procedure for monitoring acts adopted, etc.
2.2 Second reading under the codecision procedure

2.2.1 Second reading in the Parliament

*Article 251(2), third subparagraph (previous Article 189b(2), third subparagraph)*

*If*, within three months of such communication, *the European Parliament*:

(a) approves the common position or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position;

(b) rejects, by an absolute majority of its component members, the common position, the proposed act shall be deemed not to have been adopted;

(c) proposes amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

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**SECOND READING in EP (time-limit 3 months)**

- **EP approves common position**
- **EP does not take any decision on the common position**
- **EP rejects common position by an absolute majority of its Members**
- **EP proposes amendments to common position by an absolute majority**
- **PROPOSAL ADOPTED**
- **PROPOSAL ADOPTED**
- **ACT NOT ADOPTED**
- **Positive or negative Commission opinion**

This stage commences when the Council communicates its common position to Parliament. Communication is considered to have taken place when it is announced by the President in plenary. In order to do this, the President must have received the following documents:

- the Council’s common position together with the reasons which led it to adopt the common position;
- the Commission’s position;
- the corresponding translation of the documents into the official languages of the EU.
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The common position of the Council is deemed to have been referred automatically to the committee responsible and to the committees asked for their opinion at second reading on the day of its communication to Parliament. Unless the committee responsible decides otherwise, the rapporteur at first reading continues to act as rapporteur on the proposal at second reading.

The members of the committee responsible and their substitutes may table amendments or proposals for rejection of the common position. The committee decides by a majority of the votes cast. The committee responsible may request a dialogue with the Council with a view to discussing compromise amendments. The committee responsible submits a recommendation for second reading to plenary on the decision which Parliament should take on the common position of the Council. The recommendation must include a justification for the decision proposed. In addition to the committee responsible, a political group or a group of at least 23 Members may table amendments to the common position in plenary.

For an amendment to be deemed admissible at second reading, it must:

- seek to restore wholly or partly the position adopted by Parliament at first reading; or
- be a compromise amendment representing an agreement between the Council and Parliament; or
- seek, inter alia, to amend a part of the text of the common position which was not included in the proposal submitted at first reading or differs in content from that proposal.

Parliament's second reading is of great legal importance, while greater importance attaches to the first reading in terms of content.

In principle, the new Treaty of Amsterdam provides for four possible courses of action for Parliament within the framework of the codecision procedure:

1. Parliament explicitly approves the common position. If the Council ratifies its common position, the act in question is deemed to have been adopted. The act is considered definitively adopted in the form of the common position, and the codecision procedure is thus concluded at second reading;

2. Parliament does not take any decision, i.e. it does not express any view on the common position of the Council. In this case too, the Council may ratify its position and adopt the act in question:

3. Parliament rejects the common position by an absolute majority of its members. The Commission does not enjoy any power to intervene once Parliament has rejected the common position. The act is deemed not to have been adopted and the co-decision procedure ends at second reading;

4. Parliament proposes amendments to the common position of the Council by an absolute majority of its members and forwards them to the Council and Commission. The Commission must deliver an opinion on the amendments.
By comparison with the previous procedure, two new features have been introduced in this paragraph:

1. *The intention to reject phase has been deleted* (abolition of mini-conciliation). The Treaty of Amsterdam has removed the possibility previously open to Parliament (Article 189b (2)(c)) of announcing its intention to reject the common position. This possibility has been replaced by a new option: Parliament may definitively reject the common position of the Council by an absolute majority of its component members (Article 251(2)(b)). This will make the procedure more effective and speedier. The mini-conciliation phase has in fact been used only once (Beazley report on motor vehicles, A3-9/94), and this was doubtless a contributory factor to the consensus within the IGC that the relevant paragraph should be deleted. The automatic extension of the three-month period provided for in paragraph 7 of the previous article has been abolished.

2. **A time-limit has been set starting from Parliament's second reading.** A declaration annexed to the Treaty of Amsterdam confirms the importance of strict respect for the deadlines set for the co-decision procedure. That declaration sets a maximum period of nine months between the start of Parliament's second reading and the outcome of the Conciliation Committee. Nevertheless, a rough calculation of the time-limits set in the article as a whole shows that the procedure may extend to 12 months, especially bearing in mind that the first reading is not subject to any time-limits.

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32 The third subparagraph of former Article 189b (2) read as follows: 'If, within three months of such communication, the European Parliament: (a) approves the common position, the Council shall definitively adopt the act in question in accordance with that common position; (b) has not taken a decision, the Council shall adopt the act in question in accordance with its common position; (c) indicates, by an absolute majority of its component members, that it intends to reject the common position, it shall immediately inform the Council. The Council may convene a meeting of the Conciliation Committee referred to in paragraph 4 to explain further its position. The European Parliament shall thereafter either confirm, by an absolute majority of its component members, its rejection of the common position, in which event the proposed act shall be deemed not to have been adopted, or propose amendments in accordance with subparagraph (d) of this paragraph: (d) proposes amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.'

33 Even though in principle the result is in fact nine months: two plus three months for the second readings plus six weeks for convening the Conciliation Committee.
2.2.2 Second reading in the Council

*Article 251(3) (Article 189b(3))*

*If*, within three months of the matter being referred to it, the Council, acting by a qualified *majority*, approves *all* the amendments of the European Parliament, the act in question shall be deemed to have been adopted in the form of the common position first amended; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. *If* the Council does not approve *all* the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.

There are basically three possibilities open to the Council at second reading where Parliament forwards to the Council amendments adopted by a majority of its Members:

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34 The former Article 189b(3) read: 'If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, it shall amend its common position accordingly and adopt the act in question: however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve the act in question, the President of the Council, in agreement with the President of the European Parliament, shall forthwith convene a meeting of the Conciliation Committee.'
1. The Council, acting by a qualified majority and within a period of three months (which may be extended by one month) can accept all Parliament's amendments to the common position. In that case, the Council modifies its common position accordingly and adopts the corresponding act. For this option to be applicable, the Council must not have rejected Parliament's amendments;

2. If the Commission rejects one or more of Parliament's amendments, the Council may overrule that rejection and accept the amendments concerned only by acting unanimously;

3. If the Commission rejects one or more of Parliament's amendments and the Council fails to secure the unanimity required to approve them, the President of the Council, in agreement with the President of Parliament, convenes a meeting of the Conciliation Committee within a period of six weeks (which may be extended by two weeks).

The Treaty of Amsterdam has replaced the term 'forthwith' in the previous version of the relevant paragraph by 'six weeks' between the end of the Council's second reading and the start of conciliation. The period of six weeks, which had been proposed by the Irish Presidency (see Annex), will make it possible to put an end to the Council's practice at this stage of the procedure, which involved waiting for some months after it had concluded its second reading before convening the Conciliation Committee.

. To date, the average time taken to agree on a common position from Parliament giving its opinion at first reading until adoption of the common position by the Council has been around 226 days.

. The longest period of time required by the Council to reach agreement on a common position was 1751 days.

It should be pointed out that the average length of time taken to complete the legislative procedure for acts adopted under the co-decision procedure without needing to convene the Conciliation Committee was 630 days. In the 16 cases in which conciliation took place, the average time taken was 746 days.

In future the time-limits established for this procedure are to be strictly respected in order to make the procedure more flexible and more rapid.

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35 Reply to Question 39/97 by Mr Corbett (PE 259.385/BUR).
2.3 The conciliation committee

*Article 251(4) former Article 189b(4)*)

'The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee’s proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council. In fulfilling this task, the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament.'

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The Conciliation Committee is composed of the members of the Council or their representatives and an equal number of representatives of Parliament and has the task of reaching agreement on a document termed a 'joint text' within a period of six weeks (which may be extended by a further two weeks at the most). Adoption of a joint text requires a qualified majority of the Council or its representatives and a simple majority of Parliament representatives.

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*The wording of the previous Article 189b(4) was identical to the current version. The only variation between the two is the addition of a final sentence.*
The new codecision procedure following the Treaty of Amsterdam

This committee is not a genuinely joint body: in the current Community of 15 Member States there are 15 parliamentary and 15 governmental representatives. The differences are obvious, however: the government representatives represent themselves, while the 15 Members of Parliament (who are selected in accordance with the method determined by Parliament in its internal rules) represent 626 parliamentarians.

The Commission, which has neither speaking nor voting rights in the Conciliation Committee, may take part in the committee's work only by taking the necessary initiatives with a view to reconciling differing views. The Commission's role is thus restricted to acting as mediator in any dispute.

The Treaty of Amsterdam added a new sentence to Article 251(4) of the Treaty: '(...)The Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament'. The purpose of this new provision appears to be to respond to the question raised as to whether the Conciliation Committee should consider other factors in addition to the common position of the Council and the amendments adopted by Parliament, such as the amendments proposed in Parliament but not adopted by the required majority, compromise formulae etc. It appears logical that the work of the committee should henceforth focus exclusively on the amendments proposed by Parliament and adopted by plenary at second reading.

Article 251(5) (former-Article 189b(5))

'If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.'

The text agreed in the committee must be confirmed by each institution acting separately within a fresh period of six weeks, which may be extended by a further two weeks. There is no reasonable doubt regarding the Council's confirmation. In the case of Parliament, however, plenary will have to ratify by an absolute majority of the votes cast the agreement secured in the Conciliation Committee. If Parliament ratifies the joint text, it will have participated in legislative power, albeit in conditions of inferiority. The aspect of the committee's work most worthy of being pointed out is the fact that, as under the previous procedure, the taboo surrounding the Commission's power of initiative has for the first time been breached. The Council can now depart from the Commission proposal and accept a text agreed with Parliament representatives by a qualified majority, in contrast to the traditional requirement of unanimity wherever it departed from the Commission text. This

37 The way in which the Council approaches an agreement is in fact rather unrepresentative and arbitrary: the majorities required in the Council for a joint text may be deceptive and designed chiefly to prevent any obstacle which may have arisen within Parliament: adoption requires a simply majority of Parliament's representatives but a qualified majority in the Council.

38 The same wording in the two versions
first step, already taken in the former Article 189b(4), represents a qualitative leap in terms of making the Community more democratic.

**Article 251(6) (former-Article 189b(6))**

'Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted'

If the joint text is not approved within this period by both institutions, the proposal is considered not to have been adopted and the process will have concluded without producing a legislative act. In Parliament's view, this is the most significant modification of the codecision procedure introduced by the Treaty of Amsterdam.

The Treaty on European Union granted the Council a unilateral final option if it wished to uphold its common position: the possibility of reaffirming its decision, with the inclusion of those of Parliament's amendments which it considered acceptable (Article 189b(6)). The fact that the Council was able to conduct a trial of strength with Parliament was already extremely serious, but the fact that the Council was not permitted to accept Parliament's amendments by a qualified majority (as in the Conciliation Committee and in the case of subsequent confirmation) in such a tense situation was still more open to criticism. The act adopted in the third reading in the Council under the former codecision procedure could be considered final and would enter into force (Article 191 of the EC Treaty) unless, within a fresh period of six weeks, Parliament rejected the Council text at third reading by an absolute majority of its members. If Parliament secured such a high majority to reject the text, the act was considered to have been finally rejected and the legislative procedure came to an end without a decision. Parliament was not given an opportunity to accept the new Council text by that same absolute majority in order to co-participate in the legislative procedure. Parliament was permitted to reject or refuse to accept a text, but never to alter it. This provision at third reading, imposed by the Council, should never have been accepted, since it distorted the codecision procedure and destroyed its balance. Fortunately, it has now been deleted following the adoption of the new Treaty of Amsterdam, which has eliminated the third reading and thus the Council's right to uphold its common position despite Parliament's rejection.

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39 The former Article 189b(6) read: 'Where the conciliation committee does not approve a joint text, the proposed act shall be deemed not to have been adopted unless the Council, acting by a qualified majority within six weeks of expiry of the period granted to the conciliation committee, confirms the common position to which it agreed before the conciliation procedure was initiated, possible with amendments proposed by the European Parliament. In this case, the act in question shall be finally adopted unless the European Parliament, within six weeks of the date of confirmation by the Council, rejects the text by an absolute majority of its component members, in which case the proposed act shall be deemed not to have been adopted.'

40 Resolution of 26 June 1997 on the meeting of the European Council on 16/17 June in Amsterdam.
The new codecision procedure following the Treaty of Amsterdam

Thanks to the new paragraph 6, the two co-legislative institutions, the Council and Parliament, will enjoy the same rights throughout the procedure, which has thus become a genuine 'codecision procedure'.

3. THE NEW SCOPE OF THE CODECISION PROCEDURE

3.1 The scope of the codecision procedure under the Treaty on European Union

The scope of the codecision procedure under Article 189b of the EU Treaty was fairly restricted. This was principally for three reasons: the gradual increase in Parliament's powers, the partial and arbitrary allocation of areas coming under codecision in the 1991 IGC and, finally, the differentiation of acts according to their nature within certain sectors (in some sectors such as the environment, it was possible for three different procedures to apply). The scope of the codecision procedure under the EU Treaty was not based on any logical structure or specific criteria. Indeed, the EU Treaty itself contemplated the possibility of widening its scope:

- **Article 189b(8)** stipulated that: 'the scope of the procedure under this Article may be widened, in accordance with the procedure provided for in Article N(2) of the Treaty on European Union, on the basis of a report to be submitted to the Council by the Commission by 1996 at the latest'.

- **Article N(2)** stipulated that: 'a conference of representatives of the governments of the Member States shall be convened in 1996 to examine those provisions of this Treaty for which revision is provided, in accordance with the objectives set out in Articles A and B.'

3.2 Criteria for widening the scope of the codecision procedure proposed at the 1996 Intergovernmental Conference

During the preparatory work for the Intergovernmental Conference on the future revision of the Treaty on European Union, the Reflection Group illustrated the difficulties encountered in finding a common criterion in view of the diverging opinions in the Member States: ‘a large majority is in favour of extending it. Most would extend it to all legislation adopted by the Council by qualified majority. Another view would focus attention on matters currently dealt with by the cooperation

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41 The result of a case-by-case approach, which was again followed in the 1996 IGC.

42 Article N(1) stipulated that: 'The Government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties on which the Union is founded. If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a Conference of Representatives of the Governments of the Member States, the Conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to those treaties. (...) The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.'
The new codecision procedure following the Treaty of Amsterdam

procedure, whereas others suggest a case-by-case approach. One member, in principle, opposes any extension.'

At that time, the Commission and Parliament expressed the following views:

- The Commission took the view that it should apply to the adoption of all acts of a legislative nature. This would entail clarification of what actually constitutes a legislative instrument. The codecision procedure should in any event be adopted for all decisions currently taken by the Cooperation Procedure, which should be abolished' (opinion of 28 February 1996);
- Parliament, however, pointed out that there should be only one general procedure for legislation, namely codecision (opinion of 13 March 1996).

Four criteria were therefore proposed at the start of the conference:

1. Case-by-case consideration: this was also the criterion followed in the 1991 IGC, which brought about an unsatisfactory situation for both Parliament and the Commission. The result of the case-by-case approach was in fact to add together the exceptions proposed by each Member State. The outcome was therefore inadequate, and each conference undertook to broaden the scope of codecision at a fresh conference, at the risk of becoming bogged down in long discussions leading to compromises which lacked balance and overall coherence;

2. General definition of the 'Law' in the Treaty: At the start of the negotiations, some Member States, Parliament and the Commission proposed, on the basis of Declaration No 14 annexed to the EU Treaty, establishing a hierarchy of norms whereby the 'Law' would determine the fundamental principles, general guidelines and basic implementing rules of the Treaty. Nevertheless, this criterion was rejected at the beginning of the negotiations;

3. Codecision applied to all instruments adopted by the Council by qualified majority: this approach had the advantage of simplicity, but it would have had the disadvantage of making the scope of codecision dependent on a procedural criterion affecting a single institution: the voting method in the Council. It would also have gone too far (codecision would apply to certain instruments which are definitely matters of implementation, such as certain decisions concerning agriculture or commercial policy) and at the same time not far enough (certain legislative decisions would not be covered by codecision if unanimity remained applicable). This criterion was therefore also rejected as a basis for debate, chiefly by Parliament;

4. Codecision applied to all instruments currently enacted by the cooperation procedure: as with the previous criterion, this would at the same time go too far (it would cover areas that

43 Declaration No 16 annexed to the EU Treaty read as follows: ‘The Conference agrees that the Intergovernmental Conference to be convened in 1996 will examine to what extent it might be possible to review the classification of Community acts with a view to establishing an appropriate hierarchy between the different categories of act.’
are not strictly legislative, such as EMU) and not far enough (it would not cover such important areas as citizenship, agriculture policy or certain aspects of environment). It was therefore also rejected.

Even though each of these criteria posed certain advantages, none, on its own, appeared to provide a satisfactory response to the possible widening of the scope of the codecision procedure.

### 3.3 Which criterion was finally adopted?

Since the beginning of the Intergovernmental Conference, the Commission took the view that, in Community affairs proper, maintaining Parliament's diminished role was contrary to democratic principles. The Commission considered that Parliament's participation in enacting legislation by codecision with the Council should become the rule. This would recognize the twofold legitimacy on which the Community was founded: that of its States and of its peoples. The Commission therefore submitted a report\(^{44}\) on 3 July 1996 on the basis of Article 189b(8) on the possible widening of the scope of the codecision procedure. In its report, the Commission provided a definition of what should be understood by the term legislative activity so that 'codecision could be extended' to all the Community's legislative activity without needing to establish a hierarchy of norms\(^{45}\) in order to simplify decision-making procedures (abolishing the cooperation procedure).

In the Commission's view\(^{46}\), the definition of a legislative act would emerge from the conjunction of the four 'criteria commonly used' which each legislative area must meet:

1. The proposed act must be directly based on the EC Treaty;
2. It must be binding;
3. It must determine essential elements of Community action in a given area; and
4. It must be general in scope.

Nevertheless, these criteria would be subject to two conditions:

- As all the Union's legislative activities are governed by respect for the subsidiarity principle, application of the codecision procedure to any act meeting the above conditions should concentrate exclusively on the essential aspects of action which the Community considered appropriate;

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\(^{44}\) 'Scope of the codecision procedure', Brussels, 3 July 1996 (SEC(96) 1225 final).

\(^{45}\) As in the case of the 1991 Intergovernmental Conference on the Treaty on European Union, the issue of the hierarchy of legislative acts was left to one side; this was the origin of the difficulties encountered in defining a systematic scope for this provision.

\(^{46}\) These premises or criteria commonly used to define what constitutes a legislative instrument could be used as a guideline: it would have no legal effect and would not be formalized in the Treaty, but it would make it possible to determine which of the various areas in the Treaty should come under codecision and which should not.
Moreover, it is customary for instruments in all areas of activity to "delegate" powers to take implementing measures, which the codecision procedure is not used for. This means that all implementing measures would be excluded from the scope of the codecision procedure.

Parliament's approach before and during the negotiations was to support the criterion of extending the codecision procedure to all legislation\textsuperscript{47}, in the hope that all legislation would be adopted by a qualified majority. Parliament did not consider that this criterion would 'overload' the system, since:

1. It already applied to around a quarter of the legislative texts submitted to Parliament for consideration. Widening the scope of the procedure at a time when the overall volume of European legislation was diminishing appeared to be entirely reasonable;
2. There was a certain margin for debate as to what area would be considered 'legislative';
3. The procedure could be simplified\textsuperscript{48}.

Nevertheless, the criterion proposed by the Council and termed undisputable by the Council had, in Parliament's view, two weaknesses\textsuperscript{46}:

1. The criteria selected were not sufficiently explicit:
   - both the criterion 'general in scope' and 'essential elements of Community action in a given area' were considered highly subjective and likely to give rise to disputes in the future;
   - the concept 'technical area', which was not proposed as a criterion by the Commission, was in practice used as such.
2. Moreover, the definition of the Law was incomplete: for example, the report did not point out that such a definition would need to specify what legislative acts were of a normative, programmatic or budgetary nature, etc.

\textsuperscript{47} What, in Parliament's view, constitutes a legislative instrument? A purist might reply that any Community regulation or directive forwarded to the Council for adoption is a legislative instrument, while those which can be adopted by the Commission are implementing instruments. Under the Community system, however, this formula is not as simple. Many decisions characterized as implementing measures in the Member States require the Council's approval at Community level. If the Intergovernmental Conference upheld this situation, as appeared probable (rather than delegating such powers to the Commission, subject to adequate control and safeguard procedures), Parliament declared itself prepared to debate which acts should be covered by the codecision procedure and which not. For example, Article 43 of the Treaty is used for the adoption of measures applicable to agricultural markets. This is a typical implementing decision. Similarly, Article 113 is used both for commercial measures and for norms linked to commercial policy. In both cases, it would not be necessary to apply the codecision procedure to all aspects of the article concerned, but only to those which are clearly of a legislative nature.

\textsuperscript{48} If, at the end of the Intergovernmental Conference, the scope of the procedure had not been extended and unanimity had been maintained for some legislative acts, Parliament would continue to insist that codecision be applied, as at present in the case of the research programme and cultural exchanges.

\textsuperscript{49} Working document on the Commission report on 'The scope of the codecision procedure' by Jean-Louis Bourlanges and Biagio de Giovanni (PE 219.530).
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Consequently, while congratulating the Commission on its efforts to provide an adequate definition of what it considered to constitute legislative activity, Parliament concluded that 'demarcation of the legislative field produced by applying the criteria is both haphazard and restrictive' (for example, Parliament considered it unacceptable that Article 8(2) enshrining the right to vote and stand in European elections should not be included in the list of articles proposed by the Commission for adoption under codecision).

The initial standpoints taken by the European Council in restricting legislative procedures to three (consultation, assent and codecision) in practice appeared to strengthen codecision: the draft treaty put forward by the Irish Presidency noted the proposals submitted by the Commission and Parliament and affirmed that 'it would be preferable to approach the question of extension of the codecision procedure by reference to accepted criteria as suggested by the Commission and the European Parliament rather than on a case-by-case basis'.

When the Dutch Presidency took over, however, a much more restrictive approach was adopted in the non-paper CONF 3816/97 on 'decision-making procedures'\(^{50}\). Even though the document began by confirming the basic objective of reducing legislative procedures to three, the Presidency considered it more important to draw up a list of articles so that the various delegations could state their views on the possibility of transferring those articles to codecision (most of the articles proposed were covered by the cooperation procedure) and discuss what was and what was not legislative. Annex I to the non-paper listed those areas considered of a legislative nature and which might consequently be covered by codecision. Specifically, the non-paper defined:

**Five areas covered by the cooperation procedure which might be transferred to the codecision procedure\(^ {51}\):**

Article 6 (ban on discrimination), Articles 75(1) and 84(2) (transport policy), Article 127(4) (vocational training), Article 130s(1) (environment), Article 130w (development cooperation) and Article 118a(2) (social policy).

**Four areas of a non-legislative nature covered by the cooperation procedure which should be transferred to simple consultation:**

Article 125 (implementing decisions relating to the European Social Fund), Article 129d (other measures relating to the trans-European networks), Article 130e (measures relating to the European

\(^{50}\) The non-papers submitted by the Dutch Presidency were not put forward as draft treaties but as fact sheets which merely outlined the stage reached in the negotiations, together with some comments and requests for clarification. This is why it is important to stress the extreme caution expressed in such statements.

\(^{51}\) In May, the Patijn Working party submitted a text for negotiation which, in addition to these articles, included Article 8(2) as requested by Parliament.
The new codecision procedure following the Treaty of Amsterdam

Regional Development Fund) and Article 130o (implementing measures in the area of research and development).

A further five areas of a legislative nature which in its view should remain under the codecision procedure:

Article 43 (common agricultural policy, common rules covered by the consultation procedure), Article 51 (social security for Community migrant workers, not falling within the competence of Parliament), Article 55 (exclusion from the right to establishment of certain activities connected with the exercise of official authority, also falling outside Parliament's sphere of competence), Article 57(2) (directives whose implementation involves in at least one Member State amendment of the existing principles laid down by law governing natural persons, subject to consultation of Parliament only) and Article 100 (internal market in general, subject to consultation of Parliament, even though in recent years it has tended to be replaced by Article 100a).

The Dutch Presidency thus restricted its additional proposals to the common rules for agriculture and certain detailed rules in the area of the internal market. Both the Commission and Parliament proposed codecision for all these areas, even though they represented only a small proportion of the total number of sectors for which both institutions had proposed codecision.

3.4 Characteristics and new areas of application of the codecision procedure

Following the reform introduced under the Amsterdam Treaty, the main features which should be highlighted with regard to the scope of this procedure by comparison with the procedure before the reform are basically as follows:

1. The codecision procedure is established only within the scope of the EC Treaty and is therefore not applicable in the areas of the ECSC and EAECEuratom;

2. The codecision procedure is stipulated for the adoption of both regulations and directives. The generic term used to refer to such acts once they have been adopted under the

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52 Articles 125, 129d and 130e were to be included in the new proposal submitted by the Dutch Presidency through the Patijn working party.

53 The Commission document had considered two of these provisions, Articles 125 and 130e, to be of legislative nature and therefore proposed that they should be transferred to codecision. The Commission agreed with the Presidency with regard to Articles 129d and 130o.

54 Even in the area of the internal market, significant matters such as those covered by Article 73c (measures in respect of the movement of capital to or from third countries) and Article 99 (harmonization of legislation concerning indirect taxation) were excluded in the Dutch proposal. The Presidency's proposals appeared highly appropriate with regard to the application of codecision for common rules on agriculture, but they proved insufficient and lacking in ambition for the majority of the remaining areas.
The new codecision procedure following the Treaty of Amsterdam

codecision procedure will be 'LEX' (formally as a regulation/directive/decision of the European Parliament and the Council, or 'adopted jointly' by the European Parliament and the Council;

3. The codecision procedure defined in Article 251 of the EC Treaty now replaces the cooperation procedure 'which has been retained but will apply solely to EMU'. Cases may also arise, and have in fact already arisen, in which one specific area is covered by various different decision-making procedures, with the result that the principles or guidelines are adopted under the codecision procedure between Parliament and the Council while specific measures are adopted under a different procedure. It is even possible for certain areas to involve three different procedures.

The new Treaty of Amsterdam has extended the scope of the codecision procedure to 24 new cases. Of these, eight concern new provisions of the EC Treaty, while the remaining sixteen will apply to existing provisions: of these, eleven will be covered by the cooperation procedure, four by the consultation procedure and one by the assent procedure.

The provisions of the Treaty of Amsterdam (including the previous provisions already covered by the co-decision procedure before the reform introduced by the new Treaty) which are to be subject to the co-decision procedure are as follows:

- **Article 129** (ex Article 109r), incentive measures to boost employment (new Treaty provision), QMV;
- **Article 12** (ex Article 6), rules to prohibit discrimination on grounds of nationality, QMV;
- **Article 18** (ex Article 8a(2)), provisions to facilitate the exercise of the right of citizens to move and reside freely within the territory of the Member States, unanimity;
- **Article 40** (ex Article 49(!)), free movement of workers. internal market, QMV;
- **Article 42** (ex Article 51), internal market, social security rules for Community migrant workers, unanimity;
- **Article 45** (ex Article 54(2)), freedom of establishment, internal market, QMV;
- **Article 46** (ex Article 55(2)), freedom of establishment, internal market, coordination of provisions laid down by law, regulation or administrative action on the treatment of foreign nationals, QMV;
- **Article 47** (ex Article 57(1)), mutual recognition of diplomas, certificates and other evidence of formal qualifications in relation to access to self-employed activities, QMV;
- **Article 47** (ex Article 57(2)(in fine)), coordination of provisions laid down by law, regulation or administrative action in the Member States with respect to access to and the exercise of self-employed activities, QMB;
- **Article 47** (ex Article 57(2)), amendment of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons, unanimity;
- **Article 55** (ex Article 66), free movement of services, internal market, QMV;
- **Article 71** (ex Article 75(1)), transport policy, common rules applicable to international transport to or from a Member State or passing across the territory of one or more Member States; conditions under which non-resident carriers may operate transport services within a Member State and measures to improve transport safety, QMV;
The new codecision procedure following the Treaty of Amsterdam

- **Article 80** (ex Article 84), transport policy, sea and air transport, QMV;

**Social Policy:** articles arising from the incorporation into the Treaty of the Agreement on Social Policy (Article 2(2)), except for those aspects of that Agreement currently subject to unanimity (Article 2(3)) (QMV);

- **Article 95** (ex Article 100a(1)), internal market, approximation of legislation which has as its object the establishment and functioning of the internal market, QMV;
- **Article 95** (ex Article 100b(1), second subparagraph), internal market, list of non-harmonized provisions and equivalences, QMV;
- **Article 116** (ex Article 135), customs cooperation (new Treaty provision) QMV;
- **Article 141** (ex Article 119), social policy, equal opportunities and treatment, new Treaty provision, QMV;
- **Article 148** (ex Article 125), implementing decisions relating to the European Social Fund, QMV;
- **Article 149** (ex Article 126(4)), education, incentive measures excluding any harmonization, QMV;
- **Article 150** (ex Article 127(4)), vocational training, measures to achieve the objectives of vocational training, QMV;
- **Article 151** (ex Article 128(5)), culture, incentive measures excluding any harmonization, unanimity;
- **Article 152** (ex Article 129), public health, previous basis Article 43, minimum requirements regarding the quality and safety of organs and veterinary and phytosanitary measures which have as their direct objective the protection of public health (new Treaty provision) QMV;
- **Article 152** (ex Article 129(4)), public health, incentive measures excluding any harmonization, QMV;
- **Article 153** (ex Article 129a(2)), consumer protection, QMV;
- **Article 156** (ex Article 129d), trans-European transport networks, guidelines on general objectives, priorities and projects of common interest, QMV;
- **Article 162** (ex Article 130e), implementation of ERDF decisions, QMV;
- **Article 172** (ex Article 130(2)), adoption of provisions referred to in Articles 130k and y, research, QMV;
- **Article 175** (ex Article 130s), environment, Community action to achieve the objectives referred to in Article 130r, QMV;
- **Article 175** (ex Article 130s(3)), environment, general action programmes setting out priority objectives, unanimity;
- **Article 179** (ex Article 130w), development cooperation, QMV;
- **Article 181** (ex Article 130y(1)), cooperation with third countries and competent international organizations, unanimity;
- **Article 255** (ex Article 191a), principles on transparency (new Treaty provision), QMV;
- **Article 280** (ex Article 209a), fight against fraud affecting the financial interests of the Community (new Treaty provision) QMV;
- **Article 285** (ex Article 213a), statistics (new Treaty provision), QMV;
- **Article 286** (ex Article 213b), establishment of an independent advisory body on data protection (new Treaty provision), QMV;
4. CONCLUSIONS ON THE NEW CODECISION PROCEDURE

In brief, it might be concluded that the simplification of the codecision procedure represents one of the genuinely decisive achievements secured by Parliament at the 1996 Intergovernmental Conference, which has granted Parliament real co-legislator status on an equal footing with the Council. In practice, however, as affirmed in the report of the Committee on Institutional Affairs on the Amsterdam Treaty, drawn up by Mr Mendez de Vigo and Mr Tsatsos (A4-347/97), these reforms will change little in the way of everyday legislative work because the procedural options which have been scrapped were, in any case, only used in exceptional political cases. However, they do change the institutional symbolism and hence the institutional balance.

By contrast, the extension of the scope of the codecision procedure to 24 new cases represents an apparent rather than a real victory for Parliament which had called for codecision for all legislative acts irrespective of the voting procedure used in the Council (unanimity or qualified majority). Codecision has been obtained for only some of these acts (few of which are really decisive), and matters of fundamental importance for Parliament such as those relating to agriculture, competition policy and the approximation of legislation, etc., remain excluded.

It should also be borne in mind with regard to these new areas which are now covered by codecision that certain circumstances will arise which will not prove fully satisfactory for Parliament, such as:

- in some areas, as in the case of the new Article 5 of the new title on employment, the adoption by codecision of incentive measures (excluding harmonization) is accompanied by declarations annexed to the Treaty which are designed to specify the scope of such measures in a more restrictive fashion;

- unanimity has been maintained in those areas previously subject to the cooperation procedure and now transferred to the codecision procedure. It has also been maintained where provided for by the Agreement on Social Policy (Article 118(3)) and in the area of the environment, even though up to the very end of the IGC it appeared that this area would be transferred to qualified majority voting (Article 130s (2));

- after a period of five years, the codecision procedure will probably be extended to certain communitized areas of the third pillar (visa issues), but any decision of this kind will have to be adopted unanimously, with the sole exception of Article G(3).

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56 See paragraph 1.2 of this document, which confirms this statement.

57 Report by Mr Mendez de Vigo and Mr Tsatsos on the Amsterdam Treaty (PE223.314), paragraph 166, p. 44.
In short, the 1996 Intergovernmental Conference has literally followed a carrot-and-stick approach with regard to the codecision procedure (the carrot being the simplification of the procedure and the stick being the refusal sufficiently to extend its scope). It now falls once again to Parliament to continue to overcome, through its dedication and goodwill, the shortcomings and inadequacies of a procedure which should be standard practice for all legislation but has not yet been installed as such for reasons which lie outside its power.

\[\text{In its resolution of 19 November 1997, Parliament called for 'the codecision procedure to be extended to the remaining areas of legislation (in particular, in the new Title IV (former Title IIa) of the EC Treaty, in agricultural, fisheries, fiscal and competition policy, structural policies, tourism and water resources, the approximation of laws pursuant to Article 94 (former Article 100) EC and legislative acts under the third pillar').}\]
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- Resolution of 13 March 1996 (Dury/Maij-Weggen)
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- Resolution of 16 January 1997 on the Dublin II European Council
- Resolution of 26 June 1997 on the Amsterdam European Council of 16 and 17 June 1997
- Resolution of 19 November 1997 on the Treaty of Amsterdam (Mendez de Vigo/Tsatsos)

Reports and documents

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- European Parliament delegations to the Conciliation Committee - report on activities from 1 March 1995 to 31 July 1996 (PE 254.988/BUR)
- Note of 26 May 1994 from the Legal Service on the codecision procedure - interpretation of Article 189b(6) (JUR(94)04187/RGB/ja)
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- Note of 24 June 1997 from the Legal Service providing an initial analysis of the new version of Article 189b of the EC Treaty

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- White Paper on the Intergovernmental Conference (Political Series, W-18, three volumes)
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European Commission

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- Report of February 1996 on reinforcing political union and preparing for enlargement
- Report of May 1995 for the Reflection Group

European Council (Conference of Representatives of the Governments of the Member States)

Irish Presidency

- CONF 3926/96 (September) (Spanish delegation)
- CONF 3951/96 (16 October)
- CONF 3974/96 (4 November)

Dutch Presidency

- CONF 3811/97, procedure for adopting decisions
- CONF 3814/97, extension of qualified-majority voting
- CONF 3815/97, re-weighting of votes
- CONF 3816/97, procedure for adopting decisions
- CONF 4001/97, provisional version of the Treaty
Annex 1: Legislative procedure under Article 189b before the 1996 IGC

<table>
<thead>
<tr>
<th>Commission proposal (forwarded to EP and Council)</th>
<th>→ EP and Council may ask the Commission to submit a proposal</th>
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<tbody>
<tr>
<td>First reading in EP</td>
<td>→ Commission examines EP amendments and forwards them to the Council</td>
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<td>EP opinion or proposal for amendment</td>
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</tbody>
</table>

**FIRST READING** in the Council
Adoption of common position by a qualified majority (62 votes out of a total of 87)

**SECOND READING** in the EP (time-limit of 3 months)*

- EP approves common position  
  PROPOSAL ADOPTED
- EP does not adopt any decision on the common position  
  PROPOSAL ADOPTED
- EP rejects position by an absolute majority of its members
- Council may convene Conciliation Committee to explain its position
- EP proposes amendments to common position by an absolute majority
  Positive or negative Commission opinion

*EP and Council may agree to extend this time-limit by a maximum of one month. The time-limit is extended automatically by two months if the Council convenes the Conciliation Committee.
Annex 1: Legislative procedure under Article 189b before the 1996 IG C (Cont.)

SECOND READING in the Council (time-limit of 3 months)*

1. Approves EP amendments (qualified majority)
2. Approves EP amendments without unanimity required by negative Commission opinion
3. Council does not adopt legal act

Approves EP amendments unanimously where Commission opinion is negative

Council President in agreement with EP President, convenes Conciliation Committee

Proposal adopted

THIRD READING

Conciliation Committee approves joint text

Conciliation Committee does not approve joint text

Third reading in Council (time-limit 6 weeks)

Council 3rd reading, EP 3rd reading
Time-limit 6 weeks

Adoption of joint text
Council: qualified majority
EP: absolute majority

Joint text not adopted

Confirmation of common position (possibly with amendments) by QMV

European Parliament (time limit 6 weeks)

Decision not adopted

Not rejected

Rejected by absolute majority

PROPOSAL ADOPTED

ACT NOT ADOPTED

PROPOSAL ADOPTED

ACT NOT ADOPTED

*EP and Council may agree to extend this time-limit by a maximum of one month. The time-limit is extended automatically by two months if the Council convenes the Conciliation Committee.
Annex 2: Legislative procedure under Article 189b after the 1996 IGC

Commission proposal (forwarded to EP and Council) -- EP and Council may ask the Commission to submit a proposal

First reading in EP
EP opinion or proposal for amendment -- Commission examines EP amendments and forwards them to the Council

Adopts all the amendments in EP opinion

FIRST READING in the Council by qualified majority: 62 votes out of 87

SECOND READING in the EP (time-limit of 3 months)"

EP approves common position

PROPOSAL ADOPTED

EP does not adopt any decision on the common position

PROPOSAL ADOPTED

EP rejects position by an absolute majority of its members

Act not adopted

EP proposes amendments to common position by an absolute majority

Positive or negative Commission opinion

*EP and Council may agree to extend this time-limit by a maximum of one month. The time-limit is extended automatically by two months if the Council convenes the Conciliation Committee.
Annex 2: Legislative procedure under Article 189b after the 1996 IGC (Cont.)

SECOND READING in the Council (time-limit of 3 months)*

- Approves EP amendments (qualified majority)
- Approves EP amendments without unanimity required by negative Commission opinion (6 weeks)
- Council does not adopt legal act

Approves EP amendments unanimously where Commission opinion is negative

Council President in agreement with EP President, convenes Conciliation Committee

PROPOSAL ADOPTED

Conciliation Committee does not approve joint text

ACT NOT ADOPTED

Conciliation Committee approves joint text

Conciliation Committee approves joint text

Adoption of joint text
Council: qualified majority
EP: absolute majority

PROPOSAL ADOPTED

Joint text not adopted

ACT NOT ADOPTED

*EP and Council may agree to extend this time-limit by a maximum of one month.
ANNEX 3: COMPARATIVE ANALYSIS OF PROPOSALS TO SIMPLIFY THE CODECISION PROCEDURE

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<tr>
<td>189b.</td>
<td>Codecision procedure</td>
<td>189b.</td>
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<tr>
<td>1. Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.</td>
<td>1. Where reference is made in this Treaty to the codecision procedure for the adoption of an act, the act of the Union shall be adopted by the EP and the Council in accordance with the following procedure:</td>
<td>1. Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.</td>
<td>1. Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.</td>
</tr>
<tr>
<td>The Council, acting by a qualified majority after obtaining the opinion of the European Parliament, shall adopt a common position. The common position shall be communicated to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position.</td>
<td>The Council, acting by a qualified majority after obtaining the opinion of the European Parliament, if it approves all the amendments contained in the European Parliament’s opinion, may adopt the proposed act thus amended; if the European Parliament does not propose any amendments, may adopt the proposed act; shall otherwise adopt a common position and communicate it to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament of its position.</td>
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<td>(a) approves the common position, the Council shall definitively adopt the act in question in accordance with that common position;</td>
<td>(a) approves the common position or does not deliver an opinion on the act, the act shall be adopted;</td>
<td>(a) approves the common position or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position;</td>
<td>(a) approves the common position or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position;</td>
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<tr>
<td>(b) has not taken a decision, the Council shall adopt the act in question in accordance with its common position:</td>
<td>(b) rejects the common position by an absolute majority of its component members, the proposed act shall be deemed not to have been adopted. Deleted.</td>
<td>(b) rejects, by an absolute majority of its members, the common position, the proposed act shall be deemed not to have been adopted; Deleted.</td>
<td>(b) rejects, by an absolute majority of its component members, the proposed act shall be deemed not to have been adopted; Deleted.</td>
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<tr>
<td>(c) indicates, by an absolute majority of its component members, that it intends to reject the common position, it shall immediately inform the Council. The Council may convene a meeting of the Conciliation Committee referred to in paragraph 4 to explain further its position. The European Parliament shall thereafter either confirm, by an absolute majority of its component members, its rejection of the common position, in which event the proposed act shall be deemed not to have been adopted, or propose amendments in accordance with subparagraph (d) of this paragraph;</td>
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<td>(d) proposes amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.</td>
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<td>3. If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments proposed by the European Parliament, it shall amend its common position accordingly and adopt the act in question; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve the act in question, the President of the Council, in agreement with the President of the European Parliament, shall forthwith convene a meeting of the Conciliation Committee.</td>
<td><strong>(4. Paragraph 2)</strong> If, within three months of the text being forwarded to it, the Council, acting by a qualified majority approves all the amendments proposed by the European Parliament, the proposed act shall be adopted with those amendments. If, once that time-limit has expired, the act has not been adopted, the President of the Council and the President of the European Parliament, shall forthwith and by common accord convene the Conciliation Committee.</td>
<td>3. If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, the act in question shall be deemed to have been adopted in the form of the common position thus amended; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.</td>
<td>3. If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, the act in question shall be deemed to have been adopted in the form of the common position thus amended; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.</td>
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<td>4. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.</td>
<td>5. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.</td>
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</tr>
</tbody>
</table>
### ANNEX 3: COMPARATIVE ANALYSIS OF PROPOSALS TO SIMPLIFY THE CODECISION PROCEDURE

<table>
<thead>
<tr>
<th>LEGAL BASE</th>
<th>EP PROPOSAL</th>
<th>DEFINITIVE PROPOSAL</th>
<th>COUNCIL PROPOSAL</th>
</tr>
</thead>
</table>
| **5.** If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If one of the two institutions fails to approve the proposed act, it shall be deemed not to have been adopted. | **6.** If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the proposed act shall be deemed to have been adopted provided that the European Parliament and the Council approve the proposed act within the period of six weeks. The decision shall be taken by a majority of the votes cast in the case of the European Parliament and by a qualified majority in the case of the Council. Otherwise, the proposed act shall be deemed not to have been adopted. | **5.** **Option 1**
If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted. **Option 2**
If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the act shall be deemed to have been adopted in the form of the joint text as from six weeks after that approval, unless the European Parliament, acting by an absolute majority of the votes cast, or the Council, acting by a qualified majority, rejects that text. | **Option 1**
If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted. **Option 2**
If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the act shall be deemed to have been adopted in the form of the joint text as from six weeks after that approval, unless the European Parliament, acting by an absolute majority of the votes cast, or the Council, acting by a qualified majority, rejects that text. |
### ANNEX 3: COMPARATIVE ANALYSIS OF PROPOSALS TO SIMPLIFY THE CODECITION PROCEDURE

<table>
<thead>
<tr>
<th>LEGAL BASE</th>
<th>EP PROPOSAL</th>
<th>DEFINITIVE PROPOSAL</th>
<th>COUNCIL PROPOSAL</th>
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</thead>
<tbody>
<tr>
<td>6. Where the Conciliation Committee does not approve a joint text, the</td>
<td>Deleted.</td>
<td>Option 2 Where the Conciliation Committee does not approve a joint text, the</td>
<td>Option 1 Where the Conciliation Committee does not approve a joint text, the</td>
</tr>
<tr>
<td>proposed act shall be deemed not to have been adopted unless the Council,</td>
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<td>proposed act shall be deemed not to have been adopted.</td>
<td>proposed act shall be deemed not to have been adopted.</td>
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<tr>
<td>acting by a qualified majority within six weeks of expiry of the period</td>
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<td>granted to the Conciliation Committee, confirms the common position to</td>
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<td>which it agreed before the conciliation procedure was initiated, possibly</td>
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<td>with amendments proposed by the European Parliament. In this case, the</td>
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<tr>
<td>act in question shall be finally adopted unless the European Parliament,</td>
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<tr>
<td>within six weeks of the date of confirmation by the Council, rejects the</td>
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<tr>
<td>text by an absolute majority of its component members, in which case the</td>
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<tr>
<td>proposed act shall be deemed not to have been adopted.</td>
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</table>
## ANNEX 3: COMPARATIVE ANALYSIS OF PROPOSALS TO SIMPLIFY THE CODECISION PROCEDURE

<table>
<thead>
<tr>
<th>LEGAL BASE</th>
<th>EP PROPOSAL</th>
<th>DEFINITIVE PROPOSAL</th>
<th>COUNCIL PROPOSAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. The periods of three months and six weeks referred to in this Article may be extended by a maximum of one month and two weeks respectively by common accord of the European Parliament and the Council. The period of three months referred to in paragraph 2 shall be automatically extended by two months where paragraph 2(c) applies.</td>
<td>7. The periods of three months and six weeks referred to in this Article may be extended by a maximum of one month and two weeks respectively by common accord of the European Parliament and the Council. (Second sentence deleted).</td>
<td>7. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council. (Second sentence deleted).</td>
<td>7. The periods of three months and six weeks referred to in this Article may be extended by a maximum of one month and two weeks respectively by common accord of the European Parliament and the Council. (Second sentence deleted).</td>
</tr>
</tbody>
</table>

The Final Act of the Conference includes a declaration on respect for time-limits under the codecision procedure:

'The Conference calls on the European Parliament, the Council and the Commission to make every effort to ensure that the codecision procedure operates as expeditiously as possible. It recalls the importance of strict respect for the deadlines set out in Article 189 of the Treaty establishing the European Community and confirms that recourse, provided for in paragraph 7 of that Article, to extension of the periods in question should be considered only when strictly necessary. In no case should the actual period between the second reading by the European Parliament and the outcome of the Conciliation Committee exceed nine months.'

A. Article 189b(1):
The Dutch Presidency (and Irish Presidency) text proposed that the Council could adopt the proposal immediately, without a common position being required:
• in the form proposed by the Commission, if Parliament did not propose any amendments (second indent)
• in the version amended by Parliament, if the Council approved all the amendments proposed by Parliament at its first reading (first indent).

Even though its wording differed, Parliament basically agreed with the version put forward by both presidencies.

The final wording adopted was that proposed by the European Council.

B. Article 189b(2), third subparagraph:
The text proposed by both presidencies (Dutch and Irish) envisaged:
• that the proposed act would be adopted by Parliament at second reading (subparagraph a);
• that Parliament could finally reject the Council common position (b);
• that the 'mini-conciliation' stage following Parliament's second reading would be abolished (deleting the former paragraph c).

Parliament (Article 189b(4)) fully agreed with the proposals of the Irish and Dutch presidencies, which were finally adopted at the Amsterdam European Council.

C. Article 189b(3):
The Presidency text fixed only a six-week time-limit for convening the Conciliation Committee (the former version stipulated that the Conciliation Committee would be convened forthwith, i.e. three months + six weeks).

The time-limit proposed by Parliament for convening the Conciliation Committee was a period of three months as of the amendments being communicated, where the act had not been adopted, i.e. only three months (Article 189b(3)).

The definitive text is based on the text proposed by the European Council, i.e. three months + six weeks.

D. Article 189b(4):
The final proposal for this paragraph submitted by the two presidencies sought to clarify which amendments were to be examined by the Conciliation Committee. The final sentence of paragraph 4 specified that the Committee would work on the basis of the amendments adopted by Parliament at second reading (only the amendments adopted by Parliament in plenary).

Parliament upheld the wording from the previous paragraph. The final wording is that proposed by the two presidencies.

E. Article 189b(5):

Option 2: this modification proposed by the Irish Presidency was designed to simplify confirmation of the joint text. If the Conciliation Committee approved a joint text, adoption of the act would not be subject to a fresh vote by Parliament in order to be confirmed. The act would then be adopted provided that neither of the two institutions rejected the joint text within six weeks. Option 2 was the same as the option proposed by Parliament.

Option 1: this was proposed by the Irish Presidency and was the only option upheld by the Dutch Presidency text (CONF 3816/97) and favoured maintaining confirmation by means of the corresponding vote by the two institutions for the final adoption of the proposed act. The only modification to the Dutch text was the retention of the six-week time-limit laid down in the previous paragraph.

The first option was finally adopted: retention of confirmation by a vote for the act to be finally adopted.

F. Article 189b(6):

Option 2: was put forward by the Irish Presidency as one of a number of options but was upheld by the Dutch Presidency as the sole option. It represented a new factor in that the Council would no longer be permitted to adopt the text even where the Conciliation Committee had not reached an agreement.

This was the proposal finally adopted.

Option 1: put forward by the Irish Presidency, this represented the situation prior to the IGC: retention of the third reading. The innovatory aspect was that the Council, in a final vote, would be given the opportunity of taking account of all or some of the amendments tabled by Parliament (which would have considerably reduced the risk of Parliament rejecting the final text).

Parliament’s proposal was to delete paragraph 6 (option 2 would be included in the previous paragraph: ‘otherwise, it shall be deemed not to have been adopted’).

G. Article 189b(7):

The possibility of extending the duration of the codecision procedure was to be abolished. Both Parliament and the two presidencies agreed on the need to remove this possibility.

Further:

II. Both the Irish and the Dutch Presidency text agreed on the need to include a declaration in the Final Act of the Conference stressing the importance of avoiding unnecessary delay and the need to respect the time-limits laid down in Article 189b.

(The proposed declaration stated that the period fixed between Parliament’s second reading and the outcome of the Conciliation Committee should not exceed nine months.)
Annex 4: Evolution of codecision procedure up to the 1996 IGC

Statistical data on the codecision procedure (November 1993 to January 1996)

Source: European Parliament
### ANNEX 5: NEW AREAS NOW COVERED BY THE CODECISION PROCEDURE

<table>
<thead>
<tr>
<th>LEGAL BASE</th>
<th>PREVIOUS PROCEDURE</th>
<th>EP PROPOSAL</th>
<th>COMMISSION PROPOSAL</th>
<th>FINAL PROPOSAL</th>
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<tbody>
<tr>
<td>PRINCIPLES</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Art. 6 Ran on all discrimination</th>
<th>QMV + cooperation</th>
<th>QMV + codecision</th>
<th>YES</th>
<th>(codecision) QMV</th>
</tr>
</thead>
</table>

### TITLE I: UNION CITIZENSHIP

<table>
<thead>
<tr>
<th>Art. 8b: Right to free movement and residence</th>
<th>Unanimity + assent</th>
<th>QMV + codecision</th>
<th>YES</th>
<th>(codecision) Unanimity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 8c: Right to vote and to stand at municipal elections</td>
<td>QMV + codecision</td>
<td>YES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Art. 8d: Additional rights</td>
<td>Unanimity + consultation + ratification</td>
<td>QMV + codecision</td>
<td>NO</td>
<td></td>
</tr>
</tbody>
</table>

### TITLE II: AGRICULTURE

<table>
<thead>
<tr>
<th>Art. 43(2): Common agricultural policy</th>
<th>QMV + consultation</th>
<th></th>
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</table>

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<thead>
<tr>
<th>TITLE III: FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Art. 51 Social security for migrant workers</th>
<th>Unanimity</th>
<th>QMV + codecision</th>
<th>YES</th>
<th>(codecision)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 55 Exercise of official authority</td>
<td>QMV + codecision</td>
<td>YES</td>
<td>(codecision) QMV</td>
<td></td>
</tr>
<tr>
<td>Art. 57(2) Law governing the professions: training and conditions of access for natural persons</td>
<td>Unanimity + consultation</td>
<td>QMV + codecision</td>
<td>YES</td>
<td>(codecision) Unanimity</td>
</tr>
<tr>
<td>Art. 66 Freedom to provide services</td>
<td>Unanimity or QMV</td>
<td>QMV + codecision</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Art. 73c Movement of capital to third countries</td>
<td>Unanimity or QMV</td>
<td>QMV + codecision</td>
<td>YES</td>
<td>Outside</td>
</tr>
</tbody>
</table>

### TITLE IV: TRANSPORT

<table>
<thead>
<tr>
<th>Art. 74(1): Transport</th>
<th>OMV + cooperation</th>
<th>OMV + codecision</th>
<th>YES</th>
<th>(codecision) OMV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 75: Transport</td>
<td>Unanimity + consultation</td>
<td>Delete</td>
<td>YES</td>
<td>(codecision) OMV</td>
</tr>
<tr>
<td>Art. 84(2): Sea and air transport</td>
<td>OMV or Unanimity + cooperation or consultation</td>
<td>QMV + codecision</td>
<td>YES</td>
<td>(codecision) QMV</td>
</tr>
</tbody>
</table>

### TITLE V: COMMON RULES ON COMPETITION, TAXATION AND APPROXIMATION OF LAWS

<table>
<thead>
<tr>
<th>Art. 99 Direct taxation</th>
<th>Unanimity + consultation</th>
<th>QMV + codecision</th>
<th>YES</th>
<th>Outside</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 100 Harmonization</td>
<td>Unanimity + consultation</td>
<td>QMV + codecision</td>
<td>YES</td>
<td>YES</td>
</tr>
</tbody>
</table>

Art. 84a and 86a (only for general policy concerning conception and orientation of the CAP) YES
## ANNEX 5: NEW AREAS NOW COVERED BY THE CODECISION PROCEDURE

<table>
<thead>
<tr>
<th>TITLE VI: ECONOMIC AND MONETARY POLICY</th>
<th>LEGAL BASE</th>
<th>PREVIOUS PROCEDURE</th>
<th>EP PROPOSAL</th>
<th>COMMISSION PROPOSAL</th>
<th>FINAL PROPOSAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 103(5) Multilateral surveillance</td>
<td>QMV + cooperation</td>
<td>QMV + codecision</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Art. 113(3) and (4) International agreements and commercial policy</td>
<td>QMV</td>
<td>QMV + assent (agreement)</td>
<td>QMV + codecision (internal legislative)</td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>

| TITLE VIII: SOCIAL POLICY, EDUCATION, VOCATIONAL TRAINING AND YOUTH |
|----------------------------------------|---|---|---|---|
| Art. 118a(2) Social policy             | QMV + cooperation | To be replaced by inclusion in the protocol on social policy | YES | Codec. QMV |
| Art. 121 Social security for migrant workers | Unanimity | To be replaced by inclusion in the protocol on social policy | NO |               |
| Protocol No 14 on social policy        | O MV + cooperation | O MV + codecision (reworded as Art. 126(4), 128(5) and 129(4)) | YES | Codec. O MV |
| Art. 126 Education                     | 1. QMV + codecision (incentive measures) | O MV + codecision |                |               |
| Art. 127(4) Vocational training        | O MV + cooperation | O MV + codecision | YES | QMV (codecision) |

| TITLE IX: CULTURE |
|----------------------------------------|---|---|---|---|
| Art. 128 Culture                       | 1. Unanimity + codecision (incentive measures) | QMV + codecision |                |               |
| Art. 128                               | 2. O MV (recommend) | QMV + codecision |                |               |

| TITLE X: PUBLIC HEALTH |
|----------------------------------------|---|---|---|---|
| Art. 129 Public health                 | 1. QMV + codecision (incentive measures) | O MV + codecision |                |                |
| Art. 129                               | 2. O MV (recommend) | QMV + codecision |                |                |

| TITLE XII: TRANS-EUROPEAN NETWORKS |
|-------------------------------------|---|---|---|---|
| Art. 129a Trans-European networks   | 1. QMV + codecision (guidelines) | QMV + codecision (legislative measures) | NO (consultation) | QMV (Codec) |
| Art. 129b                           | 2. QMV (other measures) + cooperation | QMV + codecision (legislative measures) |                |               |

| TITLE XIII: INDUSTRY |
|----------------------------------------|---|---|---|---|
| Art. 130(3) Industry                  | Unanimity + consultation | QMV + codecision |                |                |

| TITLE XIV: ECONOMIC AND SOCIAL COHESION |
|-----------------------------------------|---|---|---|---|
| Art. 130b Specific actions              | Unanimity + consultation | QMV + codecision | YES |                |
| Art. 130d(1) and (2) Structural Funds and Cohesion Fund | Unanimity + assent | QMV + codecision | YES |                |
| Art. 130e(1) Regional Fund              | QMV + cooperation | QMV + codecision (legislative measures) | YES | Codec. QMV |

| TITLE XV: RESEARCH AND TECHNOLOGICAL DEVELOPMENT |
| Art. 136c, Creation of joint undertakings. | Unanimity + consultation | QMV + codecision | NO | Codec. QMV |
| TITLE XVI: ENVIRONMENT | Art. 136b (1) | QMV + cooperation | QMV + codecision | YES | Codec. QMV |
| TITLE XVII: DEVELOPMENT COOPERATION | Art. 130w (1) (development policy) | QMV + cooperation | QMV + codecision | YES | Codec. QMV |
| PART FOUR | Art. 136 Overseas countries and territories | Unanimity | QMV + codecision | NO (assent) | |
| PART FIVE: INSTITUTIONS | Art. 145 Rules on exercise of implementing powers | Unanimity + consultation | Codecision (Delete and replace by Art. 189) | YES | |
| | Art. 160a(2) Court of First Instance | Unanimity | QMV + codecision | - | |
| | Art. 201 Budget procedure | Special procedure | Special codecision case | - | |
| | Art. 209 Financial regulations | Unanimity + consultation | QMV + codecision | YES | |
| | Art. 209a Fight against fraud | Member States | QMV + codecision | - | |
| PART SIX | Art. 216 Seat of institutions | Unanimity | Nullified or QMV + codecision | - | |
| | Art. 217 Rules governing languages | Unanimity | QMV + codecision | - | |

The Treaty of Amsterdam also adds:
Art. S: Incentive measures for employment, codecision + QMV
Art. 119: Equal opportunities and treatment, codecision + QMV
Art. 191a: General principles of transparency, codecision + QMV
Art. 213a: Statistics, codecision + QMV
Art. 213b: Establishment of an independent advisory authority on data protection, codecision + QMV
New article: Customs cooperation, codecision + QMV

Source: Own tables