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# REPORT

on amendment of Rule 81 of Parliament's Rules of Procedure on the consent  
procedure  
(2012/2124(REG))

Committee on Constitutional Affairs

Rapporteur: Rafał Trzaskowski

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## PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

### on amendment of Rule 81 of Parliament's Rules of Procedure on the consent procedure (2012/2124(REG))

*The European Parliament,*

- having regard to the letter from the Chair of the Conference of Committee Chairs of 9 December 2011,
  - having regard to Rules 211 and 212 of its Rules of Procedure,
  - having regard to the report of the Committee on Constitutional Affairs (A7-0412/2013),
1. Decides to amend its Rules of Procedure as shown below;
  2. Decides that the amendments will enter into force on the first day of the next part-session and will apply to those consent procedures for which the committee responsible has not yet adopted a recommendation;
  3. Instructs its President to forward this decision to the Council and the Commission, for information.

#### Amendment 1

##### Parliament's Rules of Procedure Article 50 – interpretation – paragraph 2

###### *Present text*

***For the purposes of examining international agreements under Rule 90,*** the procedure with associated committees set out in this Rule may not be applied in relation to the ***consent procedure*** under Rule 81.

###### *Amendment*

The procedure with associated committees set out in this Rule may not be applied in relation to the ***recommendation to be adopted by the committee responsible*** under Rule 81.

#### Amendment 2

##### Parliament's Rules of Procedure Article 81 – paragraph 1 – subparagraph 1

*Present text*

Where Parliament is asked to give its consent to a proposed act, it shall **take a decision *on the basis of*** a recommendation from the committee responsible to approve or reject the act.

*Amendment*

Where Parliament is asked to give its consent to a proposed act, it shall, ***when adopting its decision, take into account*** a recommendation from the committee responsible to approve or reject the act. ***The recommendation shall include citations but not recitals. It may include a short justification, which shall be the responsibility of the rapporteur and which shall not be put to the vote. Rule 52(1) shall apply mutatis mutandis. Amendments tabled in committee shall be admissible only if they aim to reverse the recommendation as proposed by the rapporteur.***

**Amendment 3**

**Parliament's Rules of Procedure**

**Article 81 – paragraph 1 – subparagraph 1 a (new)**

*Present text*

*Amendment*

***The committee responsible may table a motion for a non-legislative resolution. Other committees may be involved in drawing up the resolution in accordance with Rule 188(3) in conjunction with Rules 49, 50 or 51.***

**Amendment 4**

**Parliament's Rules of Procedure**

**Article 81 – paragraph 1 – subparagraph 2**

*Present text*

*Amendment*

Parliament shall **take a decision** on the act requiring its consent under the Treaty on European Union or the Treaty on the

Parliament shall **decide** on the act requiring its consent under the Treaty on European Union or the Treaty on the Functioning of

Functioning of the European Union by means of a single vote, and no amendments may be tabled. The majority required for the adoption of the consent shall be the majority indicated in the article of the Treaty on European Union or the Treaty on the Functioning of the European Union that constitutes the legal basis for the proposed act.

the European Union by means of a single vote ***on consent, irrespective of whether the recommendation from the committee responsible is to approve or reject the act,*** and no amendments may be tabled. The majority required for the adoption of the consent shall be the majority indicated in the article of the Treaty on European Union or the Treaty on the Functioning of the European Union that constitutes the legal basis for the proposed act ***or, where no majority is indicated therein, the majority of the votes cast. If the majority required is not obtained, the proposed act shall be deemed to have been rejected.***

## Amendment 5

### Parliament's Rules of Procedure Article 81 – paragraph 2

#### *Present text*

2. In the case of ***accession treaties and*** international agreements ***and*** determination of a serious and persistent breach of ***common*** principles by a Member State, Rules 74c, 74e ***and 90*** shall apply respectively. ***For an enhanced cooperation procedure in an area covered by the ordinary legislative procedure, Rule 74g shall apply.***

#### *Amendment*

2. ***In addition,*** in the case of international agreements, ***accession treaties, the*** determination of a serious and persistent breach of ***fundamental*** principles by a Member State, ***the establishment of the composition of Parliament, the establishment of enhanced cooperation between Member States or the adoption of the multiannual financial framework,*** Rules ***90,*** 74c, 74e, ***74f,*** 74g ***and 75*** shall apply respectively.

## Amendment 6

### Parliament's Rules of Procedure Article 81 – paragraph 3

#### *Present text*

3. Where Parliament's consent is required for a ***proposed*** legislative act or an

#### *Amendment*

3. Where Parliament's consent is required for a ***proposal for a*** legislative act or an

envisaged international agreement, the committee responsible may *decide, in the interests of achieving a positive outcome of the procedure, to* present an interim report *on the proposal* to Parliament including a motion for a resolution containing recommendations for modification or implementation of the proposed act.

envisaged international agreement, the committee responsible may present an interim report to Parliament, including a motion for a resolution containing recommendations for modification or implementation of the proposed act *or envisaged international agreement*.

## **Amendment 7**

### **Parliament's Rules of Procedure**

#### **Article 81 – paragraph 3 a – subparagraph 1 (new)**

*Present text*

*Amendment*

*3a. The committee responsible shall deal with the request for consent without undue delay. If the committee responsible decides not to give a recommendation, or has not adopted a recommendation within six months after the request for consent has been referred to it, the Conference of Presidents may either place the matter on the agenda for a subsequent part-session for consideration, or decide to extend the six-month period in duly substantiated cases.*

## **Amendment 8**

### **Parliament's Rules of Procedure**

#### **Article 81 – paragraph 3 a – subparagraph 2 (new)**

*Present text*

*Amendment*

*Where Parliament is asked to give its consent for the conclusion of an international agreement, Parliament may decide, on the basis of a recommendation from the committee responsible, to suspend the consent procedure for no*

***longer than one year.***

*Justification*

*This suspension clause on the consent of international agreements is very important: (i) to allow a "cooling off" period in order to avoid the likely rejection of an international agreement; (ii) to require the third country to accomplish certain changes or obligations that Parliament deems necessary to give consent; (iii) to recommend to the Commission the renegotiation of any part of the international agreement that might be a red line for Parliament.*

## EXPLANATORY STATEMENT

This report deals with the way in which Parliament gives its consent in procedures where it is required pursuant to the Treaties (the consent procedure).

### 1) The consent procedure

The consent procedure, formerly known as the assent procedure, was introduced by the Single European Act of 1986 in two areas: association agreements and agreements governing accessions. The scope for the application of the procedure has been extended in all subsequent modifications of the Treaties. It now constitutes, under the Treaty of Lisbon, a ‘special legislative procedure’ within the meaning of Article 289(2) of the Treaty on the Functioning of the European Union.

The cases where the consent procedure applies are exhaustively laid down in the Treaties. They are principally the following:

- agreements establishing a specific institutional framework, agreements with important budgetary implications for the Union, or agreements covering fields governed by the ordinary legislative procedure or by the special legislative procedure where the consent of Parliament is required;<sup>1</sup>
- accession agreements;<sup>2</sup>
- application of the flexibility clause;<sup>3</sup>
- establishment of enhanced cooperation;<sup>4</sup>
- accession to the Convention for the Protection of Human Rights and Fundamental Freedoms;<sup>5</sup>
- adoption of the multiannual financial framework;<sup>6</sup>
- uniform procedure for the election of MEPs;<sup>7</sup>
- composition of Parliament;<sup>8</sup>
- enhancement of the rights of the citizens of the Union;<sup>9</sup>
- decisions by the Council and the European Council on the existence of a serious and persistent breach of the values of the Union;<sup>10</sup>
- implementing measures for the Union's own resources system.<sup>11</sup>

### 2) The Rules of Procedure

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<sup>1</sup> Article 218(6)(a) TFEU

<sup>2</sup> Article 49 TEU

<sup>3</sup> Article 352 TFEU

<sup>4</sup> Article 329(1) TFEU

<sup>5</sup> Article 218(6) (a) TFEU

<sup>6</sup> Article 312(2) TFEU

<sup>7</sup> Article 223(1), 2nd subparagraph TFEU

<sup>8</sup> Article 14(2), 2nd subparagraph TEU

<sup>9</sup> Article 25, 2nd subparagraph TFEU

<sup>10</sup> Article 7(1) and (2) TEU

<sup>11</sup> Article 311(4) TFEU



In the Rules of Procedure, these cases correspond to a general rule (Rule 81) and a number of special rules which lay down case-specific provisions as ‘lex specialis’ while referring otherwise to the general Rule 81. These special rules are: Rule 90, International Agreements; Rule 74c, Accession Treaties; Rule 74g, Enhanced cooperation; Rule 74f, Composition of Parliament; and Rule 74e, Decisions of the Council and the European Council concerning a breach of the values of the Union.

The general Rule 81 – for the purposes of this paper, the most important – reads as follows:

*‘Rule 81 (1) and (3)*

- 1. Where Parliament is asked to give its consent to a proposed act, it shall take a decision on the basis of a recommendation from the committee responsible to approve or reject the act.*

*Parliament shall take a decision on the act requiring its consent under the Treaty on European Union or the Treaty on the Functioning of the European Union by means of a single vote, and no amendments may be tabled. The majority required for the adoption of the consent shall be the majority indicated in the article of the Treaty on European Union or the Treaty on the Functioning of the European Union that constitutes the legal basis for the proposed act.*

- 3. Where Parliament's consent is required for a proposed legislative act or an envisaged international agreement, the committee responsible may decide, in the interests of achieving a positive outcome of the procedure, to present an interim report on the proposal to Parliament including a motion for a resolution containing recommendations for modification or implementation of the proposed act.’*

The form of the committee's recommendation is not specified in Rule 81. However, it usually takes the form of a legislative resolution whereby Parliament gives or declines consent to the act in question. Unless otherwise determined in the Treaties, Parliament's consent requires a majority of votes cast<sup>1</sup>. A majority of Parliament's component members is required in some cases, such as the accession of a new Member State or the electoral procedure<sup>2</sup>

### **3) The reference to AFCO**

The Chair of the Conference of Committee Chairs, Klaus-Heiner Lehne, pointed out in a letter of 9 December 2011 that the practices established in parliamentary committees with regard to consent procedures vary considerably<sup>3</sup>. He invited AFCO, on behalf of the committee chairs, ‘to review the relevant rules of the Rules of Procedure with a view to clarifying the consent procedures and making them more transparent and possibly more effective’. This letter also included four questions to be taken into consideration by AFCO. These may, for the purposes of the deliberations in committee, be reduced to the following three essential questions:

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<sup>1</sup> Article 231 TFEU

<sup>2</sup> Rule 81(1), 2nd subparagraph.

<sup>3</sup> See also the survey carried out by the Legislative Coordination Unit (DG for Internal Policies of the Union) in September 2011.

- Should recitals be admissible in the draft recommendation and in the recommendation by the committee responsible to plenary?
- Should amendments to the draft recommendation be admissible in committee and in the recommendation in plenary, and, if so, to which parts of it?
- Is a negative vote on the paragraph of the recommendation containing the decision (decisional paragraph) to be construed as a vote in favour of the contrary?

#### 4) Recitals

Recitals forming part of a recommendation submitted by the committee responsible to plenary have hitherto been considered as inadmissible, except where they relate to facts or texts and are thus equivalent to citations<sup>1</sup>.

The reasoning behind this practice is that if accompanied by recitals the decision which Parliament is to take (yes or no) would be less clear and would lose weight. A further justification for this position is that the legislative resolution in a legislative report dealing with a Commission proposal may not carry recitals either (Rule 55(2)). Political comments and demands concerning the proposed act or agreement could, before they are adopted or concluded, be expressed in an interim report pursuant to Rules 81(3) and 90(4).

On the other hand as a matter of political interest, if not indeed necessity, it is desirable for Parliament to give reasons for its decision.

An intermediate solution which is proposed in this report, is not to allow recitals but to allow the committee responsible to accompany its recommendation to the plenary with a motion for a non-legislative resolution. By doing this the committee(s) and later on the plenary would have the possibility to comment on the proposed act and explain in detail their position on it. The weighting ratio within Parliament will normally make sure that the resolution as adopted is not in contrast with the decision taken on the consent (see below).

#### 5) Amendments

As recitals are not admitted in plenary, the question of amendments consequently does not arise. This reasoning concerns the wording of Rule 81: ‘Parliament shall take a decision on the act requiring its consent under the Treaty ... by means of a single vote, and no amendments may be tabled’<sup>2</sup>. Beyond any doubt, this provision applies to the text of the act itself. The specific provision on international treaties offers the following clarification:

*‘Rule 90 (7)*

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<sup>1</sup> It should be noted that as things stand the relevant text model used by Parliament does not foresee recitals at all.

<sup>2</sup> Rule 81(1), 2nd subparagraph.

7. *Parliament shall give its opinion on, or its consent to, the conclusion, renewal or amendment of an international agreement or a financial protocol concluded by the European Union in a single vote by a majority of the votes cast. No amendments to the text of the agreement or protocol shall be admissible.*

The purpose of the exclusion of the text of the act is, having in mind the possible far-reaching consequences of Parliament's decision, to make sure that the decision of Parliament is unequivocal and unconditional. When it comes to international agreements, a further reason is that an agreement which has been negotiated cannot be amended unilaterally in any way. The same reasoning does not, however, apply to possible elements of the draft recommendation such as citations, recitals or the decisional paragraph. If, as it is proposed here, the recommendation of the committee may not carry recitals (a motion for resolution taking over their function) possible amendments would - and should - be limited to the decisional paragraph. As far as this last element is concerned, the possibility of amendments is indeed important to avoid any doubt as to what the precise position of the committee(s) is.

## 6) Voting

Where the decision proposed in the draft recommendation in committee or the recommendation in plenary does not obtain the majority required and an amendment to the contrary is not tabled or does not obtain the majority required either, the question arises as to how this result is to be viewed. Should it be considered in the sense that the committee or the plenary, as the case may be, has not taken a decision at all, or as a decision to the contrary of what has been proposed? The latter would mean that if consent to the act in question is proposed and the proposal does not obtain a majority, the act is considered rejected and conversely, where a proposal to reject does not obtain a majority, the act is considered approved<sup>1</sup>.

This latter interpretation which used to be the practice in plenary, is justified by reference to Rule 90(9): 'If Parliament withholds its consent to an international agreement, the President shall inform the Council that the agreement in question cannot be concluded'. Since the vote on the ACTA agreement on 4 July 2012, Parliament's practice has changed and is now to vote on consent irrespective of what the committee's recommendation was. If consent does not secure a majority, the act is deemed rejected.

Two aspects have to be taken into account when answering this question. Firstly, on the basis of the importance of Parliament's consent as part of a legislative procedure it could be argued that consent has to be given by a positive act, not by a construction of an act of Parliament to the contrary. Secondly, there could be a problem with this solution when it comes to special thresholds required for certain consent-decisions (majority of Members for example in Art. 49TEU, accession agreements, Art. 312(2)TFEU, multiannual financial framework, Art. 223(1)TFEU, electoral procedure, two-thirds majority representing the majority of its Members in Art. 7TEU in conjunction with Art. 354TFEU, breach of the values of the Union).

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<sup>1</sup> See for example Rule 210(3) on European Political Parties: "Parliament shall vote (by a majority of the votes cast) on the proposal for a decision establishing that the political party concerned either does or does not observe the principles set out in paragraph 1. No amendment may be tabled. In either case, if the proposal for a decision does not secure a majority, a decision to the contrary shall be deemed to have been adopted."

Here the question comes up whether a vote by simple majority against a negative recommendation (but not by the qualified majority required) can nevertheless be considered as an approval. In my view not.

The purpose of a special majority requirement for Parliament's decisions is to make sure that a decision of major importance cannot be taken by a fortuitous majority at a time when the presence in plenary is low. This purpose is not reached if a negative vote by simple majority would have under certain circumstances the same effect as a vote for which a qualified majority is required.

These difficulties could be avoided if the vote on consent in the plenary would be "disconnected" from the draft recommendation or the recommendation to plenary. In other words only the question of consent is put to the vote, irrespectively of what the rapporteur or, as the case may be, the committee recommends. An act not obtaining the respective majority would be deemed rejected. The term "recommendation" would be taken in this case as what it normally means, a proposal without binding force whatsoever. This would however not mean that it does not have any political weight.

Parliament's practice has by the way, as mentioned before, changed in this sense since the vote on the ACTA agreement on 4 July 2012. I propose to bring in line the Rules of Procedure with this practice.

At committee-stage things are slightly different as the draft for a recommendation presented by the rapporteur suggests a "Yes- or a No- decision". Applying the "no-fictive-decision"-principle which I am in favour of, means here that the committee in cases where it does not follow the rapporteur, does not give a recommendation at all and has to start with a new draft. As this situation cannot last for ever, a deadline should be foreseen (see Rule 81(3) (new)).<sup>1</sup>

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<sup>1</sup> See also the interpretation given by the Committee on constitutional affairs on the result of a tied vote on a proposal not to intervene in court proceedings - Rule 159(3), P7\_TA-PROV(2013)0121

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	26.11.2013
<b>Result of final vote</b>	+: 16 -: 0 0: 1
<b>Members present for the final vote</b>	Andrew Henry William Brons, Zdravka Bušić, Carlo Casini, Andrew Duff, Ashley Fox, Gerald Häfner, Stanimir Ilchev, Morten Messerschmidt, Sandra Petrović Jakovina, Paulo Rangel, Rafał Trzaskowski, Manfred Weber, Luis Yáñez-Barnuevo García
<b>Substitute(s) present for the final vote</b>	Zuzana Brzobohatá, Isabelle Durant, Helmut Scholz
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Leonardo Domenici