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*Plenary sitting*

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**A9-0384/2023**

1.12.2023

# REPORT

on the implementation of Treaty provisions concerning special legislative  
procedures  
(2023/2083(INI))

Committee on Constitutional Affairs

Rapporteur: Victor Negrescu

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## **EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS**

The aim of the report is to highlight the need for mutual sincere cooperation between European institutions, the respect of treaty-based rules and timely decision making in full transparency.

The report makes a selection of politically relevant cases where the Council did not engage in mutual sincere cooperation, highlighting by those examples where and how special procedure is applicable.

The Treaty provisions on the law-making procedures are straightforward when referring to the involvement of the institutions and their level of participation.

However, in some cases, it is clear that there have been no serious negotiations between Parliament and the Council, showing the difficulty to determine the outer limits of loyalty obligations and the institutions' rights and competence.

For example, on the right of inquiry, the Parliament blames the Council on its unwillingness to cooperate, whereas the Council holds that it would only enter into negotiations on a draft that fully reflected Council's position. Meanwhile, the draft is in the third parliamentary term but still there have been no reasonable political discussions on the file.

In other cases, such as the Schengen agreement, a special legislative procedure consists of the adoption of a legislative act by the Council after having obtained Parliament's opinion. The report underlines that the procedure is essential also in the case of consultation and recalls in particular the situation concerning Romania and Bulgaria's accession to the Schengen free movement area, postponed for several years and blocked by an unjustified veto, recalling the request of the Parliament and of the Commission to make it happen by the end of 2023.

The report also insists on the need to define precise requirements on the timeframe for the adoption of an act by the Council and suggests in this regard to also release the public positions of the Member States at the moment of the adoption of an act by the Council, including by introducing binding justifications in all cases where Member States apply a veto on a particular decision.

**ANNEX: ENTITIES OR PERSONS  
FROM WHOM THE RAPPOREUR HAS RECEIVED INPUT**

The rapporteur declares under his exclusive responsibility that he did not receive input from any entity or person to be mentioned in this Annex pursuant to Article 8 of Annex I to the Rules of Procedure.

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the implementation of Treaty provisions concerning special legislative procedures (2023/2083(INI))

*The European Parliament,*

- having regard to the Treaty on European Union (TEU) and in particular Article 13(2) thereof,
- having regard to the Treaty on the Functioning of the European Union (TFEU) and in particular to Articles 223(1), 226(1), 293 and 296 thereof,
- having regard to its resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty<sup>1</sup>,
- having regard to its resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union<sup>2</sup>,
- having regard to the final report of the Conference on the Future of Europe, and in particular proposal 39 on the EU's decision-making process,
- having regard to Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Euratom<sup>3</sup>,
- having regard to its resolution of 9 June 2022 on Parliament's right of initiative<sup>4</sup>,
- having regard to its resolutions of 18 October 2022<sup>5</sup> and of 12 July 2023<sup>6</sup> on the accession of Romania and Bulgaria to the Schengen area,
- having regard to its position of 3 May 2022 on the proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision (76/787/ECSC, EEC, Euratom) and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that Decision<sup>7</sup>,
- having regard to its positions of 15 June 2023<sup>8</sup> and of 13 September 2023<sup>9</sup> on the composition of the European Parliament,

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<sup>1</sup> OJ C 252, 18.7.2018, p. 215.

<sup>2</sup> OJ C 252, 18.7.2018, p. 201.

<sup>3</sup> OJ L 253, 16.7.2021, p.1.

<sup>4</sup> OJ C 493, 27.12.2022, p. 112.

<sup>5</sup> OJ C 149, 28.4.2023, p. 11.

<sup>6</sup> Texts adopted, P9\_TA(2023)0278.

<sup>7</sup> OJ C 465, 6.12.2022, p. 171.

<sup>8</sup> P9\_TA(2023)0243.

<sup>9</sup> P9\_TA(2023)0311.

- having regard to its position of 23 May 2012 on a proposal for a regulation of the European Parliament on the detailed provisions governing the exercise of the European Parliament's right of inquiry and repealing Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission<sup>10</sup>,
  - having regard to Rule 54 of its Rules of Procedure, as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,
  - having regard to the report of the Committee on Constitutional Affairs (A9-0384/2023),
- A. whereas special legislative procedures (SLPs) can take several forms, whereby the European Parliament either exercises a right of direct initiative or its consent is required, or in other cases, whereby Parliament is only consulted and the Council adopts the final decision without being obliged to adopt Parliament's proposed amendments;
  - B. whereas other SLPs are envisaged for the Council, whereby it is the institution required to give its consent to the European Parliament, by qualified majority voting (QMV) or by unanimity;
  - C. whereas SLPs are procedures that either reduce or weaken Parliament's role as co-legislator on an equal footing with the Council; whereas the institutions must, therefore, restore balance in this regard;
  - D. whereas the Treaties award Parliament direct rights of initiative with regard to its own composition, the election of its Members and their Statute, the Statute of the European Ombudsman and Parliament's right of inquiry – instances where SLPs apply; whereas the different areas in which the SLP applies must be carefully examined, alongside Parliament's different roles whereby its consent is required or it is merely consulted or whereby it acts instead as initiator of legislation, bearing in mind that the SLP in the Treaties is used in certain more sensitive policy areas such as the budget, international agreements, etc;
  - E. whereas all SLPs are defined on a case-by-case basis through the TFEU;
  - F. whereas SLPs have a special and reinforced constitutional dignity compared to ordinary legislative procedures (OLPs) as a result of their specific provision in the Treaties and therefore the procedural obligations of both institutions – the Council and Parliament – are not inferior to those arising from the OLPs;
  - G. whereas in certain cases where an SLP is used, the Council needs to act by unanimity;
  - H. whereas in several cases of SLPs, the Council refused to engage in negotiations, as it had already disagreed with the initial draft presented by Parliament;
  - I. whereas respect for the authority and the role of the institutions is one of the fundamental principles of the constitutional laws of the Member States;
  - J. whereas in multiple cases, the Council's position ignored long-standing

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<sup>10</sup> OJ C 264 E, 13.9.2013, p. 41.

recommendations of the Commission and Parliament, prolonging the decision without any time frame for completion, or even blocking the decision altogether; whereas, in some cases, the Council applied vetoes that were not legally justified by concrete Treaty-based arguments or explanations;

- K. whereas cooperation between the institutions must be carried out in compliance with the principles of institutional balance and of mutual sincere cooperation, as laid down in Article 13(2) TEU;
- L. whereas mutual sincere cooperation requires the institutions to cooperate in good faith, to support one another and to refrain from any measure that would impede the other institutions from exercising their competences;

### ***General considerations***

- 1. Recalls that EU primary law introduces two main procedures for the adoption of legislative acts: the ordinary legislative procedure and the special legislative procedure;
- 2. Notes that the respective procedures involve Parliament and the Council to differing degrees;
- 3. Underlines that, although Parliament and the Council are both involved, SLPs do not put the two institutions on an equal footing;
- 4. Regrets the fact that in most SLPs, Parliament lacks full participatory and decision-making rights; calls for Parliament's role in SLPs to be strengthened in order to enable it to engage fully and on an equal footing in negotiations with the Council;
- 5. Recognises that the rights of the institutions under the various procedures and the specific features of those procedures provide room for manoeuvre – the exercise of which is part of the interinstitutional competitive process; emphasises, however, that this room for manoeuvre must always be seen as part of good faith in the actual exercise of the co-legislative power conferred and that the line between room for manoeuvre and obstruction must not be crossed;
- 6. Acknowledges that the Treaties do not impose any time limit on the Council to react to a legislative initiative adopted by Parliament; is of the view, however, that the Council should adopt its position within a reasonable time frame, with a view to complying with the principle of mutual sincere cooperation;

### ***Acts adopted by the Council or the European Council on the initiative of Parliament and after receiving its consent***

- 7. Points out that the Treaty of Lisbon bestows direct rights of initiative on Parliament, encompassing different SLPs that pertain to its competence to self-organise, its scrutiny function and its democratic legitimacy, including electoral processes, as the only directly elected EU institution; underlines the special and reinforced constitutional dignity of the issues that are subject to the initiative of Parliament; regrets the fact that these SLPs have too seldom been successfully concluded due to the lack of agreement

of the Commission and the requirement of unanimity voting in the Council<sup>11</sup>, which fundamentally decrease the bargaining power of Parliament; considers that the Treaties barely regulate such procedures and calls for a new interinstitutional agreement between the three institutions devoted exclusively to this matter, with full respect for its special constitutional dignity;

8. Recalls that, on 23 May 2012, Parliament put forward a proposal for a new regulation to modify the provisions governing the exercise of its right of inquiry, aimed at strengthening the available tools for inquiry and reinforcing the authority of committees of inquiry;
9. Regrets the deadlock in the negotiations with the Council and the Commission on the right of inquiry and deplores the fact that the Council and the Commission did not engage sufficiently with Parliament with the aim of holding formal discussions; recalls that the protracted unwillingness of the Council to react to Parliament's proposal constitutes a violation of Article 265 TFEU, and, therefore, a clear case of failure to act; calls on the Council and the Commission to comply with the principle of mutual sincere cooperation enshrined in Article 13(2) TEU and to engage with Parliament in order to overcome the current institutional blockage before the end of this legislative term; recalls that the adoption of a new regulation on Parliament's right of inquiry does not require unanimity in the Council;
10. Recalls that, on 3 May 2022, Parliament adopted its position on the proposal for the reform of the European electoral law aimed at fostering the Europeanisation of the EU public sphere, the emergence of a genuine pan-European political debate ahead of the European elections and citizens' interest in European politics, and at increasing the democratic legitimacy of the Union;
11. Acknowledges that some Member States have expressed reservations about certain elements of this proposal; deplores, however, the undue postponement of the commencement of negotiations on Parliament's report, which disregards the principle of sincere cooperation; reiterates that the lack of unanimity on a draft legislative report does not represent a valid justification for not engaging in the identification of a compromise; urges the Spanish and Belgian Council Presidencies to make this file a priority and to engage in consensus building with a view to developing a Council position in order to work towards reaching an agreement with Parliament on reforming the European electoral law before the next European elections;
12. Highlights that the political and legal concerns expressed by the Council should not be a pretence to not engage in reaching an agreement on Parliament's proposal; stresses that these concerns should be discussed in a timely manner in the framework of an open and constructive dialogue between co-legislators;
13. Highlights that, in addition to the right to initiate the procedure, Parliament is called to give its consent to the Council's position; believes that any delay in the Council's work jeopardises the democratisation of the EU ahead of the 2024 elections, considering that the Council's decision can enter into force only after being approved by the Member

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<sup>11</sup> Policy Department for Citizens' Rights and Constitutional Affairs of the Directorate-General for Internal Policies, 'The European Parliament's right of initiative', p. 34-35, July 2020.



States in accordance with their respective constitutional requirements;

14. Recommends that, in accordance with the Interinstitutional Agreement on Better Law-Making (IIA)<sup>12</sup>, the legislative procedure resulting from the right of legislative initiative conferred on Parliament by the Treaties should include a request to establish a legislative timetable for the initiatives concerned, along the lines of the one for the OLP; reminds that, although Article 226 TFEU does not oblige the Council and the Commission to negotiate, such an SLP must comply with the IIA provisions on the institutional obligation of all three institutions to negotiate;
15. Reminds the Commission not to neglect its roles as ‘guardian of the Treaties’ and ‘honest broker’ in these SLPs; expects the Commission to play an active role in facilitating the dialogue on the mentioned files by proactively engaging with the Council and Parliament and by making proposals on how to overcome existing deadlocks;

***Special legislative procedure requiring Parliament’s consent***

16. Points out that the European Council is required to adopt a decision on the composition of the European Parliament by unanimity on the initiative of Parliament and after having obtained its consent by a majority of its component members; highlights that, by reason of the right of initiative attributed to Parliament for this procedure and its direct impact on the representation of EU citizens, negotiations on this decision require a high degree of interinstitutional dialogue and concertation, in line with the principle of mutual sincere cooperation; highlights that, even though the proposal stems from Parliament itself, its subsequent consent is important, as the European Council has the right to amend the proposal;
17. Stresses that Parliament wishes to keep a reserve of 28 seats for members elected in a future Union-wide constituency, in line with Parliament’s proposal on European electoral law, which is awaiting progress in the Council;
18. Recalls that, on 15 June 2023, Parliament adopted a draft proposal for a European Council decision on the composition of the European Parliament for the 2024-2029 legislative term, seeking to adjust the distribution of seats to ensure a degressively proportional representation of Member States; recalls Parliament’s proposal to allocate 28 seats to a Union-wide constituency, in line with its proposal of 3 May 2022 on a reform of the European electoral law; reiterates, in this respect, that the decision on the composition of the European Parliament and the reform of European electoral law are politically and legally intertwined; regrets the fact that, contrary to its request expressed in its position of 15 June 2023 on the composition of the European Parliament, the European Council changed its proposal considerably and failed to inform Parliament regarding its intention to delete key provisions of the proposal submitted by Parliament;
19. Recalls that the adoption of Council Regulation (EU, Euratom) 2020/2093 laying down the multiannual financial framework (MFF)<sup>13</sup> consists of an SLP whereby the Council

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<sup>12</sup> Interinstitutional Agreement of 13 April 2016 between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L 123, 12.5.2016, p. 1.

<sup>13</sup> Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027, OJ L 433 I, 22.12.2020, p. 11.

acts unanimously after obtaining the consent of Parliament by absolute majority;

20. Welcomes the development of interinstitutional practices whereby, despite Parliament only being called to give its consent, negotiations take place in the form of a ‘trilateral dialogue’ on a package comprising the MFF Regulation and the Council Decision on own resources<sup>14</sup>; regrets, however, the increasing role of the European Council in negotiations on the MFF, which severely alters the principle of interinstitutional balance as established by the Treaties; holds the view that the OLP should apply to negotiations on the MFF and that Parliament should be given full budgetary powers, in line with the proposals of the Conference on the Future of Europe;
21. Highlights that even though the proposal stems from Parliament itself, its subsequent consent is important, as the Council has the right to amend the proposal and only Parliament’s consent to the final act guarantees that Parliament agrees with the rules on its own election; believes that any delay in the Council’s work would be detrimental to the success of the whole process, since the Council’s decision can enter into force only after being approved by the Member States in accordance with their respective constitutional requirements;

#### ***Special legislative procedure requiring Parliament’s consultation***

22. Recalls that in a number of cases, an SLP consists of the adoption of a legislative act by the Council after having obtained Parliament’s opinion; stresses that, while only obliged to consult Parliament, the Council cannot take the final decision before Parliament has delivered its opinion, so that the Council can actually take notice of the opinion; underlines, in this regard, that Parliament should act in a reasonable time frame;
23. Emphasises that, although the Council is not obliged to take Parliament’s opinion into account, the consultation of Parliament in the context of some SLPs not only constitutes an essential procedural requirement, but also sends a strong political signal and enhances the decision’s democratic legitimacy; calls on the three institutions to explore possible avenues to ensure that Parliament’s opinion is duly taken into account as an institutional obligation and reflected in legislation;
24. Recalls that one of the cases in which the Council may only take a decision after consulting Parliament pertains to the application of the provisions of the Schengen *acquis* – an obligation stemming from Article 4(2) of the 2005 Act of Accession of Bulgaria and Romania<sup>15</sup>;
25. Reiterates its call on the Council to immediately adopt a positive decision on the accession of Romania and Bulgaria to the Schengen area of free movement;
26. Points out that the Schengen area is one of the greatest achievements of the European Union and the Council’s failure to take a decision on admitting Bulgaria and Romania, even though the Commission has already made the official recommendation to that effect, Parliament has called for this through several resolutions and the two countries

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<sup>14</sup> Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom, OJ L 424, 15.12.2020, p. 1.

<sup>15</sup> OJ L 157, 21.6.2005, p. 203.

have long since fulfilled the necessary conditions, is unacceptable;

27. Recalls that, in November 2021, the Commission submitted a proposal for a Council directive laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for mobile Union citizens, for which Parliament's consultation is required; underlines that the Commission impact assessment attached to the abovementioned proposal lists a series of persistent serious impediments to the exercise of electoral rights by mobile citizens; recalls that Parliament adopted its position in February 2023, with the aim of facilitating the entry into force of this directive in time for the 2024 European elections; regrets the fact that the Commission's reply to Parliament's position was extremely negative and that the Commission, instead of choosing a constructive approach of credibly engaging with possible improvements through Parliament's suggestions, decided to reply negatively by dismissing the proposals on strongly formal grounds; awaits the Council's discussion of this file and expects the Council, furthermore, to deal with its opinion and do its best to cooperate with Parliament on reaching an improvement for mobile Union citizens;
28. Notes that, from the wording of the Treaties alone, conducting the consultation is the only legal obligation; points out, however, in the light of mutual sincere cooperation, that the institution adopting the act must deal with the opinion and should justify why it has decided not to follow it; calls on the Council to provide a legal explanation for not respecting the Commission assessment or Parliament's calls for the accession of Romania and Bulgaria to the Schengen area;
29. Reiterates that, should use be made of an SLP and should no agreement be reached within a reasonable period, the Commission would have to withdraw or redraft the legislative proposal concerned;

#### ***Cooperation between the institutions***

30. Stresses that the relationships between the EU institutions are governed by the principles of institutional balance and mutual sincere cooperation enshrined in Article 13(2) TEU;
31. Recalls that the participation of Parliament in whatever form has been envisaged by the Treaties reflects a fundamental democratic principle that citizens should take part in the decision-making process through their elected representatives;
32. Points out that the duty of mutual sincere cooperation between the institutions requires the institutions to keep each other informed and consult each other so that consent may be given at the end of the procedure; insists, therefore, that consent is not a mere validation or rejection, but actually entails an adherence to the contents of the legislative act and should therefore be the result of a constant dialogue aimed at finding a mutually acceptable agreement through sincere cooperation;
33. Recalls the *modus operandi* adopted by Parliament's negotiating team that led to the adoption of the revised Statute of the European Ombudsman after years of refusal from the Council to give its consent, which included informal consultations with the Council and the Commission; recalls that this approach enabled the Council to anticipate Parliament's main legislative options and, where necessary, allowed both institutions to find compromise solutions to unblock the adoption of the file; believes that this should

constitute a practical precedent to other areas where consent is required;

34. Considers that, when the principle of mutual sincere cooperation is not being respected, the Court of Justice of the EU should be involved and an immediate solution should be applied, including, when applicable, annulling the vote;

### ***Recommendations***

35. Calls on the Commission to immediately launch a proposal to review the Interinstitutional Agreement on Better Law-Making with the objective of defining the SLPs; underlines that the revised interinstitutional agreement should devote a specific focus to procedures where Parliament enjoys the right of initiative, the legal justifications of vetoes in the Council and fostering full respect for the respective participatory rights and the principles of institutional balance and mutual sincere cooperation in SLPs, including a series of procedural arrangements requesting co-legislators to engage in open and constructive dialogue and negotiations on an equal footing on legislative acts where an SLP is envisaged and to avoid the Council's reluctance to negotiate with Parliament;
36. Highlights the need to define precise requirements on the time frame for the adoption or refusal of an act by the Council, including deadlines, to better ensure compliance with the principle of mutual sincere cooperation and to avoid institutional blockages; regrets the fact that the Council delayed a decision on the accession of Romania and Bulgaria to the Schengen area for 12 years, despite the positive recommendations of the Commission on the fulfilment of criteria;
37. Stresses that the time limits applicable to each institution for the different procedures – in primary law or through IIA arrangements – must also reflect the principle that the institutions are of equal standing;
38. Insists on its call to release the public positions of the Member States at the moment of the adoption of an act by the Council; insists, furthermore, that the Council should systematically record the identity of the Member States when they express their positions in the Council; calls for justifications to be correlated to Treaty provisions, fundamental rights of all EU citizens and Member States and the Charter of Fundamental Rights of the European Union in all cases in which Member States apply a veto to a particular decision; stresses that, when a vote is not legally justified or infringes the Treaty provisions, the Court of Justice of the EU should be called on and an immediate solution should be applied, including annulling the vote; calls on the EU and national institutions to identify effective solutions to overcome unanimity in the upcoming reflection on Treaty changes, including bridging the political gap between qualified majority and unanimity decision-making;
39. Recalls the importance of early cooperation and coordinated legal analysis between EU institutions, which might contribute to preventing institutional blockages caused by purely legal concerns rather than political reserves;
40. Considers it necessary for all institutions to step up efforts to publish, as the product of the lawmaking process, texts whose content is consistent across all official languages and, in the interests of uniform application of the law throughout the Union, robustly interpretable and applicable for all responsible actors involved in implementing

legislation within the judiciary and within the executive at all levels;

41. Reiterates its call for the Treaties to be amended urgently to expand the application of the OLP to some policy areas where SLPs are currently envisaged, for example to issues related to the Schengen area or to the MFF; notes, however, that unanimity and national ratifications should generally be overcome;
42. Calls for the immediate activation of *passerelle* clauses to move from SLPs to OLPs in key policy fields in order to improve the EU's capacity to act, pending the entry into force of changes to the Treaties;
43. Calls on the political parties to ensure that their election programmes express their commitment to Parliament's proposal for a new and updated regulation on its right of inquiry, and invites the various lead candidates to offer their public and political support on this matter;

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44. Instructs its President to forward this resolution to the European Council, the Council, the Commission and the governments and parliaments of the Member States.

## INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

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|---|--|
| <b>Date adopted</b>   | 28.11.2023   |
| <b>Result of final vote</b>                                     | + : 14<br>- : 2<br>0 : 0   |
| <b>Members present for the final vote</b>                       | Gabriele Bischoff, Ana Collado Jiménez, Charles Goerens, Brice Hortefeux, Victor Negrescu, Max Orville, Antonio Maria Rinaldi, Pedro Silva Pereira, Rainer Wieland |
| <b>Substitutes present for the final vote</b>                   | Vladimír Bilčík, Mercedes Bresso, Christian Doleschal, Cyrus Engerer, Maite Pagazaurtundúa   |
| <b>Substitutes under Rule 209(7) present for the final vote</b> | Malte Gallée, Francisco Guerreiro  |

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

| 14        | +  |
|-----------|--|
| PPE       | Vladimír Bilčík, Ana Collado Jiménez, Christian Doleschal, Niclas Herbst, Rainer Wieland |
| Renew     | Charles Goerens, Max Orville, Maite Pagazaurtundúa                                       |
| S&D       | Gabriele Bischoff, Mercedes Bresso, Victor Negrescu, Pedro Silva Pereira                 |
| Verts/ALE | Malte Gallée, Francisco Guerreiro  |

| 2   | -                     |
|-----|-----------------------|
| ID  | Antonio Maria Rinaldi |
| PPE | Brice Hortefeux       |

| 0 | 0 |
|---|---|
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Key to symbols:

+ : in favour

- : against

0 : abstention