

Working Group IV

Working document 33

## **Working group IV – "Role of National Parliaments"**

**Subject:**      **Information from the General Secretariat of the Council regarding the implementation of the Amsterdam Treaty protocol on national parliaments, COSAC and openness of the Council**

**CONSEIL DE  
L'UNION EUROPÉENNE**

**LE SECRÉTAIRE GÉNÉRAL ADJOINT**

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**Sir John KERR**  
**Secrétaire Général**  
**de la Convention européenne**  
**175, rue de la Loi**  
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**Objet :**      **Réponses aux questions formulées par Ms Gisela STUART, Présidente du**  
**Groupe de travail IV de la Convention européenne, consacré aux "Parlements**  
**nationaux"**

Monsieur le Secrétaire général,

Je vous prie de bien vouloir trouver ci-joint les éléments de réponse dont référence en objet et que vous m'aviez demandé de vous fournir dans votre lettre du 23 septembre 2002.

Toutefois, le manque de temps, au vu des délais très courts qui étaient impartis aux services du Secrétariat Général du Conseil, ne m'a pas permis de rassembler des réponses plus fournies et complètes. J'espère, cependant, que ces éléments de réponse seront de nature à aider à la réalisation des travaux en cours au niveau du Groupe de travail IV consacré aux Parlements nationaux.

Je vous prie d'agréer, Monsieur le Secrétaire général, l'assurance de ma haute considération.

Pierre de Boissieu

## **Replies from the General Secretariat of the Council**

### **Question n° 1: categories of proposals not covered by Article I.3 of the Protocol on the role of national parliaments**

The Council has defined, for the purposes of access to its documents and as required by Article 207(3), second subparagraph of the EC Treaty, cases where it acts in a legislative capacity. Article 7, first subparagraph, of the Council's Rules of Procedure<sup>1</sup> reads as follows:

*"The Council acts in its legislative capacity within the meaning of the second subparagraph of Article 207(3) of the EC Treaty when it adopts rules which are legally binding in or for the Member States, by means of regulations, directives, framework decisions or decisions, on the basis of the relevant provisions of the Treaties, with the exception of discussions leading to the adoption of internal measures, administrative or budgetary acts, acts concerning inter-institutional or international relations or non-binding acts (such as conclusions, recommendations or resolutions)."*

This definition refers to Community acts (regulations, directives and decisions) listed in Article 249 of the EC Treaty as well as to acts (framework decisions and decisions) listed in Article 34(2) of the EU Treaty (JHA field). Internal measures, administrative, budgetary or interinstitutional acts or acts concerning international relations are not considered as legislative acts.

The definition contained in the Council's Rules of Procedure is referred to in Article I.2 of the Protocol on the role of national parliaments as defining the kind of legislative proposals which the Commission should send in good time to governments so as to enable them to transmit these proposals to their national parliaments.

That definition is therefore the one to be used for the purpose of Article I.3 of the Protocol, with the addition, made implicitly by Article I.3 itself, of the JHA Conventions under Article 34(2)(d) of the EU Treaty (on which, under Article 39, the European Parliament shall be consulted).

### **Question n° 2: derogations from the 6-week requirement on ground of urgency**

Since the reasons for such derogations are stated in the acts in question, it is relatively easy to find through electronic means in the Celex the few instances in which such derogations have been made.

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<sup>1</sup> Council Decision of 22 July 2002 adopting the Council's Rules of Procedure (OJ L 230, 28.8.2002, p. 7). That definition was used as a model for a similar provision in Article 12(2) of the Regulation on public access to documents which reads: "2. In particular, legislative documents, that is to say, documents drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States, should, subject to Articles 4 and 9, be made directly accessible."

These cases are mostly linked to the management of Community tariff quotas or duties, to urgent prolongation of rules submitted to deadlines or to sudden events (outbreak of an animal disease, guarantees to EIB for loans in case of a catastrophe) which require swift action. It is also used in the so-called annual "TACs and Quotas" in the fisheries sector which are usually adopted at the last Council meeting in December each year. To our knowledge, the cases are the following (subject to further inquiry as the short deadline for replying to the questions did not allow a more in depth research):

- Council Decision of 29 November 1999 granting a Community guarantee to the European Investment Bank (EIB) against losses under loans for projects for the reconstruction of the earthquake-stricken areas of Turkey (OJ L 308, 3.12.199, p. 35);
- Council Directive 2000/27/EC of 2 May 2000 amending Directive 93/53/EEC introducing minimum Community measures for the control of certain fish diseases; (OJ L 114, 13.5.2000, p. 28);
- Council Directive 2000/44/EC of 30 June 2000 amending Directive 92/12/EEC as regards temporary quantitative restrictions for products subject to excise duties brought into Sweden from other Member States (OJ L 161, 1.7.2000, p. 82);
- Council Regulations (EC) n° 2802/2000 of 14 December 2000 amending Regulation (EC) 2505/96 opening and providing for the administration of autonomous Community tariff quotas certain agricultural and industrial products (OJ L 331, 27.12.2000, p. 55);
- Council Decision of 14 December 2000 on the conclusion of an Agreement in the form of an Exchange of Letters concerning the provisional application of the Fourth Protocol laying down the conditions relating to fishing provided for in the Agreement on fisheries between the European Economic Community, on the one hand, and the Government of Denmark and the local Government of Greenland, on the other hand (OJ L 329, 27.12.2000, p. 46);
- Council Regulation (EC) n° 2555/2001 of 18 December 2001 fixing for 2002 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required (OJ L 347, 31.12.2001, p. 1);
- Council Regulation (EC) n° 1146/2002 of 25 June 2002 amending Regulation (EC) n° 3050/95 temporarily suspending the autonomous Common Customs Tariff duties on a number of products intended for the construction, maintenance and repair of aircraft (OJ L 170, 29.6.2002, p. 7).

The preamble of legislative acts in the adoption of which a derogation was used include a whereas clause formulated along the following lines:

*"Having regard to the economic importance of this Regulation, it is necessary to invoke the ground of urgency provided for in point I(3) of the Protocol annexed to the Treaty on European Union and to the Treaties establishing the European Communities on the role of national parliaments in the European Union."*

***Question n° 3: cases of application of Article 3(5), second subparagraph of the Council's Rules of Procedure during 2001 (respect of the one-week deadline between last examination of legislative items in Coreper and its examination by the Council)***

This procedural rule is purely internal to the Council's proceedings and there are no statistics available about its implementation.

***Question n° 4: frequency of scrutiny reserves invoked by Council members and cases of possible adoption despite such reserves.***

In the Council informal practice, Council members usually characterise their "reserves" by an adjective, the purpose of which is to give some indication to other Council members of the nature of their reserve. There are "waiting reserves", "scrutiny reserves", "substance reserves", "linguistic reserves" and "parliamentary reserves". The latter indicates that the delegation in question has triggered its national internal procedure of associating its national parliament to the process.

When such a reserve is raised, the practice is to try to accommodate the delegation concerned by delaying the final adoption of the act in question.

However, should such an item be put on the agenda of the Council<sup>2</sup>, a vote could be requested either by the Presidency or by a Council member or the Commission, supported by a simple majority of the Council (Article 11(1) of the Council's Rules of Procedure), provided that this item did bear an "asterisk", i.e. an indication showing that all the procedural requirements provided for by the Treaties have been complied with (i.e. opinions from the European Parliament, the Economic and Social Committee, etc., see Article 3(2) of Council's Rules of Procedure).

In such a case, where the applicable Treaty provisions provides for majority voting (simple or qualified majority), the delegations who would still invoke a reserve would have to vote (against or abstain) and the act could be adopted, provided the required majority is met. Only a "linguistic reserve", which means that the document is not available in all official languages, could block the adoption of the act.<sup>3</sup> In case unanimity applies, the delegation still invoking a reserve could of course block the adoption of the act.

The Council Secretariat does not keep statistics about reserves, which are of a transitory nature.

***Question n° 5: cases where the governments of the Member States have decided by common accord, pursuant to Article II.4 of the Protocol, to forward draft legal texts to COSAC***

According to our information, this has never been done.

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<sup>2</sup> An item may be put on the provisional agenda of the Council at the request of any Council member or the Commission 16 days in advance of the Council (Article 3(2) of the Council's Rules of Procedure). The final agenda is then adopted by the Council, at the beginning of its meeting, by simple majority (as regards those items put on the provisional agenda within the set deadlines) (Article 3(7) of the Council's Rules of Procedure).

<sup>3</sup> Under Article 14 of the Council's Rules of Procedure, "1. *Except as otherwise decided unanimously by the Council on grounds of urgency, the Council shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing languages.*".

***Question n° 6: action taken by the Council in respect of contributions addressed by COSAC***

To our knowledge, COSAC has never addressed a contribution to the Council on a particular legislative act, but only about questions of general nature, i.e. on the Convention on the Union's Future, on the Laeken Declaration etc. (see for instance the last contribution of COSAC following its meeting of 12-14 May 2002 in Madrid).

***Question n° 7: implementation of Article 8(1) of the Council's Rules of Procedure on the opening to the public of Council deliberation concerning acts in codecision***

Pursuant to Article 8(1)(a) of the Council's Rules of Procedure, the list of public deliberations on the "*most important legislative proposals*" of the Commission, in codecision, has been adopted by the Council, in its "General Affairs and External Relation" configuration, on 22 July 2002 (see Annex I to doc. 11008/02, attached).

As to the interpretation and practice concerning public deliberation of the Council as the vote on codecision acts and the "*final Council deliberations leading to [a] vote*" (Article 8(1)(b) of the Council's Rules of Procedure), please find attached a copy of the letter sent to the Permanent Representations outlining the way in which this new provision will be implemented.

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**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 17 July 2002 (18.07)  
(OR. en,fr)**

**11008/02**

**INF 143**

**"A" ITEM NOTE**

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from :	Permanent Representatives Committee (Part 2)
to :	Council
Subject :	Transparency: List of issues for
	<ul style="list-style-type: none"><li>– Council deliberations on the Commission's most important legislative proposals under the codecision procedure with the European Parliament (Article 251 of the Treaty)</li><li>– public debates by the Council</li></ul>

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Following the agreement reached at Coreper on 17 July 2002, the Council is invited to adopt:

the list of issues which might be the subject of Council deliberations open to the public on the Commission's most important legislative proposals under the codecision procedure with the European Parliament (Article 251 of the Treaty), set out in Annex I, and

the list of other issues which might be the subject of a public debate during Council meetings, set out in Annex II.

**List of issues which might be the subject of Council deliberations on the Commission's most important legislative proposals, in accordance with Article 8(1)(a) of the Council's Rules of Procedure**

**1. ECOFIN**

- Proposal for a Regulation of the European Parliament and of the Council to establish a system of cooperation between the competent national authorities in the Member States to protect the financial interests of the Communities against illegal activities

**2. Employment, Social Policy, Health and Consumer Affairs**

- Proposal for a Directive of the European Parliament and of the Council on quality and safety standards for human tissues and cells

**3. Competitiveness (Internal Market, Industry and Research)**

- Proposal for a Directive amending Directives 72/166, 84/5, 88/357, 90/232 and 2000/26 on insurance against civil liability in respect of the use of motor vehicles
- Proposal for a Directive on the implementation of intellectual property rights
- Proposal for a Directive on cross-border mergers
- Proposal for amendments to Council Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, as amended by Directives 90/88 and 98/7.

**4. Transport, Telecommunications and Energy**

- Directive on cogeneration
- Proposals for two Regulations of the European Parliament and of the Council on the information and protection of air passengers

**5. Agriculture and Fisheries**

- Proposal for a framework Directive on pesticide residues
- Proposal for a Regulation of the European Parliament and of the Council on official safety checks on foodstuffs and animal feedingstuffs

**6. Environment**

- Proposal for a Regulation of the European Parliament and of the Council on the evaluation of the environmental risks of genetically modified plant species
- Proposal for a Directive on chemical products

**7. Education, Youth and Culture**

- Proposal for a Decision of the European Parliament and of the Council for a Community programme to fight against doping in sport
- Proposal for a Decision of the European Parliament and of the Council establishing the programme eLearning



**List of important issues which might be the subject of public debates in accordance with  
Article 8(3) of the Council's Rules of Procedure**

1. **General Affairs and External Relations**
    - Commission communication on trade and development
  2. **Justice and Home Affairs**
    - Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (asylum)
    - Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of study or vocational training or for other purposes
  3. **Employment, Social Policy, Health and Consumer Affairs**
    - Proposal for a Directive concerning non-discrimination on grounds of gender (Article 13)
  4. **Agriculture and Fisheries**
    - Proposal for a Council Regulation on the protection of animals during transport and related operations
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