Chapter VI

The Decision-Making Process of the Community: Some Case Studies

Introduction

The complex decision-making process of the European Community (EC) involving essentially its two key institutions, the Council and the Commission, with the Parliament playing an increasingly important role, needs to be properly examined. Over a period of time, there has been a remarkable balance in the legislative process of the Community which has kept the relation between the institutions intact, fine-tuning it, rather than a total overhaul. The decision-making process and the enduring balance among the institutions is the key to European integration process because each step since the signing of Rome Treaty to the Maastritch treaty signifies a step making the supranational forces stronger, thus a step closer to the European integration.

The present chapter seeks to study and analyze four case studies, two prior to the Single European Act (SEA) coming into force including the invocation of Luxembourg Accord, one after it and a last one after Maastricht. In each case the established procedures of decision-making process as well as the advances introduced by the Community have been analyzed.

These are not been chosen randomly. They have been selected because they reflect not only the process of decision-making followed hitherto, but also
because they could be treated as turning points, representing the changes brought upon in the process.

In each case study the established procedures of decision-making process as well as the advances introduced by the Community to this process are studied. These cases are based on the extensive study of the original documents, some of them could not be obtained inspite of best-efforts, hence there are a few visible holes in the study which nevertheless, do not affect the conclusion.

The first case was a pioneer in the field of environmental legislation, setting the issue of environmental protection on the priority agenda. This ultimately led to initiating a debate on Community's competence, and the principle of subsidiarity became the guideline to decide it in the Maastricht Treaty.

The second case was indeed the milestone in the history of the Community because Germany invoked the 'Luxembourg Compromise' for the first time in order to protect its 'vital national interests.' This shows the preference of national interests over supranational ones, demonstrating the weaknesses of neo-functional theory of European integration. It also provoked the integrationists to reform the Community. As a result, the scope of majority voting was considerably extended. (first in the SEA, and then, in the Maastricht Treaty).
Third case is a vital piece of legislation required to create the single market by 1992, as desired by the SEA. The European Parliament (EP) enjoyed the cooperation procedure introduced by the Single Act and introduced many key amendments. It also exercised its option of a second reading which forced the Council to accept some of the proposed amendments, something unthinkable before.

The fourth and last case is a genuine piece of joint legislation achieved by the process of co-decision introduced by the Maastricht Treaty. By then the Members had learned the skill and art of tough negotiation and bargaining and they used this skill for the first time under the treaty. This was a genuine step forward towards realising the parliamentary democracy in the Community.


The first case is the study of one of the legislations passed by the Community to combat air pollution. The reason to choose this case is the fact that it belongs to the field of environment, a field in which the Community was not legally equipped to act by the Rome Treaty. The expansion of Community powers to the field of environment demonstrates a significant shift of power from the national to the Community level and, showing major advancement towards supranationalism.
The Preamble to the Rome Treaty which says, ‘... the constant improvement of the living and working conditions of their people....'¹ be one of its major objectives, provides the fundamental legal base for Community's action in the field of environment. Along with the Preamble, the liberal interpretation of Arts 2, 100 and 235 of the Treaty supplements this legal base.²

**Air Pollution:** The Commission's document notes, "the first steps to curb air pollution were taken before the Community's environment policy proper had been implemented. In March 1970, measure were taken to reduce pollution caused by exhaust fumes from motor vehicles under the EEC's industrial action programme."³ The present directive is, thus the amendment of the original EEC Directive passed in 1970.⁴

**The Commission's Proposal**

The Stuttgart European Council meeting in June 1984 re-affirmed the Community's commitment for the pursuit of a vigorous and active

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¹ See, the Preamble to the Treaty of Rome,

² Art.2 and Art.100 relate to the establishment of a common market and approximation of the economic policies of the Member States for a harmonious development; and Art.235 entrusts the Council with power to take appropriate measures to attain EC's goals.


⁴ See, Directive 70/220/EEC.
environmental policy.\textsuperscript{5} It provided the necessary background for the Commission to propose an amendment to the EEC Directive of 1970 seeking the further reduction in the lead content of the petrol and controlling motor-vehicle emission.

The Commission, in its proposal (COM (84) 226, Final, 6.6.1984) stated clearly, "it is both necessary and possible for the Council to reach agreement on the new legislation by the end of this year."\textsuperscript{6}

The proposed amendment to the 1970 Directive, in fact was a new directive replacing the old one, "that takes into account the principle that, from 1989, all new types of vehicle must function with unleaded petrol and that, as from 1991 this requirement is extended to all new vehicles placed in the market."\textsuperscript{7}

As far as the question of providing leaded petrol to the existing vehicles was concerned, it was well taken into the consideration, but, "the Community proposes to reduce for the whole Community the maximum lead content of petrol to 0.15 g/l as from 1 July 1980."\textsuperscript{8}

\begin{itemize}
\item[7] Ibid., pt.2.1.
\item[8] Ibid., pt.2.4. p.6.
\end{itemize}
Along with these two main provisions, the proposal of 17 articles had the provisions of colouring all leaded petrol and putting a limitation on the maximum benzene content of all petroli.

The proposal for a directive regarding the pollutant emission of motor vehicles formed a subsequent part of the Commission's original proposal and was a necessary followup. The limits of the motor-vehicle emission were controlled by the 1970 Directive (70/220 EEC) and were subsequently amended in 1983 (83/35/EEC). The Commission now further sought its amendment.

The proposal stated *interalia*:

This proposal related to a two-stage procedure for the reduction of pollution caused by motor-vehicles emission on the basis of a single Council Decision to be adopted before end of the year.\(^9\)

The first stage proposed a reduction between 20% to 50% for carbon monooxide, 20% to 40% for combined hydrocarbon, and 30% to 45% for nitrogen oxide, to be effective from 1 October 1989 for all new types of vehicles and from 1 October 1991 for all new vehicles. The second stage sought further reduction, corresponding to the standards prevailing in the US and Japan. These values to be proposed by the Commission before 30 September 1984 would be effective from 10 October 1995.

In a subsequent communication to the Council, the Commission finalized the Art.6 of its proposal (Council Directive COM (84) 226 final of 6 June 1984),

dealing with the Octane rating of the unleaded petrol and colouring agent for leaded petrol.\textsuperscript{10}

There was one more communication from the Commission to the Council, completing its proposal regarding the motor-vehicle emission.\textsuperscript{11} It was a technical text completing the original proposal in which the Commission was supposed to propose values of emission for the second stage, thus bringing the European values at par with US/Japanese values.

The Commission stated that, "it does not contemplate abandoning the European text cycle or replacing it by either the American or Japanese Cycles."\textsuperscript{12}

To protect the European car industry it was provided that, "the limit values for 1995 should not be determined at levels which would exclude from European type approval cars."\textsuperscript{13} It also replaced the date 1988 by 1986 in Art.3. Thus the Council was now obliged to adopt before the end of 1986 the technical standards necessary for the implementation of the second stage.

This finally completed the Commission's proposal which spanned a period of about six months and became rather complex. There was a deviation from the Commission's original proposal regarding the second stage of emission

\begin{itemize}
  \item[\textsuperscript{10}] See, COM (84) 532 Final, 28.9.1984.
  \item[\textsuperscript{11}] See, COM (84) 564 Final, 24.10.1984.
  \item[\textsuperscript{12}] \textit{Ibid.}, p.1.
  \item[\textsuperscript{13}] \textit{Ibid.}, p.13.
\end{itemize}
control. What took the Commission so long and what pressures and cross-
pressures from various pressure groups, Member States and Coreper operated
upon it, is difficult to analyze for the want of necessary information.

Now as per treaty requirement [Art. 100(a)], the opinion of the EP and
the Economic and Social Committee (ESC) was sought. The EP was consulted
by the Council on 6 December 1984.\textsuperscript{14}

Afterward the motion on resolution as a whole was passed as the
EPP/EDA Groups called for a roll call vote. It was passed by 168 votes to 51
while 29 abstained.

On the text, mostly, they pertained to the advancement of date of the
introduction of unleaded petrol which was now 1 July 1986, instead of 1 July
1989. It also added new paragraphs making the Council responsible to decide
on a further reduction in the benzene content of unleaded petrol by 1 July
1989, and sought Member States' responsibility to ensure the introduction and
general availability of unleaded petrol.\textsuperscript{15}

The EP also introduced four amendments to the Directive seeking
also, the EP advanced date of limiting the pollutants content from 1 October
1989 to 1 October 1986. Along with, it added a new paragraph to Article 3, as

\textsuperscript{14} See, DOC., 1-351/84.

\textsuperscript{15} See, OJC 12, 14.1.1985, p.57-59, for the complete text of amendments
introduced.
Article 3 (a), making it obligatory for the Member States to provide incentives to promote environment friendly vehicles.\textsuperscript{16}

Afterward, the motion on resolution as a whole was passed as the EPP/EDA Groups Called for a roll call vote. It was passed by 108 votes to 51 while 29 abstained.

Now the Parliament put forward the proposals as amended to the Council and Commission along with this resolution.

Meanwhile the second report of the Committee on the Environment, Public Health and Consumer Protection and the opinions of the Committee on Energy, Research and Technology, the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Transport were tabled.\textsuperscript{17}

In short, they broadly favoured the position already being taken by the Parliament. With regard to the Commission's proposal on leaded petrol, the maximum lead contents were approved but it advanced the implementing date from 1 July 1989 to 1 July 1986. The states were not allowed to be exempted from fulfilling the obligations to apply to more rules within this period.

With regard to the proposal on benzene level and octane rating of petrol, it expected the Council to introduce a further reduction in benzene content after 1 July 1989 and with regard to the proposal on control on emission, it

\textsuperscript{16} See, \textit{ibid} p.61, for the complete text of amendments introduced.

\textsuperscript{17} See, DOC 2-1149/84.
basically approved the Commission's approach and wanted to shorten the period to attain the American emission values.

The EP also decided, in pursuance to Rule 38 of its Rules of Procedure, to initiate the procedure for conciliation with the Council as the latter, according to its press release of 6 December 1984, had already adopted a common position substantially departing from that of EP.\textsuperscript{18}

**The Economic and Social Committee's Opinion:** The Committee's Bureau had asked on 3 July, 1984 its Section for Industry, Commerce, Crafts and Services to prepare the Committee's opinion. In accordance with Art. 23 of its Rule of Procedure, the Section for Protection of the Environment, Public Health and Consumer Affairs was invited to prepare a complementary opinion. Finally, in its 221st Plenary Session on 22 November, 1984 the Committee adopted the resolution with 58 votes to 8 (21 abstaining).\textsuperscript{19}

It advocated the sale of lead-free petrol from 1 January 1986 instead of 1 July 1986 as demanded by the Parliament and sought a reduction in the lead content of petrol used by existing vehicles to 0.15 g/l instead of 0.40 g/l. With regard to the emission of the motor-vehicles from 1988/90 instead of 1989/91 and by other vehicles too, the time was brought down by one year. It also advocated the tax incentives measures to promote lead free petrol and the

\textsuperscript{18} See OJC 12, 14.1.85, p.69.

\textsuperscript{19} See, OJC 25, 28.1.85, pp.46-50.
vehicles that run on it.\textsuperscript{20}

**The Council’s Directive:** On 20 March 1985 the Council passed its directive (85/210/EEC) regarding the lead content of petrol. Broadly it adhered to the original Commission proposal, thus ignoring most of the amendments introduced by the Parliament.\textsuperscript{21} The Directives of 16 articles follow the limits of lead in leaded/unleaded petrol as originally proposed, that is, lead content should be less than 0.013g/l for unleaded petrol, and for leaded petrol, 0.15g/l.\textsuperscript{22} Regarding the introduction of unleaded petrol in the market, it even advanced the schedule a little, from 1 July 1989 (as the Commission proposed) to 1 December 1989 and as a consolation to the Parliament’s amendment (it had advanced the schedule to 1 July 1986), it provides:

Member States shall take the necessary measures to introduce unleaded petrol from 1 October 1989 but it shall not preclude measures being taken to introduce unleaded petrol on a date earlier than 1 October 1989.\textsuperscript{23}

The Council also directed the benzene content of leaded/unleaded petrol not to exceed 5% v/v from 1 October 1989.\textsuperscript{24}

\textsuperscript{20} EC BULL, 11/1984, pt.2.4.47, p.87.
\textsuperscript{21} See, OJL 96, 3.4.1985, pp.25 to 29.
\textsuperscript{23} *Ibid.*, Art. 3(1).
\textsuperscript{24} *Ibid.*, Art. 4.
Further a committee was to set up for the adoption of this directive, having representatives of Member States with a representative of the Commission as its chairman. The representatives would submit a draft of the measures to the committee which shall give its opinion based on majority voting and the Commission would subsequently adopt the proposed measures if they were consistent with the opinion of the committee.\textsuperscript{25}

On the Commission proposal regarding emission from the motor-vehicles, the Council could not act in time, mainly because of the pressure from the motor-industry. Then, the EP urged the Council to open the conciliation procedure, deploring its failure to act in this issue while reaffirming its opinion of 12 December 1984.\textsuperscript{26} It should be recalled here that in its opinion, the Parliament had advanced the date for the implementation of the first stage by three years for new types of vehicles and by five years for all new vehicles.\textsuperscript{27}

As a response, the Commission submitted a new proposal\textsuperscript{28} to the Council under the cooperation procedure.\textsuperscript{29} It basically advanced dates which the EP opined in its resolution on 12 December 1984 and thus brought its

\begin{itemize}
\item \textsuperscript{25} \textit{Ibid.}, Arts. 11, (2) and 12 (3).
\item \textsuperscript{26} EC BULL 3/1985, pt.2.4.11, p.76.
\item \textsuperscript{27} OJC, M 14.1.1985, p.61.
\item \textsuperscript{28} COM (85) 228 Final, 19.6.1985.
\item \textsuperscript{29} See, Art. 149 (2) of the EC Treaty.
\end{itemize}
proposal in accordance with wishes of the EP. The EP gave its opinion favouring the Commission's proposal.\textsuperscript{30}

Finally, the Commission, the Council and the Member States reached an agreement on a solution to the problem of air pollution caused by the exhaust gases from motor vehicles although Denmark entered a general reservation.\textsuperscript{31} This was fairly close to the Commission's proposal.

On 13 June 1985 the EP adopted a resolution, laying down the European standards for exhaust gases. It also criticized the Council for making 1989 the year for mandatory introduction of lead free petrol instead of 1986. It noted that its main amendments were not accepted by the Commission and criticized the Council for its obstructive behaviour.\textsuperscript{32}

Case 2: Proposals of the Commission on the fixing of prices for agricultural products, and related measures for the year 1985-86.

The Common Agriculture Policy (CAP) as provided in Article 39 of the Treaty of Rome was treated as the most important policy to achieve the common market, the stated goal of the treaty. The main objectives of CAP are to increase agricultural productivity, to ensure a fair standard of living for the agriculture community, to stabilize markets, and to ensure that supplies are available to consumers at reasonable prices.

\textsuperscript{30} See, OJC 94, 15.4.1985.

\textsuperscript{31} EC BULL, 6/1985, pt.2.1.97, p.58.

\textsuperscript{32} OJC 175, 15.7.1985.
To achieve these aims, "the CAP has two aspects, the first a set of 'regimes' for particular products, the second a series of 'structural' measures." The set of regimes is actually the administered price mechanism. First is the 'target prices' fixed by the Council of Ministers which the Council would like to see prevailing in the wholesale market within the EC. Then there is 'threshold prices' at which the non-EC products are supposed to enter the EC. Finally, the 'intervention prices' are the ones at which the EC is ready to purchase these products.

This price mechanism worked well for the first few years and agricultural productivity rose to an extent to create 'mountains of grains' and 'lakes of milk'. The glut thus created resulted in the fall of prices on the one hand, and on the other, created considerable strain on the Community's budget which had to subsidize the increasingly rising production at a higher cost.

By the beginning of 1980s attempts were made to reduce the support to the farmers in order to cut costs. But now the formidable farm lobby had become very vocal and they posed a stiff resistance, especially the ones from the agriculturally rich and large areas, notably France and Germany.

The guaranteed threshold was introduced in the year 1982/83 which refers to the ceiling quantities the EC is willing to support. Then the farm product prices for 1984/85 registered a very modest increase over the last year.

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and guaranteed threshold was extended to a wider range of products. Rosemary Fennell has noted, "this appeared to herald the demise of open-ended price support irrespective of the quantity produced." 34

The very next year marked a watershed in the history of CAP when while proposing the fixation of the annual prices for the farm products for the year 1985/86, the Commission proposed a reduction in the prices of cereals for the first time and for the first time too, the then Federal Republic of Germany (FRG) invoked the 'Luxembourg Compromise' to veto the proposal in the Council. This is the reason for selecting this case for study.

The Commission's Proposal: Pursuant of Article 31 of the Rome Treaty, the Commission each year submits to the Council and Parliament, proposals for the annual fixing of prices and related measures. In January 1985 the Commission prepared a set of proposals for the marketing year 1985/86.35 In its explanatory memorandum it expressed the hope that it would, "enable Parliament to deliver its opinion as soon as possible and the Council to take a decision, as it is required to do by 1 April."36

The 105-page long proposals (excluding tables) took a comprehensive view of the agricultural situation prevailing in the Community and aimed for a long term prospect to solve the problems prevailing in the sector. The present

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set of proposals formed three main elements: common prices; related measures, and monetary compensatory amounts and, "the Commission wishes to underline that these elements form a single coherent package; in fixing its position on each, the Commission has taken into account its relationship with the other." 37

The Commission proposed the price adjustment for the majority of products (other than cereals), between 0 and 2%. 38 For cereals, it was noted that the volume of cereal production in 1984 exceeded the threshold limits by 8% creating a huge surplus in the market. Therefore, in accordance with the price adjustment mechanism it implies a price reduction by 5%.

The Commission's proposal was even more modest. It proposed just 3.6% price reduction in cereals other than durum wheat over the prices fixed for the year 1984-85 and for durum wheat it maintained a restrictive price policy. 39

This set of proposals was submitted by the Commission to the Council on 8 February 1985. 40

These proposals were not viewed by the Commission as a breach in the Community's policy on agriculture. Rather, they were termed as 'continuity in the development of agricultural policy' and it was noted that,

37 Ibid., pt.23, Vol.I.
38 Ibid., pt.216.
39 Ibid., Explanatory Memorandum, Product-by-Product, pt.1.11.
In short term there is no alteration to the maintenance of a policy on prices more closely adopted to the real conditions prevailing on internal and external markets, but at the same time the Community's obligations to the farmers and their families must be met.\textsuperscript{41}

The Council discussed the proposals briefly in its meeting on 25-27 February 1985 without reaching to any conclusion.\textsuperscript{42}

**Parliament's Opinion:** The debate in the Parliament was quite substantial and at many points, acrimonious. On 11 March 1985, the Rapporteur for the Committee of Agriculture, Mr. Pierre-Benjamin Pranchere asserted that "Commission's proposal had acted like a red rag to the farmers, since they would slash incomes and set new limits on production, quite apart from the risks of a renationalization of the CAP."\textsuperscript{43} Among other suggestions, he proposed a general price increase of 4.5% and wanted that the decision on prices should mainly be inspired by a concern to help farmers improve their positions. The Rapporteur for the Committee on Budgets, on the other hand, had the opposite view. Mr. James Elees (UK) endorsed the Commission's proposals, describing them as 'courageous and appropriate' as long as they were backed by adequate structural measures.\textsuperscript{44}

\textsuperscript{41} EC BULL, 1/1985, pt.1.2.1.
\textsuperscript{42} EC BULL, 2/1985, pt.2.1.70.
\textsuperscript{43} EC BULL, 3/1985, pt.2.4.9.1.71.
\textsuperscript{44} *Ibid.*, p.73.
On behalf of the socialists, Mr. Eisso P. Woltjer (Socialist/NL) called for a social agricultural policy that would help small farmers and for a policy on the Mediterranean products.

On the behalf of the communists, Mr. Emmanuel Maffre Bauge supported Mr. Pranchere’s proposals and rejected any other approach.

The liberal/IRL group led by Mr. Thomas Maher condemned the flaw in the thinking of those members who refused any increase in farm prices simply because the Council would not allow the necessary funds.

The Commission Vice President with the special responsibility for agriculture Mr. Frans Andriessen, rebutted the idea that only budgetary considerations had prevailed in his proposals.45

At the end of this debate Parliament adopted the Pranchere report with amendments by 137 votes to 123 with 13 abstentions and rejected the Commission’s actual proposals by 183 votes to 11 with 9 abstentions.46 It called for an increase in prices averaging 3.5% compared with 2.5% proposed by the Commission which was passed by 147 votes to 139 with 9 abstentions.

The House was divided both politically and nationally. A majority of the socialists came out against the amendment with all the European Democrat groups, the majority of Communists (Italians) and the whole Rainbow Group; on the other side, all the EDA Group (French, Irish) and almost all the EPP

Group endorsed this amendment which was also supported by a small majority of the liberals. Members from France, Belgium, Luxembourg, Ireland, Greece overwhelmingly approved the amendment while those from Britain and Denmark rejected it. Others were equally divided.

**Council's Deliberations:** Meanwhile the Council kept on discussing these proposals during its meeting on 1 and 2 and 22 and 23 April, 1985. The basis was the compromise proposals drawn up by the presidency in close cooperation with the Commission.\(^47\)

Despite the efforts made at these meetings and notwithstanding with bilateral contacts organized by the Presidency from 25 March onwards, no decision on prices was taken and the Council decided to resume its considerations on the whole package in Luxembourg on 2 May 1985.

In that meeting the partial agreement was reached by the Council on 16 May for all products with exception of cereals and rape seed. The Parliament called to adopt the entire set on proposals as amended by it.\(^48\) This partial agreement was followed on 23 May 1985 by formal adoption of the Regulation.\(^49\) No voting had taken place, the basis was the consensus, marked by two abstentions, "The German delegation abstained because of the decision taken regarding the milk sector and the Greek delegation abstained

\(^{47}\) EC BULL, 4/1985, pt.2.1.75,p.32.

\(^{48}\) See, OJC 141, 10.6.1985.

\(^{49}\) See, OJL 137, 23.5.1985.
because of the treatment of Mediterranean products.  

As far as cereals were concerned, the compromise proposal had halved the earlier proposed reduction from 3.6% to 1.8%. It was done in order to reach the final agreement because the German delegation had stated that Germany's 'very important national interests' were at stake which was within the meaning of paragraph I of the 'Luxembourg Compromises'. The Council sought some time to reach to the solution, agreeable to all, and it decided to meet again on 11 and 12 June 1985.

However, the German delegation agreed to dissociate cereals and rape seed from the rest of the price package.

When the Council met on the stipulated date, the then FRG invoked the 'Luxembourg Compromise' for the first time to prevent the reduction in the prices for cereals and rape seed for the marketing year 1985/86. Six delegations (Denmark, France, Germany, Greece, Ireland and the UK) refused to participate in the vote, "so that the Council was unable to take a decision despite the fact that a majority of the delegations had previously expressed their support for the measure."  

The Commission made the following observation on the Council's inability to act:

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The Commission regrets that the Council has not been able to fix the prices for cereals and rape seed at the present meeting despite the fact that majority support for these proposals had earlier been recorded. The Commission notes that it has been finally established that the Council has failed to act.\footnote{Ibid., pt.2.1.110, p.62.}

The Parliament also debated the Council’s failure to act. In the view of Mr. Delors, the President of the Commission, it would go beyond the realm of agricultural policy. He observed,

The fault lay in general attitudes, not with a particular country. Germany had pleaded to a vital interest; others had declined to vote. So the fault lay in the gap between words and deed, in the contempt in which Excellencies held Parliament and the Commission.\footnote{EC BULL, 6/1985, pt.2.5.9., pp.106-7.}

The Council’s President Mr. Filippo Marice Pandolfi also admitted at a press conference that the entire Community had reached a critical stage.\footnote{Ibid., pt.2.1.112, p.62.}

The Belgium Minister of Agriculture Mr. Paul De Keersmacker went one step ahead to describe it as a black day for the Community.

Finally on 19 June 1985 the Commission adopted as planned, the interim protective measures for rape seed and durum wheat and for the measures in order to ensure the continuity of CAP. It announced that if Council failed to act, it would be compelled to take such management measures...
without prejudice to the Council's final decision.\textsuperscript{55}

The Commission's decision (85/309/EEC) stipulated the earlier agreed 1.8% reduction in the prices of cereals other than that of durum wheat.\textsuperscript{56}

The shockwaves the German veto had generated were felt throughout the Community, including in the academic circle. Brewin and McAllister termed it a major loss for the Commission, "its most severe setback was the collapse of its agricultural strategy in the wake of the German veto."\textsuperscript{57} Others like Harvey and Thomson, found the Commission's policy unavoidable as "a substantive price reduction for cereals in nominal, national currency terms would finally confirm the new direction for the CAP... Even this modest proposal has been rejected outrightly by Germany, the major paymaster of the policy."\textsuperscript{58}

Some commentators did not see it as a triumph by Germany and rightly so. Alan Swinbank in his article on CAP linked it with overall decision-making of the Community,

Germany won the battle, but lost the war. The Council had not mustered the necessary qualified majority to fix the cereals support price for the marketing year 1985-86 and that remained

\textsuperscript{55} See, OJC 153, 22.6.85.
\textsuperscript{56} OJL 163, 22.6.85.
the position. The Commission however, acting on its own authority, went ahead and implemented the compromise package. 59

He concluded, "in a sense it might be said that the Commission acted in a vacuum, with the tacit agreement of a divided council, and no fundamental reshaping of the balance of power between the Council and Commission occurred." 60

**Case 3: Forming the Community’s Customs Code**

The Third case to be discussed pertains to the post Single European Act (SEA) period, hence is a testimony to the changes brought about in the decision-making process. Among these most notably is the cooperation procedure under which the Parliament was, for the first time, effectively involved in the legislative process of the Community and the second is the considerable extension of the majority voting in the Council.

It has been pointed out, "in essence the cooperation procedure accords to the EP two legislative readings with dead lines." 61 At the first reading itself as Fitzmaurice notes, "Parliament is maintaining and increasing the


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'dialogue' with the Commission on amendments and on the withdrawal of rejected proposal. The second reading is the novel innovation of the SEA and "the real significance of the second reading is the enhancement of parliamentary power before legislation reaches that stage." The new procedure introduced by the SEA involves the EP in the traditional Council-Commission dialogue as elaborated by Richard Corbet, "What is clear is that Parliament is entering into traditional Commission-Council dialogue, in devoting time and energy to this, and is having a perceptible impact.

The present case so chosen not only is a tool in analyzing the new procedure introduced by the SEA but also is significant because it was a necessary piece of legislation to remove the physical barrier, the one among three the SEA aimed to remove; namely, the technical, physical and fiscal barriers in order to establish the single common market.

The Commission Proposal: The Member States continued to have different custom laws since the establishment of the EEC. It was only in the year 1971 when the approximation and harmonization of their custom legislation was initiated. The proposed Common Custom Code is the culmination of this long legislative process which "aims to codify Community


63 Davids Earnshaw and Judge, n.65, p.104.

custom rules in a single piece of legislation, enhancing their consistency, continuity and clarity." 65

To adopt the code became imperative by 1990 because of the necessity to harmonize all the custom laws were required to establish the single common market by its target date, that is, by 1 January 1993. Accordingly the Commission adopted the proposal to have a common custom code on 28 February 1990. 66

As pointed out in the official document:

This code contains the general rules of customs legislation. It shall, together with the implementing provision adopted in accordance with Article 255, be applicable to trade between the Community and third countries without prejudice to special rules laid down or to be laid down in the context of the common agricultural policy and provisions laid down in other fields. 67

It was a comprehensive and remarkably well prepared proposal spanning fifty-two pages, having eight titles and 258 articles. Basically it dealt with general rules for the application of the Community's main commercial policy instruments, the Common Custom Tariff, and other procedural matters for trade with outside world. However, "the Commission decided not to burden the Code itself with the specific rules applying to various temporary import obligations. These have accordingly been set out in the attended proposal for

65 EC BULL 12, 1990, pt.1.1.5, p.11.
66 See, COM (90), 71 Final.
67 Art. 1 of the Proposal on Common Custom Codes, OJC 128, 23.5.1990, p.4.
a Regulation which simply restates the existing Community's law." 68

**Economic and Social Committee's Opinion:** The proposed code was transmitted to the Council which decided to consult the Economic and Social Committee as per requirement of the Article 28,100 A and 113 of the Rome Treaty.

The Committee discussed it in its 282nd plenary session on 18 December 1990 which endorsed it unanimously and drew attention, "however, to the Commission's increased role regarding adaptation of implementing provisions." 69

The Committee had some objections relating to the complex, innovating and time-consuming body of laws, some of which were over-lapping with the existing Community law. Particularly, the general provisions set in Title I and appellate jurisdiction incorporated in Title VII were its main foci of attention.

It proposed to delete Article 4 70 which stated *inter-alia* "This code shall be without prejudice to the arrangement for German internal trade within the meaning of the protocol as German internal trade and connected problems." 71

It also proposed to add a new article after Article 5 which reads:

In specific cases convention may be concluded with economic operation to simplify customs procedures. Simplified procedures

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68 EC BULL, 1/2, 1992, pt.1.1.5., p.12.
69 EC BULL, 12/1990, pt.1.3.34, p.34.
70 OJC 60, 8.3.1991, pt.2.3., p.6.
71 Art.4 of the Proposal, OJC 128, 23.5.1990, p.5.
are only admissible if the total revenue from duties and levies is not altered and if competition is not impaired.  

As a as amendments to the Title VII were concerned, the Committee wanted the various prevailing national laws to be incorporated in the code should remain valid. It marked in its opinion related to Articles 241 to 252 (Right of appeal) that "the harmonization of rights of appeal for the purposes of customs law only will fragment hitherto uniform national appeals procedures"]]73 hence it opined its view related to Articles 250 to 252 (Other provisions relating to the right of appeal), "provision needs to be made for the continued validity of national law, subject to observance of Articles 241 to 249."  

Parliament's Resolution (First Reading): The Parliament adopted the Code on 22 February 1991 after a prolonged debate along with several amendments. It introduced altogether 31 amendments,  incorporating new articles and deleting two: Articles (4) and Article (252). Thus, the Parliament invoked the Article 149 (2) (a) of the EEC Treaty, making it necessary for the Council to follow the cooperation procedure. These amendments were,

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72 OJC 60, 8.3.1991, pt.2.5., p.7.
73 Ibid., pt.2.50, p.14.
74 Ibid., pt.2.53, p.11.
75 For the full text of amendments proposed by the Parliament. See OJC-72, 18.3.91 pp.176-183.
76 Ibid, p.183, pt.3.
"designed in particular to increase harmonization of the methods of customs control in the various Member States."\textsuperscript{77}

This amended proposal was adopted by the Commission on 27 March 1991.\textsuperscript{78} The amendments basically pertain to the scope and basic definitions, validity and continuity of national laws, right to appeal, and final provisions.

To give the national law its validity and to entrust the implementation of Community law at national level, it amended the very scope of the code by amending Article 1 which now follows as, "Customs legislation shall consist of this code and the provisions adopted at Community level or nationally to implement it..."\textsuperscript{79} Accordingly, it replaced the phrase ‘customs legislation’ by ‘Community Custom legislation’ in Article 2.\textsuperscript{80}

Several Articles such as Articles 4, 66, 142, 230 and 251 were deleted whereas several others such as Articles 3(1), 12(2), 117 and 189 were replaced by amended provisions. Along with this, there were several addition to the overall text to make it more comprehensive and relevant.

The Chapters dealing with right to appeal and Title VIII (Final Provisions) were the major portions which were amended. The scope of right to appeal was widened by adding the following provisions Article 241 (1):

\textsuperscript{77} EC BULL 1/2, 1991, pt.1.2.15, p.16.

\textsuperscript{78} See, COM (91), 98 Final.

\textsuperscript{79} OJC 97, 13.4.1991., pt.3, p.12.

\textsuperscript{80} \textit{Ibid.}, pt.4.
The following may give rise to an appeal:

- a failure on the part of the customs authorities to give adequate reasons for a decision,
- abuse of power
- breach of the provision in force.\(^{81}\)

Chapter 3 (Other Final Provision) Title VIII (Final Provisions) was thoroughly amended. It proposed the seventh and eighteenth indent of Article 257 to be amended to make the already existing directive effective and relevant, and it added three indents to the same article to update it.\(^{82}\)

**Council's Common Position:** The Parliament, as we have seen, had introduced a few important amendments to the Commission's original proposal and the Commission then had accordingly amended this proposal. Now as per requirements of the provisions of the Single European Act,\(^{83}\) the Council adopted the common position on 14 May 1992.

The adopted text sets out the scope, aims and nature of the Code as follows:

This proposal sets out to assemble, in a single and coherent text, the general rules and all arrangements and procedures applicable to goods traded between the Community and third countries. As

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\(^{83}\) Article 149(9) as amended by Art.7, of the SEA which reads *inter-alia*: 'The Council, acting by a qualified majority under the condition of paragraph 1, on a proposal from the Commission and after obtaining the opinion of the European Parliament shall adopt a common position.'
a means of consolidating Community custom legislation and making it transparent, the Community Custom Code is designed to replace and supplement all the legislation which the Council has adopted in this field since the Common Custom Tariff was introduced in 1968 and which is currently in force.\textsuperscript{84}

It was decided that the Code would come into force from 1 January 1994 and would also serve as a model for the consolidation of Community law, hence it has a unique importance for the completion of the internal market.

Now under the same cooperation procedure the common position was transmitted to the EP for its opinion or 'second reading' as being the principal innovation of the SEA.\textsuperscript{85}

\textbf{Parliament Opinion (Second Reading):} The EP on 16 September 1992 reexamined the common position and approved it subject to a number of 'technical amendments'.\textsuperscript{86}

It fact, the Parliament introduced two key amendments. The first was the amendment of Article 249 (1) (2) and (3) of the proposal and the second was the amendment of Article 253 (fourth paragraph).\textsuperscript{87}

Then the Commission within a month, as the deadline set by the SEA, adopted the proposal as amended by the EP in its second reading on 8 October

\textsuperscript{84} EC BULL, 5/1992, pt.1.1.10, p.18.
\textsuperscript{85} See, Articles 149(1)(c) and 149 (1)(d) as emended by Art.7 of the SEA.
\textsuperscript{86} EC BULL 9/1992, pt.1.1.92, p.17.
\textsuperscript{87} For the full text of EP's amendments, See, OJC 284, 2.11.1992, pp.64-65.
Now the requirements of the SEA were complete, hence the Council adopted the proposal on 12 October 1992. It was pointed out that the "Common Custom Code brings together all the custom laws governing Community trade with third countries."^{89}

The Act was divided into three main parts,^{90} having nine titles and 253 articles which would come into force with effect from 1 January 1994, except for measures relating to import and export declaration which were to be implemented as from 1 January 1993 (Art.253).

The Fourth Case: The Proposal for the Fourth RTD Framework Programme

The Community has been adopting multiannual framework programmes in the fields of research and technological development (RTD) since 1985 to enable the Member States coordinate their R & D activities so that the Community could expand its scientific and technological bases and could become more competitive at the international level.^{91} Until the signing of the

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^{88} See, COM (92) 423, Final.

^{89} EC BULL, 16/1992, pt.1.3.38, p.25.


^{91} See, Article 130f (Title XV: Research and Technological Development) of the EUT which spells out the objectives of the European Union in R & D.
Maastricht Treaty, the Community had already adopted three such multiannual framework programmes.

In the wake of Europe-wide recession and overall slowing down of the economic activities in Europe from 1990 onwards, the European industries had beginning to lose their competitive edge to their American and Asian counterparts. The Commission sought to streamline R & D activities and raise the total investment in R & D at par with the Americans: the US spends about 3% of its GDP on R & D whereas Europe spends about half of it. Along with this, the Commission finds the two stage decision-making process required to adopt the programme cumbersome, leading to long delays. Hence it sought to replace this two stage process by one stage co-decision process, involving both the Council and the Parliament at the same time.92

Accordingly, the Maastricht Treaty provides that:

A multiannual framework programme, setting out all the activities of the Community, shall be adopted by the Council, acting in accordance with the procedure referred to in Article 189b after consulting the Economic and Social Committee. The Council shall act unanimously throughout the procedures referred to in Article 1896.93

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93 Article 130i (Para 1) of the EUT.
However, the Maastricht Treaty maintained the dual legislative procedure that was introduced in the SEA in the sense that adoption of the framework programme as a whole is followed by adoption of the individual specific programmes subsequently. Nevertheless, the former is subjected to the co-decision process.

Incidentally, the fourth RTD programme was the first case the EP exercised its newly gained powers on. Also, it was a test for the Community's competence qualified by the principle of subsidiarity, because it is, "intended to complement, not replace national programmes. The principle of subsidiarity is observed, initiatives are taken on a European level only if results would not be obtainable otherwise."94

Beginning of the Legislation Process:

In accordance with the treaty provisions, the Commission submitted its proposal for a Council decision on fourth RTD programme on 17 June 1993.95 Although the Commission wanted to submit the proposal only after the Maastricht Treaty had come into force, but owing to the long delay in Pts ratification of points, it decided to present its proposal on the basis of the SEA. But it pointed out that it should be adopted only after the Maastricht Treaty

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95 See, OJC 230, 26.8.1993 for the complete text of the programme
had come into force, and the entire process should be completed by February/March 1994 so that its continuity was preserved (the Third framework ends on 31 December 1994).\textsuperscript{96} The Commission proposed a sum of ECU 13.9 billion for the programme.

The Parliament delivered its first reading on 18 November 1993. It had introduced amendments. On the recommendation of the rapporteur, pursuant to Rule 114, the President put amendments 1 to 9 to the vote collectively which were adopted subsequently. Then Mr. Linkoliv introduced the recommendation for the second reading, drawn up on behalf of the Committee on Energy, Research and Technology.\textsuperscript{97} The EP endorsed the amount of ECU 13.1 billion, as proposed by the Commission.

The Economic and Social Committee delivered its opinion on 25 November 1993. It declared, "the Commission's proposal is sound and what it contains can be endorsed, but it could be improved".\textsuperscript{98}

The Council adopted the Common position on 14 January, 1994. The Council had accepted most of the amendments introduced by the Parliament but it endorsed the ECU 12 billion ceiling approved by research ministers in December 1993. The Commission, as per treaty requirements, communicated the common position to the Parliament. It concluded, "the Commission wishes

\textsuperscript{96} COM (93) 276 Final, p.16-17.

\textsuperscript{97} OJC, 329, 6.12.1993, p.15

\textsuperscript{98} OJC 34, 2.2.1994, pt. 7.9.2., p.94.
to confirm its willingness to contribute to a satisfactory overall agreement between the three institutions. It will continue to act with the European Parliament and the Council in this sense.”

The EP acknowledged this communication on 19 January 1994.100 Earlier, in its first reading itself, it had made it clear that the meeting of the Conciliation Committee would be convened had the Council chosen to depart from the text approved by the Parliament.101

In its second reading on 9 February 1994, the Parliament called on the Council to amend its common position accordingly and adopt the proposal as amended by the Parliament, and called for the Conciliation Committee to be convened, in an event of the Council not agreeing to this.102 Alongwith, it introduced ten amendments to the common position of the Council, the most important of them being raising the amount from ECU 11.64 to ECU 12.4 billion.103

The Commission delivered its opinion on EP’s second reading. It expressed satisfaction with the proceedings in the Council and Parliament and favoured the amendments introduced by the EP to the Council’s common

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100 Ibid, p.7.
101 See, OJC rr, 14.2.1994, pt. 24, p.84.
Acting in accordance with the Article 189 b of the European Union Treaty, the Conciliation Committee on 21 March 1994 agreed for an initial budget of ECU 12.3 billion. The special reserve that was to be unblocked from 1996 after an interim review was reduced from ECU 1 billion to ECU 700 million. This approval cleared the way for the adoption by the Commission of (20) specific programmes that make up the framework programme, covering such fields as information technology, nuclear energy and technology.105

The studied case illustrates the process of co-decision working after the Maastricht Treaty came into force. Although the decision could be taken only after nine months of deliberations and negotiations it was because of the fact that the treaty itself came into force only on 1 November 1993. In order to exercise its powers, therefore, the EP had to wait a long time: the Commission had submitted its proposal on 17 June 1993. Hence, the overall time taken to reach on a decision could have been shortened, had Maastricht come into force earlier. In fact, the EP delivered its opinion at second reading in less than a month after being informed of the Council's common position.106 Then the Conciliation Committee too gave its opinion within six weeks as specified in

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104 See, COM (94) 52 final, pp.2-3.
105 COM (94) 68 final, 30.3.1994
106 Article 189 b cl.3 gives the EP three months to cut on the Council's common position.
the treaty provisions.\textsuperscript{107}

Therefore, it cannot be safely concluded that the codecision process had made the legislative process time consuming and complex, on the basis of this case. Certainly, more empirical studies are required to reach any definite conclusion which is possible only after sometime when there would be enough cases to be studied.

However, it could be concluded that the Parliament was quick to learn the rules of the game and to use its newly acquired powers effectively. It forced the Council to hammer out a compromise position to enable the Community to continue its R & D activities: by no means is a small achievement.

\textsuperscript{107} Article 189 b cl.5 of EUT.
Conclusion

These case studies substantiate the fact that the legislative process of the Community has never been a static process, if not actually a very dynamic one. There has been a constant evolution of the process, maintaining a fine balance between national and supra-national forces as represented by rules governing the decision-making at the Council and the Commission, traditionally known as the Council-Commission dialogue.

It has been the European Parliament which has been making inroads into the two-way affair. The Member's quest for power combined with increasing pressure from outside for democratization of the Community is responsible for turning this 'dialogue' into a triangular relationship, especially after the Single European Act and the Maastricht Treaty came into the force.

The first case dealing with the content of lead in petrol and motor-vehicle emission reveals the fact that the Community has been extending, albeit slowly, the sphere of its competence and now legislates on the issues it was not originally supposed to without any formal amendments to its power. The reason was the community-level importance of environmental problems which undoubtedly extended beyond its physical frontiers.

The case also points out the fact that the pre-SEA decision-making process was quite a time consuming process. The Commission took about six months to finalize its original proposal. Then, there were several communications from the Commission to the Council and finally the Council
took another nine months to pass its Directive, thus the whole process spanned well over a year.

The EP found itself almost unheard and help-less. It passed several amendments aimed at making the emission standards more stringent and expediting their implementation. Probably, the Parliament was guided by its sense of responsibility towards the public interest which lay in keeping the environment clean. The Commission also endorsed EP’s opinion in its revised proposal but the Council chose to ignore these amendments inspite of the conciliation process which was being initiated. Perhaps the Council was more guided by the interests of the motor-vehicle industry which found it difficult to adjust itself to the new standards in a short time.

The second case can be termed as the turning point in the history of the Community’s legislative process. The “Luxembourg Compromise" which was the genesis of disagreement over the CAP was used again to prevent an agreement over the cereal prices by the pay-master to the Policy, Germany, for the first time in a period of about twenty years.

This proposal was in tune with the prevailing market situation. There has been a glut of agricultural products, especially cereals in the market, produced by the farmers on heavy subsidies, causing a heavy drain on the Community’s budget. The Commission’s approach however, was ad-hoc and aimed at short-term measures without any long-term planning to revamp the CAP.
The case highlights the fact that the Council is the ultimate arbiter in the entire process. Against the expressed wish of the Commission for Council to take its decision before 1 April 1985, the case was dragged until 12 June 1985 when it finally could not take a decision on the cereal's and rape seed's prices owing to the German veto.

There were various attempts at compromise and the negotiation witnessed cross coalition building. The role of the Presidency in reaching the compromise was indeed vital. In fact it was the Presidency's last proposal in cooperation with the Commission which had halved the originally proposed reduction in cereals prices. But even this modest cut of 1.8% against 8% increase in the threshold limits was not acceptable to Germany which preferred to bow under the farm lobby's pressure in the name of its 'vital national interests' being at stake.

Not that other Member States could effectively resist this formidable pressure. Denmark, France, Greece, Ireland and the UK delegations refused to vote, probably because they had found the German veto a safe cover to hide under. Naturally, these Member States also ducked under the pressure from the farmers who were rich, strong and vocal.

The third case highlights the changes brought about by the SEA to the decision-making process of the Community. The two most important changes it effectively illustrates are the extension of majority voting in the Council and Parliament participating actively in the legislative process by virtue of the
time-bound second reading.

The present case was one of the few that took an exceptionally long time to decided. The Commission had adopted its original proposal on 28 February 1990 and finally the Council adopted it on 12 October 1992, thus the entire process took more than two and a half years, while empirical studies have noted the expediency in the decision-making process as one of the several advantages of the SEA.\textsuperscript{108}

However, the case just studied took a much longer time to culminate into the Community law. The Commission had adopted its proposal on 27 March 1991 after obtaining opinion from the Parliament (First Reading) on 22 February 1991. Then the Council took an exceptionally long time to adopt the common position which it finally reached on 14 May 1992. It will be pertinent to point out that the SEA prescribes no time limit for the Council to adopt the common position under the cooperation procedure. No wonder, the Council can utilize this loop-hole in the form of a suspended veto.

Besides making the decision-making process speedier, the SEA has helped make it smoother, less contentious and more democratically oriented.

\textsuperscript{108} The Cooperation procedure has been quite significant at least quantitatively as shown by the EP's study. See, \textit{Bulletin European Parliament}, 6 April 1992, p.15. Between July 1987 and December 1991, there were 299 proposals subjected to this procedure. Parliament proposed 2,734 amendments at the First readings in the 208 proposals by September 1991. The Commission accepted 1626 (60\%) and Council retained 1216 (45\%) out of these amendments. For second readings, the EP introduced 716 amendments out of which 366(48\%) were accepted by the Commission and 194 (27\%) by the Council.
The Parliament has been increasingly involved by way of introducing amendments and getting them incorporated into the original proposal. Mostly, these amendments have been endorsed by the Commission and in a few cases by the Council.

But there is another side of the picture too. It is true that about 280 pieces of legislation were passed by the Community well ahead of the deadline, necessary for the single common market coming into the force since 1 January 1993, they represent the continuation of an ever evolving legislative process. For instance, the issue of the common custom tariff was one of the primary issues the Community had worked for. The six original Member States removed all tariffs and quotas on their internal trade in July 1968, 19 months ahead of schedule and on 1 July 1977 the Custom Union was achieved in the enlarged Community.

Thus, most of the issues requiring the establishment of the single common market were non-contentious which helped the decision-making process to get speedier and smoother. A few, however, proved difficult to adopt and national interests as seen by the decision-makers continued to have an upper hand. For example, when EP rejected the common position on October 1988 for the first time, on a proposal for a directive on the protection of workers from risks relating to exposure to benzene, the Commission neither withdrew nor amended its proposal. The Council failed to achieve

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109 See, OJC 290 14 November 1988, p.36.
unanimity and the proposal lapsed.

And for the second time the EP rejected the common position in May 1992 on a directive for sweeteners for use in foodstuffs.\textsuperscript{110} It was within the framework of an already adopted Council Directive on food additives.\textsuperscript{111} But in this case when the EP rejected the Common position in May 1992, the Commission announced its decision to withdraw the proposal. Later, it baulked and proposed three new proposals, thus killing the original one. It shows the ways and means which the Commission and the Council can adopt to suppress the Parliament as well as to use the legislation process to their benefit.

The fourth case reflects the changes brought about by the Maastricht Treaty in the inter-institutional relationship. It also demonstrates how the Parliament increasingly became a major player in the legislative process, at the expense of the Commission. The EP, for the first time in history, got the opportunity to exercise its newly won co-decision power. It utilized this power efficiently and skillfully not only to its own advantage, but also to the advantage of the Community as well.

In the post-Maastricht era, the Commission is likely to become less important in the over-all decision-making process, at least in the fourteen policy areas the co-decision process applies to. Although, the Commission will

\textsuperscript{110} See, COM (90) 381, Final, 11 September, 1990.

continue to initiate legislation by making proposals, the Parliament could ask the Commission to initiate legislation if in the opinion of the latter, the former is not willing to do so. This has certainly weakened the position of the Commission.

As the case just studied has shown, the Commission acted effectively and endorsed most of the amendments introduced by the EP before the convening of the Conciliation Committee. Hence the classic Commission - Council dialogue has been observed up to this point, although the EP's opinion has become much more important than it was ever before. Once the Conciliation Committee is being convened, this dialogue becomes Council-Parliament dialogue with Commission performing just a subsidiary role.

Thus, a complex triangular relationship involving all three institutions, instead of a straight relationship between the Council and the Commission has been firmly established in the decision-making process of the Community.