Excerpt from the Vedel Report on the development of collaboration practices between the institutions (25 March 1972)

Caption: Article 218 of the Treaty establishing the European Community stipulates that ‘The Council and the Commission shall consult each other and shall settle by common accord their methods of cooperation.' This excerpt from the ‘Vedel Report' emphasises that, even in the absence of such an express provision (cf. Article 15 of the Merger Treaty), the institutions may, in practice, determine their methods of cooperation.

Source: Bulletin of the European Economic Community. April 1972, n° 4. Luxembourg: Office for Official Publications of the European Communities. "Report of the Working Party examining the problem of the enlargement of the powers of the European Parliament", p. 83-87.

URL:
http://www.cvce.eu/obj/excerpt_from_the_vedel_report_on_the_development_of_collaboration_practices_between_the_institutions_25_march_1972-en-5b08539b-cac2-43dc-85d9-2ecafb02bba5.html

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Report of the Working Party examining the problem of the enlargement of the powers of the European Parliament
"Report Vedel"

[...]

Chapter VIII — Implementation of the proposed reforms

The reforms and proposals described in the preceding chapters are not only diverse as to their aims and scope but can also be implemented in a large variety of ways.

Certain suggestions would merely entail the elaboration of existing practices based on the Treaties, or merely the retention or even re-establishment of rules written into these (notably the re-assertion of the Commission's role, the revival of the principle of majority voting on Council decisions). Even some of the new practices envisaged in certain parts of the report do not require to be given legal form.

Others however, involve more far-reaching innovations in the institutional life of the Community. It is quite obvious that they can assume their true political and legal importance only if they are formally written into the Treaties. Revision of these can alone guarantee legal security by preventing possible retrogressive action and by allowing the juridical guarantees prescribed by the Treaties to fulfil their task of safeguarding observation of the rules.

The process of formally modifying the Treaties is, however of necessity, a drawn-out one. The question must therefore be put whether, pending such a revision, some of the proposals put forward could not be implemented or at the very least, begin to be implemented within the framework of the existing Treaties by establishing practices agreed upon by the institutions concerned.

The answer to this question is, above all, a legal one. However, considerations of a more political nature may affect the conclusion reached.

Section I — The legal viewpoint

The Working Party did not consider that its mandate implied a detailed legal study of the procedures whereby the proposals it has put forward in the preceding chapters might be realized.

However, the Working Party found it impossible not to mention the legal problems involved in the implementation of its suggestions, as this will enable the time required for such implementation to be determined and if desired, the different ways in which it must be achieved, to be explored.

The problem of the need for formal revision of the Treaties, or possible provision which would render this course unnecessary differs according to the nature of the proposed reforms.

The texts of the present Treaties seem to leave open a wide choice of ways in which the proposals concerning the composition of Community institutions can be put into practice.

Thus the guidelines concerning election by direct universal suffrage (cf. Chapter V) do not require any amendment to the Treaties. This is obvious as regards a broad interpretation of Article 138(3) EEC to permit election to the European Parliament by direct universal suffrage in accordance with national laws. The situation would be different only if the election were to be accompanied by an increase in the number of members of the European Parliament as fixed in Article 138(2) of the Treaty.

Furthermore, the suggestions made concerning the nomination of the President and members of the Commission affect the exercise of the powers of the Member States and it appears that there is nothing in the Treaties to prevent the latter nominating the President of the Commission in agreement with the European Parliament.

On the other hand, as the texts stand at present, the Working Party's proposal that the President be nominated for a term of office of four years could not be implemented, formally at least, without revision of the Treaties.

The problem of strengthening the European Parliament's participation in the taking of normative decisions or of improving relations between the institutions of the Community is more complex. The possibility for these institutions to develop their practices in this direction is limited only by the basic principle laid down in Article 4 of the EEC Treaty which states that "each institution shall act within the limits of the powers conferred upon it by this Treaty".

At the same time Article 155 of the EEC Treaty allows the Council to confer upon the Commission the broadest powers for the implementation of the rules it lays down.

None the less, the principle of a fixed distribution of functions governs the Community institutional system. And so the institutions cannot be free to abandon powers attributed to them. On the contrary, they have to assume all the political and legal responsibilities conferred upon them by the Treaties. This prohibits any one institution from imposing limitations on its own powers in favour of another institution, as this would result in the responsibility for measures to be promulgated being shifted to the latter.

This does not mean that the institutions cannot improve their methods of collaboration with one another. Explicit provision for this is made for relations between the Council and the Commission in Article 15 of the Merger Treaty.

No similar text exists for the Parliament, but its character as a parliamentary organ provides sufficient justification for practical efforts to strengthen and improve the means of control at its disposal. The text of Article 149 of the EEC Treaty already reflects the concern to facilitate consideration of opinions of the European Parliament. From this angle it can readily be imagined that the Council would agree to do all in its power to avoid setting aside the European Parliament's opinions, for example, in those fields which appear to be the most important for the development of the Community.

Nevertheless, it must be pointed out that there is a certain limit beyond which a practice may lead to a veritable shift of responsibility forbidden under Article 4 of the EEC Treaty. It is one thing for the Council to adopt the opinions given by the European Parliament: it would be quite another for it to consider itself legally bound to follow them in all circumstances. This would, in fact, mean that the Council would be refusing to exercise the powers conferred upon it as such by the Treaties.

And so it can be concluded that, as far as the European Parliament's participation in the exercise of normative powers in the Community is concerned, important progress can be made in strengthening the role of this institution without immediate resort to revision of the Treaties. This is true in any case for the proposed innovations that would allow the European Parliament to exercise, for a short period of time, a sort of suspensive veto on Council decisions. These innovations would respect the consultative nature of the European Parliament's role and would merely extend the power to give opinions already conferred upon it by the Treaties. It is only at the stage when the European Parliament comes to be involved in the exercise of a true power of co-decision that there will be a shift of responsibility necessitating revision of the Treaties. These considerations indicate that there already is a quite substantial field in which the institutions can achieve results.

This is also true for the budgetary sphere, in view of the extent to which the texts already adopted allow scope for interpretations more or less favourable to the European Parliament's powers. Here again, however, any extension of the Parliament's powers of decision and control would have to be firmly anchored in a revision of the Treaties.

Section II — The political viewpoint

The legal viewpoint has enabled us to define those procedures whereby this or that proposal put forward in this report can be implemented. The choice between these methods, however, can be made only on the basis of a political viewpoint. Let us try to bring together the essential facts.

The increase in the number of the Community's tasks will mean that national parliaments will have to relinquish further powers. They will be the more willing to accept such relinquishments — which will determine the future of the construction of Europe — if, in the areas concerned, the European Parliament's control and participation takes over from them. Even more: a Europe that developed without at the same time developing its own representative institutions would become disloyal to the common democratic ideal of its member countries and would therefore be rejecting its origins.

Contrary to what might be thought, the forthcoming entry of new members into the Community does not mean a stagnation of its activities but an accelerated rate of evolution. In spite of certain forecasts, it appears that the new partners of the Six, far from considering the structures into which they are about to enter as sacrosanct and the present stage of integration as being the limit for a long time to come, are anxious to add their weight to that of the countries that originally signed the Treaties of Paris and Rome in order to promote the growth of a democratic Europe.

From a legal point of view, we have seen that certain proposals in this report do not justify revision of the Treaties, since in their case this would only involve unnecessary complications. On the other hand, some proposals of necessity imply such revision. There are, however, quite numerous cases where, without any legal irregularity, practice may run ahead of the legal rule. It is this last category which raises a problem.

In fact, in terms of economy of means, we may prefer the road of empiricism and practice and patiently await revision of the Treaties. But then there is the danger that practice may undo one day what practice did the day before: the establishment of a custom is always a hazardous venture. On the other hand, if priority were to be accorded to revision of the Treaties so that any changes that occur will be guaranteed in written law, would we not be running the risk of wasting time?

The Working Party believes that the first course is the right one. It offers more rapidly effective ways of achieving results: all that it requires is a political will and this has already been shown to exist by the enlargement of the Community and the increasing number of fields in which it is active. The Community must therefore pursue this course as far and as fast as possible.

However, two ideas must be borne clearly in mind.

The first is that partial achievement of certain of the objectives pursued by means of a scarcely formulated practice must be neither a reason nor a pretext for delaying necessary legal innovations indefinitely.

The second is that there must be a certain degree of coherence between the changes sought and it is on this that the present report attempts to throw light. If these changes were brought about in a way that relied too much on day-to-day, almost accidental empiricism, the result would, undoubtedly, be contradictory and unbalanced. Worse still, under the guise of a pragmatic approach, there would be the risk that a vast system of horse-trading would develop. In this, the restoration and reform of the Community system, which the future development of Europe requires, would be watered down into a number of minor and disconnected changes, these would not mark the beginnings of an evolutionary process but would be a façade concealing inaction.

In any case, there will be no excuse for not turning immediately to the task of solving these problems which were the subject of the Working Party's terms of reference. Even a limited revision of the Treaties involves a long haul: but the establishment, development and consolidation of political practices also take time. In a rapidly changing world, the time at our disposal is limited. Europe is a matter of historical urgency.

No doubt many of the desired objectives seem far away. This is another reason for getting down to work on them forthwith. The higher the summit, the sooner the climbing party must set out.

Brussels, 25 March 1972.