Interview with Norbert Schwaiger: the sharing of legislative powers between the Council and Parliament (Brussels, 22 November 2006)

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[Norbert Schwaiger] As for the analogous process regarding legislation, that began later on and it was certainly also conditioned by the fact that Parliament, for a long time, was not elected. In the wake of the Hague summits, the idea had already been put forward of ultimately having to elect Parliament by universal suffrage, yet this still did not happen until the 1980s, because of all sorts of suspicions about where it could lead.

Once elected, it began to be given prerogatives in the area of legislation. Beforehand, the opinion that Parliament was authorised to issue had been little more than a purely formal condition. I have told you that normally one ought to wait for the opinion before starting work in the Council; that would have been the ideal situation, but owing to the time factor, it was not possible… I remember that often, just as it was about to be adopted, at least politically, somebody checked: Where has the opinion from Parliament got to? Which goes to show that no one had taken it into consideration while drafting the regulation within the Council.

That is how things went. They have changed, not dramatically, but at least for the better thanks to the cooperation procedure, whereby Parliament has not merely the right to have its say, but is also at least taken into consideration. Therefore this procedure forced the Council to organise meetings in which Parliament could express its views and where points made in Parliament were discussed. In this way it was clearly an intermediate stage that prepared what was to come later.

Here you must see the effect that the Danish ratification crisis of the Maastricht Treaty had, and its implications for transparency; for transparency would certainly not have developed as it did, had there not been at the same time this pressure for greater democratic legitimacy in favour of the Community bodies generally. When it was envisaged quite quickly to give Parliament the possibility of codecision — drop by drop at first, later on somewhat more generously — this conditioned and also in some ways favoured transparency.

As soon as Parliament played a codecision role in various areas, it became clear, since everything is more or less open in Parliament, that there was no sense in working on the sly here, and that the Council would have to open up its proceedings to some extent as well — if only because at the first reading there were already very lively exchanges of information between the two co-legislators. If everything was public, or nearly so, on just one side, this no longer made sense. So this certainly stimulated change in the Council’s outlook, which allowed development of greater transparency as well, hand in hand with the codecision procedure, as far as access to the preparatory documents of the Council, entries in the minutes, and all that.

At the moment, almost all the areas of Community legislation come under the qualified majority rule, or the classic two-chamber model — except for some reserved matters, such as taxation, or some others where clearly there is a risk of infringing on the sovereignty of Member States which are not, and have not been, ready for this yet. There too, there were more steps to be taken that were foreseen in the Constitution, but for the moment this remains in abeyance.

I believe it is very important to see this process: firstly, Parliament had to acquire democratic legitimacy through direct elections, after which it was gradually given legislative rights, legislative competences, and, following that, with Amsterdam and Nice, important steps were taken — and more still would have been taken with the Constitutional Treaty. At any rate, this clearly indicates the direction to be followed in future.