

Interview with Norbert Schwaiger: decision-making in the Community field (Brussels, 22 November 2006)

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[Raquel Valls] How do negotiations proceed? What are the roles, in particular, of the working groups, committees and Coreper?

[Norbert Schwaiger] These are issues where we need to make a distinction. The classic Community issues, where the Community model is applicable, provide for the Commission to have the right of initiative. So usually Council procedures begin after the Commission has submitted a proposal. Before submitting a formal proposal, the Commission may take soundings, also referred to as policy documents, or guidelines, in which there are technical terms, x books, and so forth. So, the classic procedure — let us speak about that first: the Commission makes a proposal. Usually, when it was a legislative proposal, right from the start Parliament had something to say — in a purely consultative way at first — but the procedure was initiated in Parliament and generally, or one would have said ideally, examination in the Council started once Parliament had delivered its Opinion. This ensured that, at that time, the file had been completed and while the Council, or its bodies, was studying the proposal from the Commission, it could look at the Opinion of Parliament at the same time. In practice, it often did not happen like this, because Parliament also takes its time to deliver an Opinion and then — above all when it was urgent, or at any rate a matter that could not be allowed to drag on too long — the Council and its preparatory bodies would get on with it anyway. At Council level, it is generally the working party that carries out a technical review. Unless a proposal requires an orientation debate beforehand, be it general — one on the organisation of work would more probably take place at Permanent Representatives Committee level — or political, politically oriented, in which case it could take place at Council level, especially where important initiatives are involved.

But let us return to the normal procedure. The competent specialised Group considers a proposal; it may be, and in many cases this is so, that the Group comes to a conclusion at its own level. In this event, neither the Permanent Representatives Committee, nor the Council need take the trouble to discuss it. They both see to it that the procedure is followed. If the Group has come to an agreement, the texts are then put into shape so that they can be adopted. They are then submitted in this form to the Coreper, as what is referred to technically as a roman (i) point — as opposed to a point for discussion, or roman (ii) point — and then it makes its way again to the Council, as an ‘A-point’, that is to say, a point without discussion, one which is sometimes added to a very long list of decisions that may be important, for formal adoption. This procedure is most useful because any Council may adopt any act — since the Council is legally and ideally unique — any Council, which obviously saves time. It is also sometimes preferred that certain decisions that could be problematic be adopted by less conspicuous councils rather than during a General Affairs Council, where obviously much greater attention is paid even to issues filed as ‘A-points’. This reminds me of the recent directive that was adopted — one which in France, at any rate, was very poorly viewed — regarding the liberalisation of services, commonly referred to as the ‘Polish plumber’ directive and feared by the whole of France. In such a case one may wish — even if it has been completely emasculated — to conceal it somewhat. But this is by the way.

To get back to the subject: the working party does its job, but it cannot solve certain problems, be they legal, political or simply substantive, so it sends the file on to the Permanent Representatives Committee which — as you know — sits in two configurations, the ambassadors being more concerned with affairs to do with external relations, those of general application, or nowadays with certain new policy areas. On the other hand, Coreper I had more technical powers right from the start: everything to do with transport, environment, research, energy, and so forth, usually went through them. To give the full picture, I must mention that there was a Special Committee... or that there is a Special Committee on Agriculture dealing with all the agricultural legislation. Added to this there are sometimes committees or working parties with special functions: for example, for agriculture, in so far as financial aspects are concerned, these were the prerogative of the Working Party on Financial Questions, or the Budget, or even Coreper I, so there were two committees that had something to say concerning on the one hand, its substance, and on the other, its financial and budgetary implications. So if Coreper, or one of these other committees, reaches conclusions, the upward path may continue as an ‘A-point’; that is to say, it is all settled — an ‘A-point’. If there are issues remaining that are increasingly political, or that constitute a matter of principle, then they are

submitted to the Council. Where possible, one avoids referring very technical issues to the General Affairs Council, but specific councils dealing with such matters do exist, and they do not refuse to enter into a technical discussion on proposals, draft regulations or important directives, because it is clearly their role, so they have to do it.

Of course all this is all accompanied by Opinions from Parliament — we could perhaps speak of its role later on, but it should not be forgotten — and it is also true that the Commission can still change it, since a proposal that it has made is never adopted definitively. It can change it in order to help find a compromise; it can change it because it has had some new ideas, or because its discussions have thrown new light on certain things that were lacking. So it is a process that took place, at first, through dialogue at all levels between the Commission and the Council.