

## **Written Evidence by Professor Simon Hix to the European Union Committee of the House of Lords on the Implications of Codecision for National Parliamentary Scrutiny.**

**12 May 2009**

1. My evidence to the committee focuses on two issues relating to national parliamentary scrutiny of EU legislation under the codecision procedure: (1) the development and implications of ‘early agreements’ between the European Parliament and the EU Council; and (2) the operation of the Council when acting in a legislative capacity.
2. Regarding early agreements, there are powerful incentives for the Council and the European Parliament to reach agreements on legislation at an early stage in the co-decision procedure. A first set of incentives relate to the need to speed up EU decision-making. With several readings of legislation in both institutions, policies proposals have at times taken too long, and with the latest enlargements it was decided between the institutions to seek first reading agreements when possible.
3. A second set of incentives relate to each of the institutions’ considerations about how to maximise their influence over policy outcomes. The Council would prefer to reach an agreement before the conciliation committee, as the conciliation process, which was originally designed for 12 or 15 member states, is unwieldy with 27 member states as well as the same number of representatives from the European Parliament. On the other side, the European Parliament has an incentive to reach agreement at first reading, because amendments can be passed by only a ‘simple majority’ at this stage whereas an ‘absolute majority’ of MEPs is required to pass amendments at second reading.
4. Research by Raya Kardasheva<sup>1</sup> at the London School of Economics and Political Science has shown that these incentives have led to a significant increase in first reading agreements between the European Parliament and the Council since 1999. For example, while only 21 per cent of codecision proposals were decided at first reading in 2000, more than 85 per cent were agreed at first reading in 2007 and 2008.
5. Legislation is now passed at a significantly quicker pace. In 2000-01 it took on average 686 days to pass a piece of legislation under the co-decision procedure, whereas in 2006-07 it took on average only 206 days. Also, directives are now passed more quickly than regulations.
6. There has also been an increase in the use of informal ‘trialogues’ between the European Parliament and the Council, to facilitate these early agreements. Since 2004, 94 per cent of codecision bills (201 out of 219 agreements) were discussed via the informal dialogue procedure, before open deliberations and votes could take place in committee or on the floor of the European Parliament.

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<sup>1</sup> Raya Kardasheva (2009) *Legislative Package Deals in EU Decision-Making*, PhD Thesis, London School of Economics and Political Science.

7. Because of these deals between the EU governments and the European Parliament behind the scenes it is now difficult for 'backbench' MEPs, let alone national MPs, to scrutinise codecision legislation. One example of this is the decline in the number of European Parliament committee reports which are amended by the plenary of the European Parliament. In 2003-04 the plenary amended almost one-third of committee reports (18 out of 57 bills), whereas in 2006-07 the plenary amended only 10 per cent of committee reports (3 out of 28 bills).
8. In general, these trends suggest that it is increasingly difficult for national parliaments to monitor what either the Council or the European Parliament is doing under the codecision procedure. In the past draft directives and amendments from the Council and the MEPs were debated across several readings and over several months. These days, in contrast, most directives are adopted via a deal between a small group of MEPs and the Council Presidency, often in informal and non-recorded meetings, and then rubber-stamped by the European Parliament plenary and the Council. Full scrutiny by the MEPs, let alone by national parliaments or the wider public, is increasingly difficult.
9. Turning to the operation of the Council when acting in a legislative capacity, it is clear to most Council observers – such as the Centre for European Policy Studies and the European Policy Centre<sup>2</sup> – that there has been a fundamental shift in the way the Council works as a result of the enlargement of the EU from 15 to 27 member states. With 15 member states the Council was able to operate as a forum for all EU negotiations: with each member state acting independently, negotiations in Council bodies (such as COREPER) conducted through bilateral and multilateral negotiations by diplomats and civil servants, amendments submitted by individual governments, and Council meetings starting with a 'tour of the table' where each member state could explain its position on the issues on the table.
10. With 27 member states, in contrast, when conducting legislative business the Council operates more like a normal legislative body. For example, the tour of the table has been removed. Instead, member states are required to share their speaking time. This forces governments to agree common positions before Council meetings. More fundamentally, it is widely understood that member states are now required to co-sponsor amendments rather than promoting amendments individually. This is a significant shift from the traditional practice in the main legislative body of the EU. Furthermore, these changes, as well as the increasing the size of the Council, have increased the ability of the Council Presidency to set the agenda of meetings and to adjudicate between the various composite amendments.
11. These changes in the operation of the EU Council are consistent with what political science would predict about how increasing the size of a committee or political body would affect the allocation of power and resources in that body. Essentially, increasing the size of a body generally leads to greater specialisation (such as joint speaking time and joint amendments in the case of the EU Council) and greater delegation of power to agenda-setters (the Council Presidency in the case of the EU Council).

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<sup>2</sup> Sara Hagemann and Julie De Clerck-Sachsse (2007) 'Old Rules, New Game: Decision-Making in the Council of Ministers after the 2004 Enlargement', Brussels: Centre for European Policy Studies, and Sara Hagemann (2008) 'Voting, Formal Statements and Coalition Building in the Council from 1999 to 2006', in Daniel Naurin and Helen Wallace (eds) *Unveiling the Council of the European Union: Games Governments Play in Brussels*, London: Palgrave.

12. These changes to the Council raise serious questions about the ability of national parliaments to scrutinise the operation of national government when they are conducting EU legislative business. The Council is certainly a more open and accessible institution than it was a decade or so ago. For example, the media can attend certain Council meetings, the results of some legislative votes in the Council are now made public (although very few votes are formally reported), and Council documents are more accessible on-line than they used to be.
13. Nevertheless, this is not the same as full public scrutiny of what is meant to be a democratic legislative chamber. If one compares the access of the public and national parliaments to the legislative business of the European Parliament and the Council the differences are stark. Whereas in the European Parliament the public has full access to almost all committee deliberations on legislative issues as well as full access to all plenary deliberations, in the EU Council there is no public access to any meetings of COREPER and incomplete access to legislative deliberations of ministerial meetings of the Council. Whereas in the European Parliament all legislative documents are available to the public and national parliaments, including all amendments by all parties, committees or individual MEPs, in the Council the public and national parliaments are not able to see what legislative amendments are proposed by which national governments, and also which governments co-sponsored which amendments.
14. I would consequently urge the committee to ask the British government to make available to the committee every single amendment proposed by a British civil servant or minister to any piece of EU legislation (as opposed to an executive action of the EU, where secrecy is perhaps more defensible), and also to indicate which of these amendments were co-sponsored, and with which other member states. Several governments are under pressure to divulge this information, and it is only a matter of time until this information become available. It would surely be better for the British government to lead the push for transparency in the EU's main legislative body than to try to stop what is probably an irresistible tide.