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REPORT

**“INTER-MINISTERIAL COMMUNICATION
IN EUROPEAN AFFAIRS:
THE FRENCH EXAMPLE”**

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The French Constitution clearly states that international negotiations are conducted by the Executive. The Parliament appears only at the end of process through the ratification procedure once the treaty, convention or agreement has been drafted. From the start, European negotiations and therefore the elaboration of legal Community norms have quite naturally been regarded as diplomatic negotiations; and diplomatic negotiations are the preserve of the Executive.

Consequently, in the French model, this process is firmly in the hands of the Executive : Government or President. The role of the Parliament has until recently been virtually inexistent and remains, despite recent constitutional changes, marginal.

This has become a significant and sensitive question, if not a downright problem. It is now commonly acknowledged that 70% of our legal norms are European in origin? The scope of European affairs increases with every new treaty. Can it seriously be left to the Executive without more democratic control? To make matters worse it is believe that 90% of the decisions are in effect taken by civil servants ; 10% at most at ministerial level.

With such a huge amount of legal norms coming out of Brussels, can it still be seriously claimed that European matters are part of the diplomatic activity? should it not now be considered as “internal affairs”? The question is valid for every Member State. Have our diplomats become legislators? European law is indeed the result of international negotiations but of a nature totally different from those of classic international organisations. European law goes far beyond international subjects. Some countries have understood that and allow or require their Parliament to intervene early in the negotiations giving their negotiators some “legislative” legitimacy. Whatever the constitutional set up of a country, the need for a mechanism or institution enabling the definition of clear negotiating positions is real. There must be a form of inter-ministerial collaboration. This institution or mechanism must be altogether efficient and legitimate.

To answer these questions, we will look at how the decision making process in European affairs has been dealt with in France. We shall first briefly cover the respective roles of the President of the Republic and the Government. Then we shall analyse the role of the special body that was set up at Government level to respond to the needs of coordinating the various administrations concerned in this process of decision making in European matters. We shall see how the role of the Parliament has evolved over time and consider whether the “democratic deficit” needs to be addressed.

I - The institutions involved in European affairs

The President of the Republic

The President of the Republic is the main authority of the French political system, in particular when it comes to foreign affairs. This is the result of constitutional practice rather than a strict enforcement of the Constitution. It came about mainly after President de Gaulle’s insistence that the President should be directly elected by the people. In effect 2 areas have since been considered to be the preserve of the President : foreign affairs and defence. This is still the case. It was even so, but to a lesser extent at the time of what was called “cohabitation” when the President was of a different political colour than the Government. The fact of the matter is that

European affairs are in France still considered to be part of foreign affairs. The voice of the President is therefore paramount and he is seen directly negotiating with other Member States in Brussels.

The President is in charge of defining the political strategy and orientation in European matters.

The President is also *de facto* the ultimate arbitrator between various administrations on sensitive issues.

The Prime Minister

The Prime Minister is the head of the Government and therefore constitutionally in charge of negotiations in European affairs. The Prime Minister has a central role in defining French positions even if he or she has to refer to the President when it comes to strategic matters or when foreign relations issues are at stake. It is the normal or natural level of arbitration. Naturally the Government will feel far more concerned and implicated if the subject concerned affects internal matters (i.e. economic or social matters for example).

In practice, however, the political set up is paramount and if, as is the case today, the Government is politically close to the President, both will work in tune. To take an example, *par hasard*, no agricultural subject can be defined without close consultation with the current Presidency.

The Ministries

The Foreign Office

The Ministry in charge of foreign affairs plays a proportionally smaller role as the scope of European affairs is being regularly developed. In the French system it also has to account with the duality of the Executive, Prime Minister and President, and the special body of arbitration set up under the authority of the Prime Minister : the SGCI. However, recently, because of the increasing powers of the European Union in foreign relations & defence and the recurring institutional questions (new treaties and the European Constitution) it has acquired a privileged position and regained some importance without being dominant. The Foreign Office is still in Brussels the “natural leader” of negotiating teams. The increase of technical matters over general ones in European law makes its position somewhat fragile for the future. It becomes difficult to master the variety of questions springing out of Brussels without the close collaboration of experts from technical ministries.

The European Affairs Ministry

Created in 1981, the Ministry is responsible for :

- assisting the Foreign affairs Minister on European matters and represent him or her if necessary;
- monitor the implementation of the internal market representing France at the Competitiveness Council and monitoring the implementation of EU directives;
- promote Europe at home.

It relies on the services of the Foreign Office and the SGCI. It has not therefore a leading political role in European affairs. The main political strategy in this field is in the hands of the President or Government as we have seen and it does not deal with the every day decision making which as we will see is the role of the SGCI.

Other Ministries

According to the importance of a their field within the scope of European affairs other Ministries can play an influential role. The personality of the Minister in charge of course is crucial, depending largely on his or her political clout. It is weaker for those little involved in European matters (defence, education, etc.), increasingly important in some areas (justice, interior, etc.) and still very prevalent in core European matters (Economy, Finance, Agriculture, etc.). In this respect the importance in France of the Ministry of Economy, Finance and Industry in European matters cannot be ignored.

The SGCI : the instrument of the Executive in European affairs

At a very early stage of the *construction européenne*, the Government decided to set up a specific administrative institution under the authority of the Prime Minister that would be in charge of defining French positions in European matters (in fact the institution existed before and had another purpose, as will be specified hereafter). There were so many Ministries involved that they could not be left alone to negotiate in Brussels. A common position had to be first defined before the start of any negotiation by any diplomat or minister. The idea was that France spoke under a single voice to be efficient and influential in Brussels. Thus the *Secrétariat général du comité interministériel pour les questions de coopération économique européenne*, which had been dealing with foreign economic aid after the war and ECSC matters, was used for that purpose. It can be translated as follows : “General Secretariat of the Inter-ministerial Committee for European Economic questions”, referred to hereafter as “SGCI”.

II - The set up of a unique body of arbitration called SGCI

There are roughly 3 models prevalent in the Member States to coordinate European matters. They usually depend on the constitutional set up of each country.

- 1) The classic or Foreign Office model : the Foreign Office is the only one in charge of negotiating in Brussels. It can define the negotiating positions with instructions for the Government and/or the Parliament. There is always a problem of arbitration between the Foreign Office and the technical ministries and this model is becoming more and more untenable and outdated because of the increasing number of technical matters involved. The Foreign Office is often understaffed and has to rely heavily on technical experts.
- 2) The sharing-of-responsibilities model : according to the subject the Foreign Office or the Minister of the Economy (or several others sometimes) is in charge of negotiating. The possible conflict between ministries as to who is in charge and for what being generally arbitrated at cabinet level. The political clout of the ministers involved becomes paramount and there may be internal conflicts apparent in Brussels.
- 3) The centralisation model : or the setting up of a body specifically in charge of defining negotiating instructions, usually under the authority of the Prime Minister. The row between

ministries is done at home and in Brussels the country appears to speak in one voice. Such is the case in France.

The third model adopted in France relies on 3 principles : a) separation between the negotiator and the person writing the instructions, b) inter-ministerial debate with the head of the Executive (Prime Minister usually) at the summit of the decision making and c) definition of the scope of competence of the institution in charge.

An old institution

Strangely enough the SGCI was created in 1948. Before the signing of the Treaty of Rome! In fact the SGCI was created in order to ensure an efficient response to the Marshall Plan. In effect to arbitrate in a conflict of responsibilities (Foreign Office versus Ministry of the Economy) and ensure a common French position in international affairs and negotiations. The SGCI is a remarkable example of administrative adaptability. When the SGCI became redundant the Government found it other uses. It became in charge of preparing French Government decisions when the European Community for Steel and Coal was founded in 1952 and then the European Economic Community in 1957. As the European construction was being reinforced so was the remit of the SGCI.

Founded on an original administrative structure

The SGCI is under the authority of the Prime Minister and is thus a part of the office of the Prime Minister, it was never put under the authority of the Foreign Office.

The organisation of the SGCI : an ambiguous status

The SGCI is an administrative institution headed by a civil servant (the General Secretary) under direct political control (the General Secretary is also usually the European affairs Counsellor in the Prime Minister's *cabinet*). From its inception the SGCI has always been under the authority of the Prime Minister except for a short period between 1981-1983 (for obvious political reasons, President Mitterrand wanted to keep directly in touch with European affairs). Being an institution set up to arbitrate between the various administrations, placing it under the control of the Prime Minister makes sense. The SGCI is therefore administrative and political.

The SGCI is headed by 1 Secretary General who has 3 direct collaborators (Deputy Secretary General). 20 *chefs de secteurs*, all high ranking civil servants, are in charge of specific sectors and manage a team of 2 to 4 collaborators. It is important that the *chef de secteurs* are generalists not specialists.

The civil servants working in the SGCI are seconded for up to 3 or 4 years by their Ministry of origin (which means that they are paid by their Ministries and not by the SGCI). The SGCI has always employed just under 200 people at any one time, including secretaries.

Not having its own civil servants is a great asset for the SGCI. It means that it regularly trains civil servants in European affairs; civil servants coming from many different ministries and returning there after a few years. It is a formidable way to propagate EU culture.

The objectives of the SGCI

It aims at : speaking in one voice, separating the functions of negotiator and instructor, taking into account all possible national interests (arbitration and neutrality insured, the ultimate choice being political), ensuring a historical memory of negotiations, preserving national sovereignty, and of course being efficient (i.e. striking the right balance).

The areas of competence

- a) The 1st and 3rd pillars of European affairs are the core areas of competence of the SGCI. In these matters the SGCI is fully competent and organises the inter-ministerial meetings whatever the subjects and writes the instructions for the negotiators, usually the civil servants working at the Permanent Representation in Brussels.
- b) In matters relevant to the 2nd pillar the SGCI is normally not competent. It is the Foreign office that organises the inter-ministerial meetings if required and writes the instructions for the negotiators (a special CFSP Direction within the Foreign Office). If EU decisions in the 2nd pillar concern the implementation or the use of Community policies or instruments (commercial measures, Community budget, etc.) then the SGCI is competent. The common strategies are now dealt with by the SGCI.
- c) The SGCI is also competent in areas other than strictly EU. Questions dealt with at OECD level (*codex alimentarius*) or questions concerning other international organisations or institutions falling under EU competence (WTO, CNUCED, etc.).

The main task of the SGCI : the definition of instructions

The main task of the SGCI is to define French positions for European negotiations in its areas of competence. It arbitrates between various standpoints. It writes the instructions. It hands them over to the negotiators. If a compromise cannot be reached at the level of the SGCI the point in question will be arbitrated directly by the Prime Minister (or, as the case may be, by the President). The SGCI is the sole institution that can send instructions to the Permanent Representation. This is true of all European negotiations (working groups, COREPER or other committees, Council of Ministers, Management Committees, etc.).

Instructions are sent to the Permanent Representation through diplomatic cables. Once a compromise is reached or imposed, it is implemented and controlled by the SGCI.

The ministers' files for EU meetings are prepared by the SGCI not by their administration. This is significant and stresses the importance (also political) of the SGCI. The Minister in Brussels speaks therefore in the name of the whole Government not of his administration.

To achieve a common position the SGCI has to do all the upstream work involved. Send all the relevant Commission or Council documentation and information to the ministries concerned through all possible means and increasingly by internet. The EU institutions send their documents directly to the SGCI.

Article 88-4 of the Constitution requires the SGCI to inform the Parliament (both chambers) of all EU proposals that fall under the competence of the Legislative (see infra).

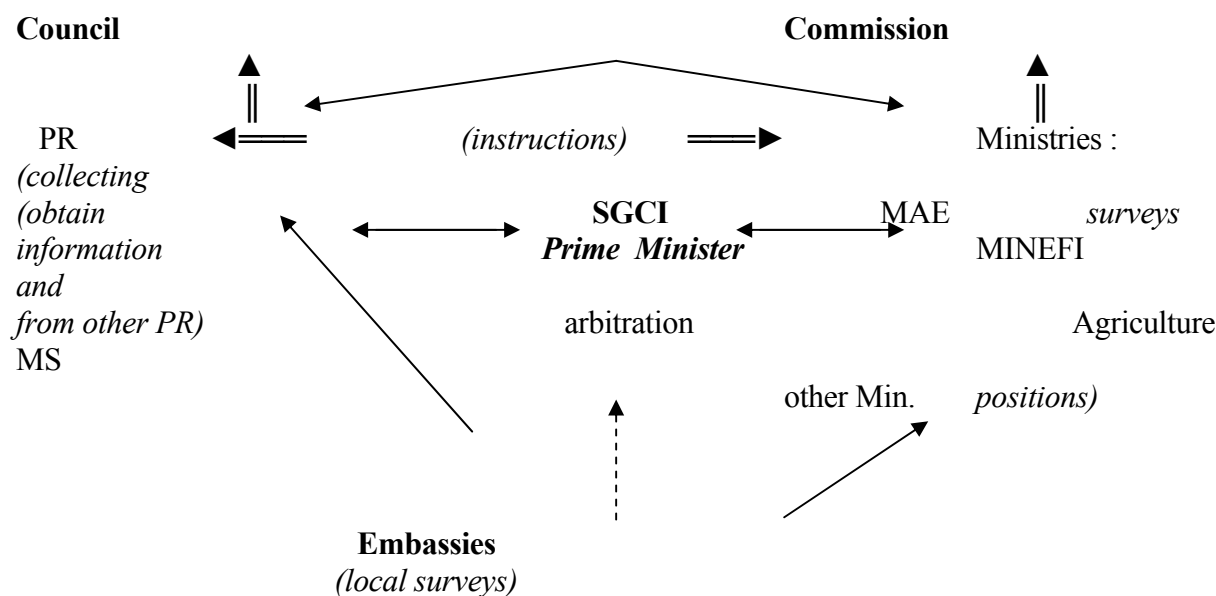
When the SGCI refers EU issues requiring an official response it may demand that a position be taken by the administration concerned within a time limit. In urgent circumstances it may do so orally.

Depending on the various reactions of ministries, the SGCI can convene a meeting to allow for a thorough examination of an issue. The *chef de secteur* normally heads such meetings. Every year approximately 1,800 such meetings take place. Many are organised by Visio conference so that Permanent Representation counsellors may attend.

The SGCI is in regular contact with the Permanent Representation at all stages of the procedure. This allows it to adapt instructions to the shifting positions of other Member States.

The SGCI organises an Inter-ministerial Committee at irregular but frequent intervals, according to the EU agenda. Are members by right of the Committee : the Foreign Office Minister, The Minister for European Affairs, the Minister of Economy, Finance and Industry. Only the most sensitive issues are dealt with by such Committee.

FRENCH INSTRUCTIONS FOR EU NEGOTIATIONS



Other tasks devolved to the SGCI

- Integration of EU directives in French law.
- Monitoring of the European Parliament.
- Coordination in EU litigation issues.
- Organisation of meetings between Commission or current Presidency officials and French officials.
- Organisation of meetings between administrations of various Member States.
- Missions of information to the European Parliament, the Social and Economic Council and the Regional Council.

III – A NEW ROLE FOR THE PARLIAMENT?

The question of the balance between efficiency and legitimacy was asked in the introduction, as well as that of the balance between democracy and bureaucracy. Most decisions concerning European affairs as we have seen are taken at an administrative level. Most laws and regulations governing our everyday life are European by origin.

In effect the role of the Parliament and of our elected representatives is greatly diminished, or at least sidelined. At the beginning of the *construction européenne* that was not deemed to be much of a problem because the areas involved were limited in numbers and scope and because the Parliament in the end had the power to ratify or not. Today many treaty ratifications have occurred and numerous European directives or regulations are directly introduced into national law without Parliamentary control. Of course it can be argued 1) that there is a European Parliament and that it is increasingly involved in the decision making process within the EU and 2) that the decisions taken at the Council level are done so by elected Governments that regularly face elections. Of course it can be argued that this is the result of negotiations but the fact of the matter is that it amounts to a legislative process (the principle of direct applicability superior to national law) without consultation of the people. Of course the people can voice their discontent at national elections. And they actually do. The result is an increasing confusion between European and national issues.

We face that very problem in France with the adoption of the Constitution by referendum. The vote may not be solely on the Constitution itself. It could be a rare opportunity to say to the Commission, Council, and the national Government that one is dissatisfied with many measures taken without proper consultation of the people... meaning of the Parliament.

As an example we can take that of the principle of non discrimination of women in the work force. In France an old law banned night shifts for women (and incidentally children). It was taken at the time clearly for the protection of women. Today it is deemed a discrimination because women cannot benefit from the opportunity of working better paid hours, hence the directive. It was easily accepted by the French authorities when first proposed by the Commission. But when the time came to adapt French law, the Parliament reacted very negatively. The Trade Unions also reacted violently and it took a long time to convince them that this measure was not a backward step in social terms. The preparatory work had not been done. The Parliament had not been really consulted ahead of the measure.

Since around 70% of our legal norms are now European in origin, this situation has become politically untenable.

In response, the role of our national Parliament has been increased during the decision-making process. It is now involved in the inter-ministerial process. But the implication of the French Parliament still remains limited.

As early as 1979 parliamentary delegations were created (and not parliamentary commissions which would have required constitutional modifications) in both chambers to follow European matters but their role was very limited. At the time it could be argued that European matters being limited in scope it did not matter too much.

It is only in 1990 that what is usually called the *loi Josselin* came into force. It requests the Government to transmit to the parliamentary delegations major European Community documents. In 1994 a new law widened this by including all 1st and 3rd pillar issues. Delegations may adopt conclusions, but those have no legal force and only limited political impact. Delegations may also request the presence of ministers or administrative representatives. The Government must also inform them of current negotiations.

As we have seen, the SGCI is in charge of sending all relevant documents except those relating to 2nd pillar issues that are transmitted by the Foreign Office.

The real step forward came in 1992 during the debate that preceded the ratification of the Maastricht Treaty. The constitutional law of the 25th of January 1992 made it compulsory for the Government (article 88-4) to submit to the Parliament all *actes communautaires* including measures of a legislative nature (under the French 1958 Constitution some areas are covered by law and others by regulation). That meant only 1st pillar measures.

The Amsterdam Treaty meant an extension to 2nd and 3rd pillar issues since they were formally introduced into the EU Treaty at that time. The Constitution was duly modified again in 1998. The Government went further (as a reward to ratify the Amsterdam Treaty?) and offered to transmit to the delegations all EU documents : green and white books and EU communications.

Crucially, since 1992 the SGCI must (except in CFSP matters) ask the *Conseil d'Etat*, the highest administrative court, if the EU text being transmitted includes areas covered by law. If such is the case The Secretariat General of the Government must then send the draft measure to both Parliamentary Chambers. Within one month the Chambers may decide to act. In any case, the parliamentary delegations may only adopt "resolutions" which do not legally bind the Government . They have a significant political weight of course, and increasingly so. The SGCI must now take that into account and inform the Government of the sensitivity of certain subjects well ahead.

All this is very well but not enough has been done. Our politicians have to come up with some feasible solutions because the democratic deficit in European matters is now keenly felt by the population at large. With the referendum on the European Constitution due on the 29th of May the subject is currently regularly debated in the press and on television. It is feared that many may vote "no" not because they oppose the European Constitution as such but because they are unhappy about policies currently favoured by the European Commission.

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