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The Extension of Qualified Majority Voting from the Treaty of Rome to the European Constitution

This Paper traces the extension of Qualified Majority Voting in the European Union in Treaty amendments since the 1957 Treaty of Rome.

It also shows which areas have remained subject to unanimity and considers the QMV amendments in the *Treaty Establishing a Constitution for Europe*.

Finally, there is an overview of UK voting behaviour in the Council over the last few years.

Vaughne Miller

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Summary of main points

- Qualified Majority Voting (QMV) is a procedure for adopting EC legislation which involves roughly a two-thirds majority of votes in the Council of Ministers. A blocking minority constitutes roughly one third of votes.
- The number of Council votes is currently distributed very roughly according to the population of the Member States, but favours the smaller States.
- Until 1966 unanimity was used for most decision-making. After this QMV was extended, leading to the French Government boycott of the Council of Ministers (the ‘empty chair crisis’).
- Each EU enlargement has necessitated an adjustment of the number of Council votes that form a qualified majority and a blocking minority.
- Each EU enlargement has brought about an extension of QMV and a reduction in the use of the national veto.
- By 1986 QMV was the norm for budgetary decisions and in a broad range of other areas, and in 1987 the *Single European Act* introduced QMV for Single Market measures.
- In the *Treaty on European Union* (TEU or Maastricht Treaty), which came into force in 1993, 30 articles were moved to, or introduced subject to, QMV.
- In the *Treaty of Amsterdam*, which came into force in 1999, 24 articles were moved to, or introduced subject to, QMV. This was largely as a result of extending the co-decision procedure (nearly always with QMV) to more Treaty articles.
- In the *Treaty of Nice*, which came into force in 2002, 46 articles were moved to, or introduced subject to, QMV.
- At present around 65 articles in the TEU and TEC remain subject to unanimity.
- The *Treaty Establishing a Constitution for Europe* will increase QMV and make the co-decision procedure, re-named the “Ordinary Legislative Procedure”, the norm.
- The British Government generally supports QMV extension, on condition that the national veto remains in certain areas of national sensitivity.
- The UK is not often out-voted in the Council of Ministers.

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I Qualified Majority Voting: background

Qualified Majority Voting, or QMV, is the voting procedure that requires approximately two-thirds of Council votes for the adoption of EC/EU legislation. Abstention counts as a vote against. The system of QMV is roughly based on the size of population, although it has always favoured the smaller Member States, which have had a number of votes disproportionate to their size. QMV applies in the first stage (the Council's 'common position') of measures subject to the 'co-decision' procedure (Article 251) and at various points during this process.

Between 1958 and 1965 most decisions were taken by unanimity, but as the EEC enlarged, it became more practical to adopt a system of decision-making by majority vote. However, this has always been a contentious issue and moving to QMV was one of the causes of the "empty chair crisis" of French President, Charles de Gaulle in 1965, which led ultimately to the so-called "Luxembourg Compromise" in 1966.

The position of the larger States began to weaken in 1973, with the enlargement that included the UK. Before this, any of the three large States could force through a proposal opposed by the others, but since 1973 the large States have not had enough votes to do this. The maths has been adjusted for each EU enlargement. In 1973 41 votes out of 58 were needed from the then nine Member States to adopt a proposal, and these had to be cast by at least six Member States in the absence of a Commission proposal. When Greece joined in 1981, 45 votes out of 63 were needed to form a qualified majority and when Spain and Portugal joined in 1986, this was raised to 54 out of 76 votes. With the accession of Austria, Finland and Sweden in 1995 the new QMV became 62 out of a total of 87 (62 cast by at least 10 members without a Commission proposal), with a blocking minority of 26. However, an agreement secured by the UK, called the *Ioannina Compromise*, was reached by Foreign Ministers in March 1994 which stipulated that if 23-25 votes were cast against a proposal, the Council would do "all in its power to reach, within a reasonable time ... a satisfactory solution". The blocking minority is around a third of available votes.¹

When ten new states joined the EU in May 2004 changes were introduced that had been set out in a Protocol to the Treaty of Nice, agreed in December 2000, and amended slightly in the Act of Accession for the applicant states.² For the transitional period between 1 May 2004 and 31 October 2004, the current QMV system has been extrapolated to include the new Member States. After 1 November 2004, the voting system will be amended, based on the principles defined by the Nice Treaty.

¹ Timothy Bainbridge, *The Penguin Companion to European Union*, 2002. The figures for the blocking minority are 35.3% until 1973; 31% 1973-80; 30.2% 1981-5; 30.3% 1986-94; 29.9% 1995-2004.

² See Library Research Paper 03/48, 19 May 2003, *Enlargement and the European Union (Accessions) Bill [Bill 98 of 2002/03]*

Initially, the qualified majority will be 88 votes out of 124 on a proposal from the Commission, and 88 votes cast by at least two-thirds of members in other cases. The blocking minority will be 37. The qualified majority will represent 71.3% of the total number of votes, regardless of the number of countries which accede to the Union during this period.

From 1 November 2004 Council acts will require for their adoption by QMV at least 232 out of 321 votes. The blocking minority will be 90. Furthermore, a Member State may request verification as to whether these 232 votes represent at least 62% of the total population of the Union (Article 12(1)(b) of the Act of Accession). Article 12(3) of the Act provides for the qualified majority threshold to be fixed between 71% and 72.27%, depending on the eventual size of the Union.

II Government Views on QMV

The gradual increase in decision-taking by QMV and the consequential loss of the national veto has been one of the most controversial issues for British Governments in dealing with the European Union. QMV extension is often interpreted as representing an erosion of national sovereignty, because veto powers are lost and individual Member States can no longer unilaterally block measures that would be unpopular at home. A Member State needs to find allies with sufficient voting strength in order to form a blocking minority and prevent the adoption of an act.

Most Member States, including the UK, agree that in an enlarged Union, QMV is desirable in order to prevent delay in, or the stagnation of, the legislative process. However, there continues to be disagreement as to the extent of the increase. There has been a consensus that the extension of QMV should be carried out within the current limits of the EU's powers and that highly sensitive matters should remain subject to unanimous voting (e.g. common defence, the accession of new Member States, additional rights of citizenship, uniform electoral procedure, own resources). However, during the recent negotiations on the drawing up of a European constitution, even some of these areas became the subject of a debate about possible moves to QMV.

In parliamentary answers on its position at the Intergovernmental Conference (IGC) in 2000, the Government said it would consider proposals to increase the use of QMV on a case by case basis, but would not agree to its use in the areas of defence, taxation, border controls and Treaty changes.

The Minister for Europe, Denis MacShane, said in reply to a question about QMV on 1 July 2003:

This Government believe that more QMV is essential to push through our solutions to Europe-wide problems in key areas, such as immigration and asylum. But there are areas in which we would not be prepared to move away from unanimity.³

In the White Paper published in September 2003 on the 2003-4 Intergovernmental Conference (IGC) the Government stated:

62. An important proposal is for greater use of Qualified Majority Voting (QMV) for decision-making in the Council of Ministers. There is also a proposal for a clause which would allow the European Council to vote by unanimity to move any Treaty article to QMV. We oppose anything which would undermine the role of national parliaments in Treaty change.

63. The Government recognises, as it did, for example, at Nice, and as its predecessors did in the Single European Act and the Maastricht Treaty, that, as the Union grows in size, so decision-making by unanimity can become more difficult. QMV can help make it easier. Experience shows that QMV does not weaken Britain's position in Europe – we are rarely outvoted.

64. On the contrary, QMV has helped Britain pursue an agenda which is in our interests. The Single Market would never have been constructed without QMV, nor would many pieces of legislation have been passed on, for example, the environment or market liberalisation, or reform of the Common Agricultural Policy. In many areas, the use of majority voting has benefited the British economy.

65. We therefore welcome the use of QMV as the general rule for legislative proposals. It is clearly in Britain's interests for QMV to help us cooperate on issues such as asylum and illegal immigration, which require solutions at European level.

66. But we will insist that unanimity remain for Treaty change; and in other areas of vital national interest such as tax, social security, defence, key areas of criminal procedural law and the system of own resources (the EU's revenue-raising mechanism). Unanimity must remain the general rule for CFSP, as proposed in the final Convention text.⁴

Areas that remain subject to unanimity are set out in Section VIII of this Paper. Other sections provide an overview of the extension of QMV from the *Treaty of Rome* to the *Treaty Establishing a Constitution for Europe*.

³ HC Deb 1 July 2003 c 203W at <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmhansrd/vo030701/text/30701w06.htm>

⁴ *A Constitutional Treaty for the EU: The British Approach to the European Union Intergovernmental Conference*, Cm 5934, September 2003, at http://www.fco.gov.uk/Files/kfile/FoE_IGC_Paper_cm5934,0.pdf

III *Treaty of Rome*

The three Community Treaties, the *Treaty of Rome*, the *Treaty Establishing the European Coal and Steel Community* (ECSC)⁵ and the *Treaty Establishing the European Atomic Energy Community* (Euratom) established voting procedures for legislation in various areas of Community activity. From 1958 to the end of 1965 most Council decisions were by unanimity, but in January 1966 there was a major extension of QMV. It was at this point that unanimity became a critical issue in the Community. By 1986, QMV was the norm for budgetary decisions and a range of other areas, as set out in the following parliamentary written answer:

(i) *Qualified Majority on a proposal from the Commission*

Article	Subject matter
7	rules to prevent discrimination on the grounds of nationality
28	autonomous alteration or suspension of common customs tariff duties etc not exceeding 20 per cent of the rate.
42	application of competition rules to agriculture
43(2)	implementing the common agricultural policy
43(3)	establishment of common agricultural market organisations
54(2)	freedom of establishment
55	exclusion of certain activities from freedom of establishment
56(2)	co-ordination of certain national provisions concerning special treatment of foreign nationals
57(1)	mutual recognition of diplomas
57(2)	taking up and pursuit of activities by certain self-employed persons
63(2)	liberalisation of services
69	free movement of capital
70(2)	amendment of national measures restricting free movement of capital
75(1)	inland transport policy
79(3)	elimination of discrimination between carriers
87(1)	competition rules
92(3)(d)	additional categories of state aids considered compatible with the common market
94	state aid rules
98	special authorisation of export refunds or countervailing charges on imports
101	directives to remove distortions or competition caused by differences between national laws
103	directives to implement conjunctural policy measures adopted under article 103(2)
112(1)	harmonisation of export aids
113	common commercial policy
116	common action in international organisations of an economic character
127	European social fund

⁵ The ECSC Treaty expired in July 2002.

(ii)	<i>Qualified Majority not on the basis of a Commission proposal</i>
73(1)	revocation of Commission authorisation of a member state's protective measures in field of capital movements
108(2)	grant of mutual assistance to meet balance of payments difficulties
108(3)	revocation or amendment of Commission authorisation of a member state's protective measures to meet balance of payments difficulties
109	amendment of a member state's protective measures to meet a sudden balance of payments crisis
114	conclusion of certain commercial agreements with third countries
126(a)	stopping certain social fund assistance
154	salaries of EC staff (now found in article 6 of merger treaty)
203(3)	establishment of a draft budget
203(5)	decisions on budget amendments and modifications proposed by European Parliament
203(9)	altering maximum rate of increase in budget (with agreement of EP)
204	authorising expenditure in excess of provisional twelfths at beginning of financial year
206(9)	conditions of employment of members of the Court of Auditors
206(b)	recommendation to Parliament that Commission be given discharge in respect of implementation of the budget ⁶

IV *Single European Act*

The *Single European Act* (SEA) of 1987 extended the scope of QMV, mainly to cover single market measures, and made QMV the voting method for new areas of Community activity, namely trans-European networks, education and public health. It also extended the use of QMV in the areas of the environment and Economic and Monetary Union (EMU).

Under the SEA 12 articles were either moved to, or were introduced subject to, qualified majority voting. The following lists show (a) areas with unanimous voting, marking with an asterisk those which changed to QMV, and (b) new subject areas subject to QMV (in the Treaty of Rome, not the ECSC or Euratom).⁷

(a)	<i>Unanimity and areas of change</i>
Article	Subject matter
28*	alteration of duties etc in the common customs tariff by more than 20 per cent
51	social security for migrant workers

⁶ HC Deb, 12 March 1986, cc.511-512W

⁷ See also Baroness Symons of Vernham Dean, HL Deb 4 July 2003 cc WA143-148 at <http://pubs1.tso.parliament.uk/pa/ld200203/ldhansrd/vo030704/text/30704w01.htm> and <http://pubs1.tso.parliament.uk/pa/ld200203/ldhansrd/vo030704/text/30704w02.htm>

56(2)	co-ordination of national legislation concerning special treatment for foreign nationals
57(2)*	taking up and pursuit of activities by certain self-employed persons (as amended by the SEA)
59(2)*	extension of free movement of services to national of a third country
70(1)*	capital movements between member states and third countries
75(3)	common transport policy provisions liable to have a serious effect on standards of living and so on
76	safeguard against new discrimination between carriers
84(2)*	sea and air transport (as amended by the SEA)
93(2)	derogations from state aids rules
99	indirect tax approximation
100A*	approximation of provisions affecting functioning of common market (supplemented by article 18 and 19 of SEA)
100B*	mutual recognition of national measures affecting the functioning of the internal market
103(2)	conjunctural policy measures
121	delegation to the Commission of implementation of common social measures
126(b)	new tasks for European social fund
138(3)	direct elections to the European Parliament
149	amendments to Commission proposals (amended by SEA to introduce procedure for co-operation with EP)
157	size of Commission (now article 10, merger treaty)
159	replacement of members of Commission (now article 12, merger treaty)
165	increasing the number of judges on the ECJ
166	increasing the number of advocates-general at the ECJ
194	appointment of members of Economic and Social Committee
196	approval of rules of procedure of the Economic and Social Committee
201	own resources
206(4)	appointment of members of the Court of Auditors
209	adoption of financial regulations and so on
217	languages of Community institutions
223(3)	amendments to list of war materials etc
231	co-operation with OECD
235	action in absence of specific powers in the Treaty
237	new accessions
238	conclusion of association agreements
(b)	<i>New areas of QMV introduced by the SEA:</i>
8B	guidelines and so on for balanced progress on internal market
118A	adoption of minimum requirements for health and safety of workers
130E	implementing decisions relating to European regional development fund
130Q(2)	adoption of certain provisions implementing the framework programme on research and technological development

130S decisions on matters relating to the environment in respect of which the Council decides by unanimity that decisions are to be taken by QMV⁸

V *Treaty on European Union*

In the *Treaty on European Union* 30 articles were either moved to, or introduced subject to, qualified majority voting. QMV was also introduced in certain aspects of the largely intergovernmental Second and Third Pillars of the TEU, the Common Foreign and Security Policy (CFSP) and Cooperation in Justice and Home Affairs (JHA). In both these pillars, the initial decision to act would be by unanimity, but the Council could also decide by unanimity that implementing measures in “joint actions” might be decided by QMV. There were no cases where a requirement for unanimity was replaced by one for qualified majority.⁹

Article	Subject matter
J.3(2)	decisions implementing common foreign and security policy joint actions, if use of QMV is agreed unanimously by Council;
K.3(2)(b)	decisions implementing Justice and Home Affairs (JHA) joint actions, if use of QMV is agreed unanimously in Council and potentially,
K.9	application of Article 100c of EC Treaty to some aspects of JHA, if unanimously agreed by the Council (e.g. emergency visa requirement)
73(c)2	movement of capital to or from third countries
73(f)	safeguard measures
73(g)(1)	movement of capital and payments to implement sanctions
73(g)(2)	abolishing above sanctions
75	transport safety
100c(2)&(3)	establishing a list of third country nationals who require visas
103(2)	broad economic guidelines
103(4)	make public recommendations on compliance with economic guidelines
103(5)	rules for multi-lateral surveillance
103(a)(2)	bail-out fund in the event of a natural disaster
104(a)(2)	definitions for applying prohibition on assuming financial liability
104(b)(2)	definition of prohibitions regarding credit institutions
104(c)(6)&14	excessive deficits procedure
105(a)(2)	harmonising coins
106(5)&(6)	ECSB statutes
109 (1-4)	exchange rate agreements
109(3)	decision on the position of the Community at international level as regards issues of particular relevance to EMU
109(c)(3)	Economic and Financial Committee
109(f)(6)	consultation of Economic and Monetary Institute (EMI)
109(h)(2)	mutual assistance in the event of balance of payments difficulties
109(h)(3)	protective measures (EMU)
109(i)(3)	suspending protective measures (EMU)

⁸ HC Deb, 12 March 1986, cc 512-513W

⁹ HC Deb, 20 May 1992, c.169W

109(j)(2,3)	moving to stage III of EMU
109(k)(1)	stage III EMU derogations
126	education
127	vocational training (was simple majority under Article 128)
129	public health
129(a)	consumer protection
129(d)	TENs guidelines
130(i)(4)	development co-operation
138(e)	regulations and conditions for performance of Ombudsman's tasks
130s	certain environmental measures
130w	development
194	allowances of members of Economic and Social Committee
228(1) & (2)	conclusion of international agreements on subjects where internal decision-making is by QMV, codifies existing practice
228(a)	measures to implement sanctions

Decisions taken under Articles 104c, (7), (8), (9), (11) and (12) were by two thirds of weighted votes. These changes were paralleled, where appropriate, in the revisions to the ECSC and Euratom Treaties (Titles III and IV TEU).

VI *Treaty of Amsterdam*

In the Treaty of Amsterdam of 1997 articles requiring unanimity were repealed because they no longer applied. These included articles on the early stages of EMU, old Article 100c on the first stage of establishing a common visa list and the first stage of old Article 112 on the harmonisation of aid to third countries. Amsterdam also changed the numbering of articles as a result of the IGC simplifying and consolidating the Treaties.

24 articles were moved to, or were introduced subject to, qualified majority voting. In the following list, those marked with an asterisk were new articles:

Article	Subject matter
7 TEU	suspension of Member State rights (including voting rights) if breach of fundamental principles is established by unanimity, and subsequently variation or revocation of such measures
23(2) TEU	adoption of common foreign and security policy (CFSP) joint actions, common positions or any other decision based on a common strategy (subject to an emergency brake, and no QMV for decisions have military or defence implications) and any decision implementing a CFSP joint action or common position (subject to an emergency brake, and no QMV for decisions have military or defence implications)
34(2)(c) TEU	measures to implement certain Justice and Home Affairs (JHA) decisions
11 TEU	authorisation of closer co-operation to develop the area of freedom, security and justice (subject to an emergency brake)
40 TEC	authorisation of closer co-operation in the TEC (subject to emergency brake)

37(4)	compensatory aid for imports of raw materials
46(2)	co-ordination of provisions laid down by law, regulation or administrative action for special treatment for foreign nationals (right of establishment);
62	establishing list of third countries whose nationals who are exempt from visas (only European Parliament (EP) consultation) and a uniform format for visas; procedures and conditions for issuing visas and rules on a uniform visa (five years from e.i.f. of Amsterdam Treaty)
166(1)	adoption of the Research Framework Programme
166(2)	adapting or supplementing the Research Framework Programme;
172	setting up of joint undertakings in R&T development;
128*	employment guidelines (only EP consultation);
129*	employment incentive measures;
135*	Customs co-operation;
137(2)*	social exclusion;
139(2)	approval of agreements concluded by management and labour;
141(3)*	equality of opportunity and treatment of men and women;
152(4)*	public health;
255*	transparency (access to documents);
280*	combating fraud against the Community's financial interests;
285*	statistics;
286*	establishment of an independent advisory body on data protection;
299(2)*	outermost regions

In the CFSP a Member State would still be able to prevent a QMV vote from being taken for important and stated reasons of national interest, whereupon the decision might be referred to the European Council for a decision by unanimity. The flexibility provisions in Article 11 TEC and Article 40 TEU were also subject to QMV, but with a similar national veto mechanism. The UK secured an opt-out from participation in co-operation under the new chapter on free movement of persons, asylum and immigration, where there are QMV provisions in Articles 62(2)(b) (i) and (iii).

VII *Treaty of Nice*

Under the Treaty of Nice 46 Articles were moved to, or were introduced subject to, qualified majority voting. Those marked with an asterisk were new articles.

Article	Subject Matter
7.1 TEU	determination that there is a clear risk of a serious breach by a member state of fundamental principles (four-fifths majority required)
23(2) TEU	appointment of common foreign and security policy (CFSP) special representatives, with emergency brake;
24 TEU	conclusion of international agreements in order to implement a CFSP joint action of common position, or on matters covered by TEU Titles V and VI for which QMV is required for the adoption of internal decisions or measures

27(c) & 44 TEU*	procedure for authorising enhanced co-operation under TEU Title V, with emergency brake;
27(e) TEU*	decision to hold in abeyance a member state's request to participate in a CFSP enhanced co-operation activity
40(a) TEU*	procedure for establishing enhanced co-operation under TEU Title VI, following referral to the European Council
11 TEC	procedure for authorising enhanced co-operation under the Treaty Establishing the Economic Community (TEC), following referral to the European Council
13(2) TEC	incentive measures (excluding harmonisation) to combat discrimination
18 TEC	provisions facilitating the exercise of the right of citizens of the Union to move and reside within the territory of the member states—with caveats
political declaration on 67 TEC	measures establishing standards and procedures for carrying out checks on persons at external borders (following agreement on measures concerning the crossing of such borders) (from 1 May 2004)
political declaration on 67 TEC	measures establishing the conditions under which third country nationals shall have the freedom to travel during a period of no more than three months (from 1 May 2004)
63(1)(a) TEC	criteria and mechanisms for determining the member state responsible for considering asylum applications, provided that the Council has already unanimously defined common rules and basic principles;
63(1)(b) TEC	minimum standards on reception of asylum seekers, provided that the Council has already unanimously defined common rules and basic principles;
63(1)(c) TEC	minimum standards with respect to the qualification of third country nationals as refugees, provided that the Council has already unanimously defined common rules and basic principles;
63(1)(d) TEC	minimum standards on the procedures in member states for granting or withdrawing refugee status, provided that the Council has already unanimously defined common rules and basic principles;
63(2)(a) TEC	minimum standards for giving temporary protection to displaced persons/refugees, provided that the Council has already unanimously defined common rules and basic principles;
political declaration on 67 TEC	measures on illegal immigration and illegal residence (from 1 May 2004)
65(a) TEC	measures improving and simplifying co-operation in civil law matters (except family law cases), inc. cross-border service of judicial documents, evidence taking, recognition/enforcement of decisions
65(b) TEC	measures promoting the compatibility of the rules applicable in member states concerns the conflict of laws and of jurisdictions (except family law cases)
65(c) TEC	measures eliminating obstacles to the good functioning of civil proceedings (except family law cases)

66 TEC	measures to ensure co-operation between the relevant departments of the administrations of the member states, and between those departments and the Commission, in the areas covered by Title IV (from 1 May 2004)
100(1) TEC	measures in the event of severe difficulties in the supply of certain products
100(2) TEC	community financial assistance, under certain conditions, to a member state which is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional circumstances beyond its control
123(4) TEC	measures necessary for the rapid introduction of the euro in member states without a derogation
133(5) TEC	negotiation and conclusion of international agreements on trade in services and trade-related aspects of intellectual property (with caveats)
137(2) TEC	potentially, measures in some areas of social protection, following agreement by unanimity to move to QMV
157(3) TEC	measures supporting the action of member states on industry matters
159 TEC	specific actions for economic and social cohesion outside the structural funds
161(1) TEC	From 1 January 2007 asks, priority objectives, organisation and rules applicable to the structural funds
161(2) TEC	creation of a cohesion fund (delayed deadline)
181a TEC*	economic, financial and technical co-operation with third countries
190(5) TEC	approval of the MEPs' statute (except rules or conditions relating to the taxation of MEPs)
191(2) TEC	laying down regulations governing political parties at European level, inc. funding
207(2) TEC	appointment of the Secretary-General and Deputy Secretary-General of the Council
210 TEC	extension of the scope of Art. 210 to cover the salaries, allowances and pensions of the members and Registrar of the Court of First Instance (CFI)
214 TEC	nomination and appointment of the President and members of the Commission
215 TEC	filling a vacancy in the Commission caused by death, compulsory retirement or resignation
223(6) TEC	approval of the European Court of Justice's rules of procedure
224(5) TEC	approval of the CFI's rules of procedure
225a(5) TEC*	approval of the Judicial Panels' rules of procedure
247(3) TEC	appointment of the members of the Court of Auditors
248(4) TEC	approval of the Court of Auditors' rules of procedure
259(1) TEC	appointment of the Economic and Social Committee members
263 TEC	appointment of the Committee of the Regions members
279(1)a&bTEC	financial Regulations/rules concerning the responsibility of financial controllers, authorising officers and accounting officers as of 2007

Of the existing areas that were moved to QMV, three were within the exclusive competence of the Community (i.e. the individual Member States cannot act unilaterally in these areas). These were Articles 111(4) and 123(4) TEC, concerning monetary policy, and Article 133(5)TEC, which extended the Common Commercial Policy to trade in services and the commercial aspects of intellectual property, subject to unanimity in

certain circumstances. All the other areas were either within the shared competence of the Community and the Member States or within the intergovernmental pillars, where the concept of shared and exclusive competence is not relevant.¹⁰

VIII Unanimity

Before The Treaty of Nice came into force 73 articles or sub-articles were subject to unanimity. These were listed in Annex A of the European Scrutiny Committee's Seventeenth Report, *The 2000 Inter-Governmental Conference*, 15 May 2000, as follows.¹¹

Article 7.1 (TEU)	Sanctions clause
Article 309	Suspension of a Member State's voting rights
Article 11	Flexibility arrangements. A. 11 and 40 currently
Article 40 (TEU)	QMV with an emergency brake.
Article 44.2 (TEU)	Decision to amend rule on expenditure from closer cooperation
Article 13	Action against discrimination
Article 17.1 (TEU)	European Council decisions on 'common defence' and EU/WEU integration
Article 18.2	European citizens' rights of movement and residence
Article 19	Arrangements for non-nationals to vote in EP and municipal elections
Article 22	Additional rights of EU citizenship
Article 23.1/2 (TEU)	Foreign policy and defence decisions
Article 28.3 (TEU)	Operational expenditure under CFSP
Article 24 (TEU)	Conclusion of international Agreements
Article 38 (TEU)	Agreements with third parties on police and judicial cooperation in criminal matters
Article 34.2 (TEU)	Provisions on police and judicial co-operation in criminal matters (Title VI)
Article 41.3 (TEU)	Operational expenditure for Title VI
Article 42 (TEU)	Decisions to move cooperation under Title IV TEC
Article 42	Social Security for Migrant Workers
Article 144	Social security of migrant workers
Article 47.2	Principles on the free movement of professionals
Article 48 (TEU)	Treaty Change
Article 49 (TEU)	Accession of new Member States
Article 57.2	Derogation from liberalisation of capital movements

¹⁰ See HC Deb 12 February 2001 c 47W.

¹¹ <http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmeuleg/23-xvii/2316.htm>.

Article 67.1/2	Action under Title IV (visas, asylum, immigration and other policies related to the free movement of persons). 67.2 provides for a move to QMV after five years (if the Council so decides by unanimity).
Article 71.2	Transport policy
Article 72	Approval for derogations from transport rules in favour of a Member State's own carriers
Article 88.2	Derogation for state aid rules in 'exceptional circumstances'
Article 93	Indirect taxation
Article 94	Approximation of laws affecting internal market
Article 100	Economic aid in cases of severe difficulty
Article 104.14	Replacement of excessive deficits Protocol
Article 105.6	Tasks of the European Central Bank
Article 107.5	Amendments to the statute of the ECB
Article 111.1/4	Decisions concerning the ERM
Article 112.2(b)	Appointment of the ECB's Executive Board [Article 117.1/7 Provisions on the European Monetary Institute (EMI)]
Article 123.4/5	Institutional provisions relating to EMU
Article 133.5	Extension of commercial policy to services and intellectual property
Article 137.3	Areas of social chapter governed by unanimity (listed in 137.3)
Article 139.2	
Article 151.5	Cultural policy
Article 157.3	Industrial policy
Article 159	Rules governing structural fund tasks, objectives and organisation, and supplementary action outside funds
Article 161	
Article 175.2	Exceptions to QMV for environmental issues
Article 186	Rules and procedures for association of countries and territories with the Community
Article 187	
Article 190.4/5	Uniform electoral procedure for European Parliament/Statute for MEPs
Article 202	Comitology rules
Article 203	Order of Presidency
Article 207.2	Appointment of Council Secretary General/Deputy Secretary General
Article 213.1	Altering number of Commissioners
Article 215	Nomination for replacement Commission President
Article 214	Appointment of President and members of Commission
Article 221	Altering number of ECJ judges and advocates-general
Article 222	General
Article 223	Appointment of ECJ judges and advocates-general
Article 225.2/3/4	Jurisdiction of CFI, appointment of members of the CFI, Rules of Procedure for CFI
Article 245	Amendment to ECJ Statute/Rules of Procedure
Article 247.3	Appointments to the: Court of Auditors

Article 258	Economic and Social Committee,
Article 263	Committee of the Regions
Article 250.1	Amendment of a Commission proposal
Article 251.3	Accepting EP amendments rejected by the Commission
Article 252	Second reading of co-operation procedure (c, d and e)
Article 269	Community finances — own resources
Article 279	Financial Regulations
Article 289	Seats of institutions
Article 290	Language regime
Articles 296.2	Derogation for trade in arms
Article 300.2/5/6	International agreements covering areas where unanimity applies internally/association agreements (see Article 310)
Article 304	Co-operation with OECD
Article 308	Old Article 235 (residual legal base)

Since Nice, 66 articles or sub-articles remain subject to unanimity, as set out below.¹² This situation will prevail until such time as the European Constitution comes into force.

Article	Subject matter
7.1 TEU	Sanctions clause
17.1 TEU	European Council decisions on "common defence" and EU/WEU integration
23.1 TEU	Foreign policy and defence decisions (Title V TEU)
28.3 TEU	Operational expenditure under CFSP
24 TEU 38 TEU	Conclusion of international agreements covering issues for which unanimity is required for the adoption of internal decisions (except implementation of joint actions or common positions)
34.2 TEU	Provisions on police and judicial co-operation in criminal matters (Title VI TEU)
41.3 TEU	Operational expenditure for Title VI TEU
42 TEU	Decision to move police and judicial co-operation in criminal matters to Title IV TEC
44.2 TEU	Enhanced co-operation under CFSP, QMV with an emergency brake (unanimity)
48 TEU	Treaty change
49 TEU	Accession of new member states

¹² HL Deb 8 March 2001, c WA37 at <http://www.parliament.the-stationery-office.co.uk/pa/ld200001/ldhansrd/vo010308/text/10308w01.htm>

13 TEC	Action against discrimination (except incentive measures)
18.3 TEC	Provisions on passports, identity cards, residence permits; provisions on social security or social protection
19 TEC	Arrangements for non-nationals to vote in EP and municipal elections
22 TEC	Additional rights of EU citizenship
42 TEC	Social Security for Migrant Workers
47.2 TEC	Particular principles on the free movement of professionals
57.2 TEC	Derogation from liberalisation of capital movements
67.1 and 2 TEC	Action under Title IV (visas, asylum, immigration and other policies related to the free movement of persons). 67.2 provides for a move to QMV after five years (if the Council so decides by unanimity). Article 67.5 and the Protocol and Declaration on Article 67 mean some moves to QMV will happen sooner: on entry into force of the Treaty of Nice (Article 65 with the exception of aspects relating to family law); from May 2004 automatically (Article 66); after framework legislation, defining common rules and basic principles, has been agreed by unanimity (Articles 63(1)(a), (b), (c), (d) and 63(2)(a)); and following a Council decision after May 2004 (Articles 62(2)(a), 62(3) and 63(3)(b)).
71.2 TEC	Transport policy
72 TEC	Approval for derogations from transport rules in favour of a member state's own carriers
88.2 TEC	Derogation for state aid rules in "exceptional circumstances"
93 TEC	Indirect taxation
94 TEC	Approximation of laws affecting internal market
104.14 TEC	Replacement of excessive deficits Protocol
105.6 TEC	Tasks of the European Central Bank
107.5 TEC	Amendments (on a proposal from the Commission) to the statute of the ECB
111.1 TEC	Decisions concerning the ERM
112.2(b) TEC	Appointment of the ECB's Executive Board
117.1 and 7 TEC	Transitional provisions on the European Monetary Institute (EMI)
123.5 TEC	Institutional provisions relating to EMU
133.5 and 6 TEC	Specified exceptions to QMV for negotiation and conclusion of international agreements on trade in some services and commercial aspects of intellectual property
133.7 TEC	Extension of Common Commercial Policy to other aspects of international negotiations and agreements on intellectual property
137.2, 139.2 TEC	Particular social provisions governed by unanimity

151.5 TEC	Culture
161 TEC	Rules governing structural and cohesion fund tasks, objectives and organisation (until 2007, or until agreement on the next financial perspective, whichever is the later)
175.2 TEC	Exceptions to QMV for environmental provisions
181a TEC	Economic, financial and technical co-operation with third countries for association agreements (see Article 310) and agreements with accession candidates
186, 187 TEC	Rules and procedures for association of the overseas countries and territories with the Community
190.4 TEC	Uniform electoral procedure for European Parliament
190.5 TEC	Taxation provisions of the Statute for Members of the European Parliament
202 TEC	Comitology rules
203 TEC	Order of Presidency
213.1 TEC	Altering number of Commissioners
215 TEC	Council Decision not to fill a vacancy in the Commission College
222 TEC	Increasing number of ECJ Advocates General
223, 224 TEC	Appointment of ECJ judges and Advocates General, and CFI judges
225a TEC	Creation of judicial panels and appointment of members of the panels
229a TEC	Conferring jurisdiction on the ECJ for disputes concerning Community industrial property rights
245 TEC	Amendment to ECJ Statute
250.1 TEC	Amendment of a Commission proposal
251.3 TEC	Accepting EP amendments rejected by the Commission in the co-decision procedure
252 (c, d and e) TEC	Second reading of co-operation procedure
269 TEC	Community finances--own resources
279.1, 279.2 TEC	Financial Regulations (until 1 January 2007) Community's own resources
289 TEC	Seats of institutions
290 TEC	Community language regime
296.2 TEC	Derogation for trade in arms
300.2/5/6 TEC	Conclusion of international agreements covering areas where unanimity applies internally/association agreements (see Article 310)
304 TEC	Co-operation with OECD
308 TEC	Old Article 235 (residual legal base)
309 TEC	Sanctions clause

IX The Convention on the Future of Europe

Under the draft European constitution drawn up by the Convention on the Future of Europe in 2003, the co-decision procedure, renamed the “Ordinary Legislative Procedure” (OLP), would become the norm, unless otherwise specified in the text. This would nearly always involve decision-making by QMV, but an enhanced QMV, taking more account of the size of the population. A Convention text of 27 May 2003,¹³ which was the basis for discussion of QMV transfers, contained the following lists:

¹³ CONV 727/03 at [http://www.futurum.gov.pl/futurum.nsf/0/9BAFC4C777DBB0D9C1256D3B00420733/\\$File/part%20II.L.pdf](http://www.futurum.gov.pl/futurum.nsf/0/9BAFC4C777DBB0D9C1256D3B00420733/$File/part%20II.L.pdf)

<i>Legal bases for which the decision-making procedure is changed</i>	<i>Present procedure</i>
Ordinary legislative procedure	
Arrangements for control of implementing powers (Article I-36)	Unanimity in the Council, with just an opinion from the European Parliament (Article 202 TEC)
Internal market: social security measures for Community migrant workers (Article III-18)	Codecision, with the Council acting unanimously (Article 42 TEC)
Exclusion of certain activities in a Member State from the scope of the provisions on freedom of establishment (Article III-21, second paragraph)	Qualified majority in the Council (Article 45, second paragraph, TEC)
Coordination of provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons in the case of coordination of existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons (Article III-23)	Codecision, with the Council acting unanimously (Article 47 TEC)
Extension of the provisions on services to third-country nationals established within the Community (Article III-26, second paragraph)	Qualified majority in the Council (Article 49, second paragraph, TEC)
Liberalisation of services (Article III-29)	Qualified majority in the Council, with just an opinion from the European Parliament (Article 52(1) TEC)
Adoption of other measures on movement of capital to or from third countries (Article III-43(2))	Qualified majority in the Council (first part of Article 57(2) TEC)

<i>Legal bases for which the decision-making procedure is changed</i>	<i>Present procedure</i>
Intellectual property (Article III-65)	Unanimity in the Council, with just an opinion from the European Parliament (Article 308 TEC)
Multilateral surveillance (Article III-68(6))	Cooperation procedure (Article 99(5) TEC)
Specific tasks for the ECB (Article III-74(6))	Unanimity in the Council and assent (Article 105(6) TEC)
Amendment of the Protocol on the Statute of the ESCB and of the ECB, on a recommendation from the ECB or from the Commission (Article III-76(5))	Qualified majority or unanimity in the Council and assent (Article 107(5) TEC)
Measures required for use of the euro (Article III-80)	<i>(new)</i>
Social policy: (d) protection of workers where their employment contract is terminated, (f) representation and collective defence, and (g) conditions of employment for third-country nationals (Article III-99(1) and (2))	Unanimity in the Council, with just an opinion from the European Parliament (Article 137 TEC) <i>(under the current Treaty, these aspects could be made subject to the codecision procedure if the Council unanimously so decides)</i>
Structural Funds and Cohesion Fund, as from 2007 (Article III-114)	Qualified majority in the Council as from 2007 (at present: unanimity), with the assent of the European Parliament (Article 161 TEC)
Application of competition rules to the common agricultural policy (Article III-121(1))	Qualified majority in the Council, with just an opinion from the European Parliament (Article 37(2) TEC)
Common agricultural policy legislation (Article III-122(2))	Qualified majority in the Council, with just an opinion from the European Parliament (Article 37(2))
Energy (Article III-152)	Unanimity, with just an opinion from the European Parliament (Article 308 TEC)
Border controls on persons (Article III-161)	Unanimity in the Council, with just an opinion from the European Parliament (Article 67 TEC) <i>(codecision following a unanimous decision on a change of procedure)</i>
Asylum (Article III-162)	Unanimity in the Council, with just an opinion from the European Parliament (Article 67 TEC)
Immigration (Article III-163)	Unanimity in the Council, with just an opinion from the European Parliament (Article 67 TEC)

<i>Legal bases for which the decision-making procedure is changed</i>	<i>Present procedure</i>
Adoption of financial rules, as from 2007 (Article III-314)	Qualified majority in the Council, with just an opinion from the European Parliament (Article 279(1) TEC)
Enactment of the Staff Regulations of officials of the European Community and the Conditions of Employment of other servants of the Union (Article III-329)	Qualified majority in the Council, with just an opinion from the European Parliament (Article 283 TEC)

Special legislative procedures	
Own resources arrangements (Article I-53(4)): Council law adopted by a qualified majority, with the consent of the European Parliament	Unanimity in the Council, with just an opinion from the European Parliament and with national ratification (Article 269 TEC)
Multiannual financial framework (Article I-54): Council law adopted by a qualified majority, with the consent of the European Parliament	Interinstitutional agreement
Adoption of measures on movement of capital to or from third countries, where constituting a step back in the liberalisation process under Community law (Article III-43): Council law adopted unanimously, after consulting the European Parliament	Unanimity in the Council, without any opinion from the European Parliament (end of Article 57(2) TEC)
Tax harmonisation measures concerning administrative cooperation or combating tax fraud (following a unanimous Council decision) (Article III-59(2)): Council law adopted by a qualified majority, after consulting the European Parliament	Unanimity in the Council, with just an opinion (Article 93 TEC)
Company taxation measures concerning administrative cooperation or combating tax fraud, where required for the operation of the internal market and to avoid distorting competition (following a unanimous Council decision) (Article III-60): Council law adopted by a qualified majority, after consulting the European Parliament	Unanimity in the Council, with just an opinion (Article 93 TEC)
Arrangements for exercising the right of inquiry (Article III-230): European Parliament law, with the approval of the Council and an opinion from the Commission	Common accord of the European Parliament, Council and Commission (Article 193 TEC)
Annual budget (Article III-306); law adopted under a special procedure	Special procedure (Article 272 TEC)

Non-legislative acts	
Application of the ban on privileged access (Article III-71(2)): qualified majority in the Council, after consulting the European Parliament	Cooperation procedure (Article 102(2) TEC)
Application of the ban on assuming commitments or granting overdraft facilities (Article III-72(2)): qualified majority in the Council, after consulting the European Parliament	Cooperation procedure (Article 103(2) TEC)
Measures to harmonise the denominations and technical specifications of coins (Article III-75(2)); qualified majority in the Council, after consulting the European Parliament	Cooperation procedure (Article 106(2) TEC)
Administrative cooperation for an area of freedom, security and justice (Article III-159)	Unanimity in the Council, with just an opinion from the European Parliament (Articles 66 TEC and 30 and 31 TEU)
Recommendations on cultural matters (Article III-176): majority in the Council	Unanimity in the Council (Article 151(5), second indent, TEC)
The Council acts by a qualified majority under the CFSP when adopting a decision on the initiative of the Minister for Foreign Affairs, further to a request from the European Council (Article III-196)	(Title V TEU)
Urgent financial assistance for third countries (Article III-217): qualified majority in the Council	Unanimity in the Council (Article 308 TEC)
Provisional twelfths (Article III-307): special procedure	Special procedure (Article 273 TEC)
Arrangements for the making available of own resources (Article III-314(2)): qualified majority in the Council, after consulting the European Parliament	Unanimity in the Council (Article 279(2) TEC)

X The 2003-4 Intergovernmental Conference

The Intergovernmental Conference (IGC) opened on 4 October 2003 and its discussions were based on the Convention final text of 18 July 2003. Presidency document CIG 38/03 of 24 October 2003 contained delegations' views on the extension of QMV. The Presidency noted that a number of delegations considered that provisions on the scope of

QMV in the Convention text were balanced and should be adopted without modification, while others thought that in some areas the Convention text was not sufficiently ambitious and they put forward proposals for a further extension of QMV. The Presidency noted the following:

- CFSP:
 - some delegations want qualified majority to be the general rule, except for defence matters and those with military implications,
 - another delegation wants generalised application of QMV, but with the possibility of referring decisions to a higher political level,
 - another requests a five-year transitional period, after which QMV would apply except in cases where vital national interests are at stake,
 - some (six delegations) want qualified majority to apply in the case of acts adopted on the basis of a joint proposal from the Minister for Foreign Affairs and the Commission;
- taxation (three delegations – for some this should be linked to the functioning of the Internal Market);
- environment (two delegations);
- justice and home affairs (two delegations), with a third delegation requesting qualified majority coupled with an "emergency brake" similar to the one which exists for the CFSP;
- social affairs (three delegations, with one delegation requesting QMV except in the area of social security).

4. In addition the following areas are the subject of a request for an extension of QMV by at least one delegation in the following cases:

- commercial policy (trade in services - except transport);
- intellectual property;
- environment - quantitative management of water resources(Article III-130);
- flexibility clause (Article I-17)
- future accessions to the European Union.

One delegation also proposes that QMV on structural funds come into effect immediately.

5. The Commission proposes qualified majority voting in the Council for the following areas:

- measures to combat discrimination, the right to vote in European elections, association of the OCT, association agreements, Union accession to the European Convention on Human Rights;
- following a more precise definition of competencies: taxation relating to the operation of the internal market, namely modernisation and simplification of existing legislation, administrative cooperation, measures to combat tax evasion and avoidance and measures relating to the tax base applicable to companies, with the exclusion of tax rates; aspects of free movement of capital linked to combating fraud; environment related taxation; some aspects of social security; some measures relating to passports; the European Public Prosecutor's Office as it relates to protecting the Union's financial interests;

- by a specific date still to be determined: family law, police cooperation.

6. Other delegations consider that there are one or more areas where the Convention has been too ambitious, and propose in these areas a return to decisions by unanimity. These proposals cover the following areas:

- financial perspective (five delegations);
- modalities relating to the Union's own resources (six delegations);
- taxation (eight delegations) for some this covers not just Articles III-59 to 63, but all provisions which refer to tax measures);
- JAI:
 - evaluation procedure (Article III-161),
 - criminal law (five delegations, one delegation in part),
 - some aspects of police cooperation (two delegations),
 - asylum + immigration (one delegation);
- social policy (three delegations, for some this relates specifically to Article III-21 on social security);
- commercial policy (services in the social, health and education fields).

A return to unanimity in the following areas has been requested by at least one delegation in the following cases:

- structural funds (including after 2007);
- environment - quantitative management of water resources (Article III-130);
- social provisions (Article III-104);
- culture;
- ECJ statute (amending);
- commercial policy (addition of reference to agreements covering foreign direct investment and agreements relating to a field in which the Union has not yet exercised the powers conferred on it through the adoption of internal rules).

7. Some delegations are opposed to the bridging clause ("passerelle") which would allow the European Council acting unanimously to change the voting rules in a given area in Part III from unanimity to qualified majority. A few are also opposed to the bridging clause within the enhanced cooperation provisions.¹⁴

Following the collapse of the IGC in December 2003 the Irish Presidency held bilateral meetings with Member State and accession state governments between January and April 2004, with a view to securing agreement on the contentious areas. One of these was the extension of QMV. The British Government insisted on maintaining unanimity for Council voting in its 'red line' areas.¹⁵

¹⁴ <http://ue.eu.int/igcpdf/en/03/cg00/cg00038.en03.pdf>

¹⁵ See Standard Note SN/IA/2740, 7 November 2003 for information on 'red line' issues, at <http://hcl1.hclibrary.parliament.uk/notes/iads/sn-02740.pdf>

XI *Treaty Establishing a Constitution for Europe*

The text of the *Treaty Establishing a Constitution for Europe* (the European Constitution for short) was agreed at the IGC summit in Brussels on 17-18 June 2004. The consolidated text was published as CIG 86/04 on 25 June 2004 and can be accessed at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/misc/81243.pdf. It is based on CIG 50/03 of 25 November 2003 with corrigenda, CIG 81/04, 16 June 2004, and CIG 85/04, 18 June 2004.¹⁶

The Ordinary Legislative Procedure is set out in Article III-302, while Article I-24 defines the qualified majority in the European Council and the Council of Ministers as follows:

1. A qualified majority shall be defined as at least 55% of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65% of the population of the Union.
A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained.
2. By derogation from paragraph 1, when the Council is not acting on a proposal from the Commission or from the Union Minister for Foreign Affairs, the qualified majority shall be defined as at least 72% of the members of the Council, representing Member States comprising at least 65% of the population of the Union.
- 2a. Paragraphs 1 and 2 shall apply to the European Council when it is acting by a qualified majority. (Paragraph 3 is transferred to Article 2(1) of the Protocol on transitional provisions; paragraph 4 is transferred to Article IV-7a)
5. Within the European Council, its President and the President of the Commission do not vote.¹⁷

The following tables show how QMV will be applied. Part I articles state the general principles of Union policy or action, while Part III sets out detailed policies and voting mechanisms.

Qualified Majority Voting (with European Laws, Framework Laws or special procedures)	Present Procedure under TEC or TEU
PART I	
I-23(4): European Council to establish list of Council configurations other than Foreign Affairs Council (81/04)	New article
I-23(6): European Council to set	Article 203 TEC, unanimity

¹⁶ In the tables below these IGC documents are shown in brackets by each Constitution article, in order to show at which point in the IGC process they were proposed.

¹⁷ CIG 86/04, 25 June 2004 at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/misc/81243.pdf

conditions for rotation of Council Presidency (81/04)	
I-26(2): European Council proposal to EP for candidate for Commission President or for new candidate (85/04)	Article 214 TEC: QMV
I-27: European Council to appoint Foreign Affairs Minister (81/04)	New article
I-36: arrangements for control of implementing powers (50/03)	202 TEC: unanimity with EP opinion
I-41: approximation of national laws in Part III to achieve area of freedom, security and justice (50/03)	TEU Preamble and Article 2 TEU: Union objectives
I-46(4): determining procedures for citizens' initiative, including minimum number of Member States required (50/03)	New article
I-49(3) and (4): general principles and limits governing the right of access to Union documents and institutions' rules of procedure on access to documents (50/03)	Article 255 TEC (see Constitution III-305)
I-50(2): protection of personal data by Union institutions and by Member States when carrying out Union law (50/03)	Article 286 TEC: co-decision with QMV
I-52 (3) and (4): expenditure under Article III-318 (50/03)	Article 279 TEC (See Constitution Part III-318)
I-55: establishing budget under III-310 (50/03)	Article 272 TEC
I-59: conclusion of agreement with Member State wishing to withdraw from Union and with the Union, with EP consent (81/04)	New article
PART III	
III-6: defining principles and conditions, especially economic and financial, on which services of general interest should operate (81/04)	16 TEC: general statement on making sure that such services operate within the requirements of the Treaty
III-7: rules to prohibit discrimination on grounds of nationality (50/03)	12 TEC: co-decision with QMV
III-8(2): basic principles for incentive measures to support Member State action in III-8(1), excluding harmonisation (50/03)	13 TEC: co-decision with QMV
III-9(1): measures on freedom of movement	18 TEC: co-decision with QMV
III-11: diplomatic and consular protection measures, with EP consultation (50/03)	20 TEC: cooperation among Member States
III-19: freedom of movement for workers	40 TEC: co-decision with QMV

(50/03)	
III-21(1): freedom of movement for migrant workers – social security provisions (2) contains referral clause: if Member State thinks its own social security system would be affected, QMV procedure suspended and matter referred to European Council, which may refer draft back to Council or ask Commission to submit new proposal (81/04)	42 TEC: co-decision with unanimity
III-23: freedom of establishment as regards a particular activity (50/03)	44 TEC: co-decision with QMV
III-24: exempting activities from application of sub-section excluding “exercise of official authority” from freedom of establishment rules (50/03)	45 TEC: QMV
III-25: coordinate national provisions on treatment of foreign nationals (50/03)	46 TEC: co-decision with QMV
III-26: measures to make it easier for persons to take up and pursue activities as self-employed persons (50/03)	47 TEC: co-decision with QMV; unanimity in specific circumstances regarding training and conditions of access
III-29: measures to extend freedom to provide services within Union to third country nationals in the Union (50/03)	49 TEC: QMV
III-32: liberalisation of a specific service (50/03)	52 TEC: QMV
III-41: measures to strengthen customs cooperation between Member States and between M.S. and the Union (50/03)	135 TEC: co-decision with QMV
III-46(2): movement of capital to and from third countries involving direct investment, establishment, provision of financial services or admission of securities to capital markets (50/03)	57 TEC: QMV, but unanimity where step back regarding liberalisation in 57(2)
III-49: administrative measures regarding capital movements and payments (e.g. freezing funds, assets etc) (81/04)	60 TEC: QMV
III-65(1): approximation of Member State provisions for establishing and functioning of internal market, with ESC consultation, except for fiscal provisions, free movement of persons and rights of workers (50/03)	95 TEC: co-decision with QMV
III-66: measures to eliminate distortion of conditions of competition in the internal market (50/03)	96 TEC: QMV
III-68: provisions on uniform intellectual property rights protection, for authorisation, coordination and	New article

supervision of arrangements, except unanimity for sub-paragraph 2 on language arrangements for the above (50/03)	
III-71: rules for multilateral surveillance procedure for coordination of Member States' economic policies (50/03)	99 TEC: co-decision with QMV
III-79: amendments to ESCB and ECB Statutes (50/03)	107 TEC: QMV on ECB recommendation or unanimity on proposal from Commission and consultation of ECB. EP assent in both cases.
III-83: measures for use of EURO as single currency, with ECB consultation (50/03)	123(4) TEC: QMV with ECB consultation
III-101: incentive measures to encourage cooperation in employment through exchanges of information and best practice, comparative analysis, promoting approaches etc, excluding harmonisation (50/03)	129 TEC: co-decision with QMV
III-104(2): support and complementing measures for Member State activities in workers' conditions, rights etc, measures to encourage cooperation between Member States, exchange of information and best practice etc, minimum requirements for "gradual implementation" (must not hold back SMEs) (50/03)	137 TEC: co-decision with QMV, except unanimity for 137(1) (c), (d), (f) and (g), with possibility of <i>passerelle</i> to QMV for (d), (f) and (g)
III-100: measures to ensure principle and application of equal opportunities between men and women in pay and employment (50/03)	141 TEC: co-decision with QMV
III-113/114/115: implementing measures of European Social Fund (50/03)	146/147/148 TEC: co-decision with QMV
III-117: specific measures outside Structural Funds (50/03)	159 TEC: co-decision with QMV
III-119(1) and (2) defining tasks, priorities and organisations of Structural Funds and to set up Cohesion Fund, but first Cohesion Fund after entry into force of Constitution will be by unanimity (81/04)	161 TEC: unanimity; QMV after January 2007 if multiannual financial perspective adopted by then
III-120: implementing measures regarding the ERDF (50/03)	162 TEC: co-decision with QMV
III-127(2): common organisation of agricultural markets and other CAP and CFP measures (50/03)	Article 37 TEC: QMV with EP consultation
III-130(1): environment measures to	175, 176 TEC: co-decision with QMV,

achieve objectives in III-129, except unanimity for provisions primarily of a fiscal nature (2a) and general action programmes (3) (50/03)	except unanimity for provisions primarily of a fiscal nature, town and country planning, water resource management, land use (except waste management), measures significantly affecting choice of energy source and structure of energy supply.
III-132: consumer protection measures which support or supplement and monitor Member State policy (50/03)	153 TEC: co-decision with QMV
III-133/4: transport across Member States: conditions for non-state carriers to operate in Member State; improving safety, other appropriate measures (50/03). III-134(2): measures must take account of effects on standard of living (85/04)	Articles 70,71 TEC: co-decision with QMV, except unanimity for where serious effect on standard of living or employment
III-143: appropriate measures for sea and air transport (50/03)	80 TEC: QMV, but derogation as for 71
III-145: guidelines and measures for Trans-European Networks (TENs) (50/03)	155 TEC: coordination among Member States and with Commission
III-149(3) and (4): establishing programmes to implement multi-annual framework programme and establishing measures to implement European Research Area (81/04)	166 TEC: co-decision and QMV
III-150/151/152/153: rules for participation of undertakings, research centres, universities; rules for dissemination of research results for implementing multi-annual framework programme; for establishing supplementary programmes to the above; for participating in the above (50/03)	172 TEC: co-decision and QMV
III-155: measures for drawing up a European space policy (50/03)	New article
III-157: energy measures, except if primarily of a fiscal nature (85/04)	New article
III-166: measures on common visa policy, short-stay residence permits, border controls, freedom of third country nationals to travel in Union for short period; gradual establishment of integrated external border management; absence of internal border controls (50/03)	62 TEC: unanimity for 5-year transitional period under Article 67; then decision by unanimity to decide which areas to be decided by co-decision with QMV. Certain elements of this Article by QMV from entry into force of Amsterdam (May 1999). QMV for elements of 67(1), except for family law aspects
III-167: measures on: uniform status of asylum for third country nationals,	63(1) and (2), 64(2) TEC: unanimity for 5-year transition period, under Article 67

<p>uniform status of subsidiary protection for third country nationals, common system of temporary protection for displaced persons in the event of a massive inflow; common procedures for granting/withdrawing uniform asylum/subsidiary protection; standards for conditions for reception of asylum applicants; cooperation with third countries to manage inflows (50/03)</p> <p>III-168(2): measures on: conditions of entry/residence, standards for long-term visas/permits, including for family reunion; definition of rights of third country nationals living legally in Union; illegal immigration and residence in Union, including removal and repatriation; combating person trafficking, especially women and children (50/03)</p> <p>III-168(4): incentive and support measures to promote integration of legal third country nationals, excluding harmonisation (50/03)</p>	
<p>III-170: judicial cooperation in civil matters, especially for the proper functioning of the internal market (except for family law measures – see below) (81/04)</p>	65 and 66 TEC: as above
<p>III-171: judicial cooperation in criminal matters (81/04), except other aspects of criminal procedure identified by a European decision (50/03).</p>	31(1) TEU
<p>III-172: minimum rules on definition of criminal offences and sanctions in the areas of particularly serious crime with cross-border dimensions and (2), minimum rules regarding definition of criminal offences and sanctions in the area concerned, but with referral mechanism to European Council and possible withdrawal (81/04)</p>	New article
<p>III-173: measures to support Member States in crime prevention (50/03)</p>	New article
<p>III-174(2): Eurojust structure, operation, field of action, tasks, arrangement for EP and national parliament involvement in evaluating Eurojust activities, taking into account national rules and practices</p>	31(2) TEU: Council to encourage cooperation

regarding criminal investigations (85/04)	
III-176(2): police cooperation: collection, storage, processing, analysis and exchange of information; staff training and exchange, equipment research; common investigative techniques, but (3) operational cooperation between authorities by unanimity (50/03)	30(1) TEU: cooperation among Member States but under conditions and limitations laid down by Council for operations in another Member State (Article 32)
III-177: Europol's structure, operation, field of action and tasks; procedures for scrutiny by EP and national parliaments (50/03)	30(2) TEU: as above
III-179(4) and (5): public health measures to contribute to objectives of safety of organs, substances of human origin, blood etc; veterinary and phytosanitary measures, and incentive measures to combat major cross-border health scourges, including tobacco use and abuse of alcohol (81/04)	152 TEC: co-decision with QMV
III-180: support measures to achieve competitiveness, excluding harmonisation (50/03)	157 TEC: co-decision with QMV
III-181: incentive actions to encourage cooperation between Member States in cultural matters, conservation of cultural heritage, exchanges, artistic and literary creation, excluding harmonisation (50/03)	151 TEC: co-decision with unanimity
III-181a: measures in tourism to complement Member State action (excluding harmonisation) (81/04)	New article
III-182: incentive actions in education, exchanges, cooperation, mobility, development of sport, distance learning, excluding harmonisation (50/03)	149 TEC: co-decision with QMV
III-183: measures to improve vocational training (50/03)	150 TEC: co-decision with QMV
III-184: measures to encourage cooperation in civil protection, to protect against man-made and natural disasters, excluding harmonisation (50/03)	New article
III-185: measures to help Member States to implement Union law (50/03)	New article
III-201(2): Council adoption of decision defining Union action or position (81/04)	23 TEU: QMV for decisions adopting a Union action or position
III-213(2): Council decision on permanent structured cooperation and list of participating Member States after consulting Foreign Affairs Minister	New article

(81/04) III-213(3): Council will confirm participation of Member State fulfilling the criteria for permanent structured cooperation (81/04) III-213(4): Council may suspend a Member State from a structured cooperation (81/04)	
III-217: measures to implement the Common Commercial Policy (50/03) and (7) negotiating and concluding agreements with one or more states or international organisations (81/04)	133 TEC: QMV; but unanimity for agreements where provisions require unanimity for internal rules or where Community does not have conferred powers; by unanimity for agreements on intellectual property
III-219: measures to implement the development cooperation policy (50/03)	179 and 181 TEC: co-decision with QMV; unanimity when internal rules are decided by unanimity
III-221: measures to implement economic, financial and technical cooperation, especially aid, with third countries other than developing countries (50/03)	181a TEC: QMV, but unanimity for association and accession agreements
III-223: measures defining framework in which Union's humanitarian operations are implemented	New article
III-224: measures breaking economic or financial relations with a third country on proposal from Foreign Affairs Minister (81/04)	301 TEC: QMV
III-227: concluding agreements to which the ordinary legislative or special legislative procedure applies (50/03) and (8): adoption of agreements with third parties: QMV in procedure but unanimity where there is a unanimity requirement for the adoption of a Union act in that area, also for Association Agreements and others in III-221 (85/04) III-235: EP right of inquiry: EP own initiative with Council and Commission approval (50/03)	300 TEC: QMV, with certain provisions for unanimity (see above) 193 TEC: common accord of EP, Council and Commission
III-264: establish specialised Court attached to High Court (Former CFI); rules on organisation and jurisdiction of Court (50/03)	225a TEC: unanimity
III-268: giving ECJ unlimited jurisdiction regarding penalties (50/03)	229 TEC: EP and Council to adopt under Treaty provisions
III-289: amend ECJ Statute, except title 1	245 TEC: unanimity

and Article 64 (50/03)	
III-289a and (2)b: European Council to appoint executive board of ECB and President, Vice-President, and executive board (81/04)	112, 113 TEC: common accord of heads of state or government
III-299: amending Articles 4, 11, 12, 18(5) of European Investment Bank Statute (50/03)	266 TEC: unanimity with EP consultation
III-304: establish provisions for an open, efficient, independent European administration to support institutions, bodies, offices and agencies of the Union (50/03)	New article
III-309: establishing Union budget	272 TEC: QMV special procedure
III-310(5): joint text with EP on law establishing budget (81/04)	272 TEC: QMV special procedure
III-318: procedure for adopting and implementing budget and auditing accounts; rules for checking responsibilities of financial actors, especially authorising and accounting officers (50/03)	279 TEC: unanimity, with EP consultation. QMV after January 2007
III-321: measures to combat fraud against the financial interests of the Union (50/03)	280 TEC: co-decision with QMV
III-330: application of Constitution to certain regions (Guadeloupe, Azores, French Guiana and others) (50/03)	299 TEC: QMV
III-333: staff regulations of officials and conditions of employment of other servants of the Union (50/03)	283 TEC: QMV
III-335: measures for the production of statistics (50/03)	285 TEC: co-decision with QMV

European Laws or Framework Laws with Unanimity

Constitution Article	Present TEC/TEU Article
I-53(3): system of Own Resources, with EP consultation and national ratification	Article 269 TEC: unanimity with EP opinion and national ratification
I-54: laying down Multi-annual Financial Framework, with EP consent (85/04)	Inter-institutional agreement
III-8(1): measures to combat discrimination based on sex, racial or ethnic origin, religion, belief, disability, age or sexual orientation, with EP consent (50/03)	13 TEC
III-9(2): measures on passports, ID cards, residence permits etc concerning social	18 TEC

security or social protection, with EP consultation (50/03)	
III-13: adding to rights in I-8 (combating discrimination) with EP consent and national ratification	22 TEC
III-46(3): measures that are a 'step back in Union law regarding liberalisation of movement of capital to and from third countries, with EP consultation (50/03)	57 TEC
III-62: harmonising legislation on turnover taxes, excise duties, other indirect taxation if necessary for establishment or functioning of internal market, with EP/ESC consultation (50/03)	93 TEC
III-76: unanimity to amend Protocol on excessive deficits procedure, with EP/ECB consultation (50/03)	104 TEC
III-77(6): conferral on ECB of tasks on the prudential supervision of credit institutions and other financial institutions, except insurance undertakings, by unanimity with EP and ECB consultation (81/03)	105 (6)TEC:
III 130/131: QMV for III-129: as above, but unanimity for (a) measures provisions primarily of a fiscal nature; (b) measures affecting: (i) town and country planning; (ii) quantitative management of water resources or affecting, directly or indirectly, the availability of those resources; land use, with the exception of waste management (50/03)	175/6 TEC:
III-157: energy measures: unanimity if primarily of a fiscal nature (85/04)	New article
III-170: European decisions on aspects of family law with cross border implications. (81/04)	New article
III-175: establishing the European Public Prosecutor Office from Eurojust, with EP consent (81/03)	New article
III-178: conditions and limitations for Member State authorities to operate in other Member State territory	32 TEU
III-191: rules and procedures for association of countries and territories with the Union (50/03)	187 TEC
III-232(1): measures for EP elections with uniform procedure, with EP consent	190 TEC

and national ratification (50/03) and (2) unanimity for any regulations and conditions for MEPs' duties relating to tax (50/03)	
III-299: amending ECB Statute with EP/ECB consultation (81/03)	266 TEC
III-310: arrangements for voting in/standing for EP and municipal elections for non-nationals of Member State (50/03)	19 TEC

Passerelle articles

The Constitution contains so-called *passerelle* or 'bridging' clauses, allowing the Council to decide by unanimity to move to QMV for aspects of environmental and social policy, judicial cooperation and enhanced cooperation. There is also a general *passerelle* Article, IV-7a, which allows the European Council to decide unanimously to move to the ordinary legislative procedure, after consulting the European Parliament and informing national parliaments.

I-54: European Council may adopt by unanimity a decision allowing the Council to act by QMV on the multi-annual financial framework (85/04)	270/1 TEC
III-104: Council may decide by unanimity to allow ordinary legislative procedure for III-104 (d), (f) and (g) (protection of workers whose contract has been terminated; collective defence of workers; conditions of employment for third country nationals in Union) (50/03)	137TEC
III-130/31: Council may unanimously adopt European decision making the ordinary legislative procedure applicable to first sub-paragraph of III-129 (environmental protection)	175/6 TEC
III-170(3): judicial cooperation in civil matters: European decision by unanimity determining aspects of family law with cross-border implications which may be subject of acts adopted by ordinary legislative procedure	New article
III-328(1): enhanced cooperation (85/04), move from unanimity to QMV and from special legislative procedure to ordinary legislative procedure	New article
IV-7a: simplified procedure for revising the Constitution. European Council may	New article

authorise by a unanimous decision the Council to act by QMV rather than unanimity, except for military and defence matters (81/04)	
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Appendix: UK Voting in the Council of Ministers

The Council of Ministers does not always record votes and when there is an indication that Member States intend to reject the proposal (in the Council or in the Committee of Permanent Representatives - COREPER) to the extent that a proposal might not be adopted, discussion usually continues until there is a greater degree of certainty on the adoption of the measure. The act will then be adopted without a formal vote being taken. For this reason it is difficult and probably inaccurate to give figures for voting records, where formal votes represent a minority of the decisions taken in the Council or of those that are made public.

However, the monthly summaries of legislative acts published by the Council indicate where Member States have objected or abstained (abstention counts as a vote against in QMV decisions) in the definitive adoption by QMV of an EC legislative act. The following tables show when the UK voted against or abstained from voting (from April 1999).¹⁸ The subject matter of the legislation is footnoted in each case.

Month/year	UK vote against or abstention
1999	
April	abstained ¹⁹
May	-
June	-
July	-
August	-
September	-
October	-
November	-
December	abstained; ²⁰ abstained ²¹
2000	
January	-
February	-
March	-
April	abstained ²²

¹⁸ Including Council/Council & EP Regulations, Directives, Decisions; excluding Council Common Positions, Opinions, Resolutions, Recommendations and Joint Actions.

¹⁹ Council Regulations (a) amending and correcting Regulation (EC) No 2200/96 on the common organisation of the market in fruit and vegetables, No. 6422/99 .

²⁰ Council Regulation amending Regulation 1251/99 establishing a support system for producers of certain arable crops

²¹ Council Regulation laying down detailed rules and arrangements regarding Community structural assistance in the fisheries sector.

2000

May	-
June	against ²³
July	-
August/September	-
October	-
November	-

2001

January	against ²⁴
February	-
March	-
April	-
May	-
June	-
July	-
August	-
September	-
October	abstained ²⁵
November	-
December	against ²⁶ abstained ²⁷

2002

January	-
February	abstained ²⁸ against ²⁹ against ³⁰
March	abstained ³¹
April	-

²² Council Regulation supplementing Annex to Commission Regulation (EC) No. 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Regulation (EEC) No. 2081/92.

²³ Council Regulation fixing certain sugar prices and the standard quality of beet for the 2000/2001 marketing year.

²⁴ Council Regulation amending Regulation (EEC) No 404/93 on the common organisation of the market in bananas 14442/00

²⁵ Council Regulation amending Regulation (EC) No723/97 on the implementation of Member States' action programmes on control of EAGGF Guarantee Section expenditure

²⁶ Directive of the European Parliament and of the Council amending Council Directive 79/373/EEC on the circulation of compound feeding stuffs and repealing Commission Directive 91/357/EEC

²⁷ Council Directive relating to honey

²⁸ Council Decision on the granting of exceptional national aid by the Government of the French Republic for the distillation of certain wine sector products 6182/02

²⁹ Council Regulation imposing a definitive anti-dumping duty on imports of certain magnetic disks (3,5" microdisks) originating in Hong Kong and the Republic of Korea

³⁰ Council Regulation imposing a definitive anti-dumping duty on imports of certain magnetic disks (3,5" microdisks) originating in Japan and the People's Republic of China and terminating the proceeding in respect of imports of 3,5" microdisks originating in Taiwan

³¹ Council Regulation fixing the premiums and guarantee thresholds for leaf tobacco by variety group and Member State for the 2002, 2003 and 2004 harvests and amending Regulation (EEC) No 2075/92 7099/02 45/02

2002

May	-
June	abstained ³² against ³³ against ³⁴ abstained ³⁵ against ³⁶ abstained ³⁷
July/August	-
September	-
October	-
November	-
December	abstained ³⁸ against ³⁹

2003

January	-
February	-
March	against ⁴⁰
April	abstained ⁴¹
May	-
June	against ⁴² abstained ⁴³
July	abstained ⁴⁴ against ⁴⁵

-
- ³² Directive of the European Parliament and of the Council on the reduction of the level of pollutant emissions from two and three-wheel motor vehicles and amending directive 97/24/EC
- ³³ Council Regulation concerning a temporary defensive mechanism to shipbuilding 10285/02 + COR 1
- ³⁴ Council Regulation imposing a definitive anti-dumping duty on imports of certain ring binder mechanisms (RBM) originating in Indonesia and terminating the anti-dumping proceeding in respect of imports of certain RBM originating in India
- ³⁵ Council Regulation imposing a definitive countervailing duty on imports of certain ring binder mechanisms (RBM) originating in Indonesia and terminating the anti-subsidy proceeding in respect of imports of certain RBM originating in India
- ³⁶ Council Regulation imposing a definitive anti-dumping duty on imports of powdered activated carbon (PAC) originating in the People's Republic of China
- ³⁷ Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of recordable compact disks originating in Taiwan
- ³⁸ Decision of the European Parliament and of the Council adopting an action programme for customs in the Community (Customs 2007)
- ³⁹ Council Regulation fixing for 2003 and 2004 the fishing opportunities for deep sea fish stocks
- ⁴⁰ Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products
- ⁴¹ Council Regulation amending Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs
- ⁴² Decision of the European Parliament and of the Council on computerising the movement and surveillance of excisable products
- ⁴³ Council Regulation amending Regulation (EC) No 1255/97 as regards the use of staging points
- ⁴⁴ Directive of the European Parliament and of the Council amending Council Directive 96/22/EC concerning the prohibition on the use in stock farming of certain substances having a hormonal or thyrostatic action and of beta-agonists

2003	
July	against ⁴⁶
August	-
September	-
October	abstained ⁴⁷
November	abstained ⁴⁸
December	-
2004	
January	against ⁴⁹
February	abstained ⁵⁰
March	-

Between June and September 2003 John Bercow asked Government Departments about their voting behaviour in the Council of Ministers, with a view to establishing how often they had been out-voted since 1997. For the most part, the Government declined to answer the whole question on grounds of disproportionate cost, giving details where available for the preceding 3-4 years. The main question was as follows, although some were less detailed:

Mr. Bercow: To ask the Secretary of State for [...] on (1) how many occasions since May 1997 the Department's vote in the Council of Ministers against a legislative proposal (a) was and (b) was not sufficient to achieve with other member states a blocking minority;

(2) on how many occasions since May 1997 the Department abstained in the Council of Ministers on a legislative proposal which was passed by qualified majority voting;

(3) on how many occasions since May 1997 the Department has been outvoted by qualified majority voting in the Council of Ministers; and if she will list the legislation by year;

(4) on how many occasions since May 1997 the Department indicated dissent from a proposal in the Council of Ministers but did not register a vote or abstention.

The answers were as follows:

1. Trade and Industry

⁴⁵ Regulation of the European Parliament and of the Council concerning traceability and labelling of genetically modified organisms and traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC

⁴⁶ Regulation of the European Parliament and of the Council on genetically modified food and feed

⁴⁷ Regulation of the European Parliament and of the Council on smoke flavourings used or intended for use in or on foods

⁴⁸ Council Regulation amending Regulation (EEC) No 1907/90 on certain marketing standards for eggs

⁴⁹ Regulation of the European Parliament and of the Council establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91

⁵⁰ Regulation of the European Parliament and of the Council establishing the European Network and Information Security Agency

Ms Hewitt: It is not possible to identify these occasions when a blocking minority has been assembled against a proposal in the Council of Ministers; it is agreement that triggers the recording of a vote. For the same reason it is not possible to identify these occasions when the UK indicated dissent without abstaining or voting against the proposal.

It is good practice for the UK to work closely with the other member states and the Commission to influence and have our views taken into account prior to any vote at the Council of Ministers.⁵¹

2. Education and Skills

Alan Johnson: We are unable to provide statistics on the details of the Department's vote in the Council of Ministers for the period before 1999 as this information is available only at disproportionate cost. Since January 1999, as far as we have been able to verify, there have been no occasions where the Department has been outvoted by qualified majority voting in the Council of Ministers.⁵²

3. Environment, Food and Rural Affairs

Mr. Bradshaw: The Department does not hold information in the form requested prior to 1999. This information could be assembled only at disproportionate cost. On three occasions since 1999 this Department and its predecessors has been outvoted by qualified majority voting. A list of the relevant legislation by year is as follows:

2000:

Council Regulation 8942/00--fixing certain sugar prices and the standard quality of beet for the 2000-01 marketing year.

Council Regulation 13657/00--amending Regulation (EC) No. 2200/96 on the common organisation of the market in fruit and vegetables,

Regulation (EC) No. 2201/96 on the common organisation of the market in processed fruit and vegetables and Regulation (EC) No.

2202/96 introducing a community aid scheme for producers of certain citrus fruits.

2001:

Council Regulation 14442/00--amending Regulation (EC) No. 404/93 on the common organisation of the market in bananas.⁵³

4. Defence

Mr. Caplin: Although Defence Ministers meet regularly to discuss defence issues as part of the General Affairs and External Relations Council, they are not involved in legislation. Decisions on the common strategies, common positions

⁵¹ HC Deb 1 September 2003 c 696-7W

⁵² HC Deb 11 July 2003 c1034W

⁵³ HC Deb 10 July 2003 c910-1W

and joint actions which the European Council may adopt in support of its Common Foreign and Security Policy require unanimity.⁵⁴

5. Solicitor General

The Solicitor-General: The Law Officers do not attend meetings of the Council of Ministers as the Law Officers do not have the policy lead on any matters debated there. Therefore, the Law Officers have not been involved in any vote in the Council of Ministers since May 1997.⁵⁵

6. Work and Pensions

Mr. Pond: Information for the period before 1999 is not available and could be obtained only at disproportionate cost. Since January 1999, there have been no occasions where the Department has been outvoted by qualified majority voting in the Council of Ministers.⁵⁶

7. Constitutional Affairs

Mr. Lammy: On no occasion in the period in question has a measure in the area of responsibility of the former Lord Chancellor's Department been adopted against the wishes of the United Kingdom delegation, nor has it been necessary to participate in a blocking minority in the Council of Ministers.⁵⁷

8. Home Office

Caroline Flint: There are limited areas in the Justice and Home Affairs Council which are subject to qualified majority voting (QMV). Since 1999 and for those measures in Title IV of the Treaty on the European Community subject to QMV where the UK has opted into their adoption, no measures have been adopted with the UK abstaining, outvoted or part of a blocking minority. All measures in Title VI of the Treaty on European Union are adopted by unanimity. Information for the years 1997-99 is available only at disproportionate cost.⁵⁸

9. Cabinet Office

Mr. Alexander: The Department has not been outvoted by qualified majority voting in the Council of Ministers since May 1997. The Minister for the Cabinet Office does not attend meetings of the Council of Ministers, as the Department does not have the policy lead on any issues debated there.⁵⁹

⁵⁴ HC Deb 10 July 2003 c934-5W

⁵⁵ HC Deb 10 July 2003 c959W

⁵⁶ HC Deb 10 July 2003 c975W

⁵⁷ HC Deb 10 July 2003 c993W

⁵⁸ HC Deb 8 July 2003 c719-20W

⁵⁹ HC Deb 3 July 2003 c383-4W

10. Transport

Mr. Jamieson: Since March 1999, on three occasions. These were as follows:

In 2001:

Common Position adopted by the Council with a view to adoption of a Directive of the European Parliament and of the Council concerning the organisation of working time for mobile workers performing road transport activities. (Written procedure completed 23 March 2001, UK abstaining.)

In 2002:

Directive of the European Parliament and of the Council on the reduction of the level of pollutant emissions from two and three-wheel motor vehicles and amending Directive 97/24/EC. (Fisheries Council, 11 June 2002, UK abstaining.)

Common Position adopted by the Council with a view to adoption of a directive of the European Parliament and of the Council amending Council Directive 92/6/EEC on installation and use of speed limitation devices for certain categories of motor vehicles in the

Community. (Environment Council, 25 June 2002, UK voting against.)

Information for the earlier years is available only at disproportionate cost.⁶⁰

11. International Development

Mr Benn: There has been no occasion since January 1999 and information for 1997 and 1998 could be obtained only at disproportionate cost.⁶¹

12. Deputy Prime Minister

Phil Hope: Since the Office of the Deputy Prime Minister was created in May 2002, there have been no occasions when the Department has been involved in voting in the Council of Ministers.⁶²

13. Treasury

John Healey: The position and voting record of the UK on matters discussed by the ECOFIN Council and the ECOFIN (Budget) Council are set out in the statements made to Parliament after each Council meeting. In addition, the General Secretariat of the Council of the European Union publishes a monthly document listing legislative and non-legislative acts of the Council, including the results of votes, explanations of voting and statements for the minutes when the Council is acting in its capacity as legislator. This record is published on the Council's website at: <http://register.consilium.eu.int/isoregister/frames/introacfsEN.htm>.⁶³

⁶⁰ HC Deb 3 July 2003 c384-5W

⁶¹ HC Deb 2 July 2003 c300W

⁶² HC Deb 2 July 2003 c357-8W

⁶³ HC Deb 26 June 2003 c932W

14. Health

Mr. Hutton: Since 1997, our records indicate that the United Kingdom Government has only voted against a legislation proposal once in the Health Council and subsequently, the health element of the Employment, Social Policy Health and Consumer Affairs Council. This was for the Advertising and Sponsorship of Tobacco Products Directive in 2002, the text of which we believed could have been clearer and could have gone further. We were outvoted, by a qualified majority, and the measure was adopted. We have not abstained or indicated dissent on a proposal in that time.⁶⁴

15. Culture, Media and Sport

Mr. Caborn: This Department has not been outvoted by Qualified Majority Voting in the Council of Ministers.⁶⁵

16. Foreign and Commonwealth Office

Mr Bercow To ask the Secretary of State for Foreign and Commonwealth Affairs, on how many occasions since May 1997 the Department has been outvoted by qualified majority voting in the Council of Ministers; and if he will list the legislation by year.

Mr MacShane: None⁶⁶

⁶⁴ HC Deb 25 June 2003 c826-7W

⁶⁵ HC Deb 20 June 2003 c447W

⁶⁶ HC Deb 11 June 2003 c919W