Qualified Majority Voting: the Argument and the Agreement

Research Paper 94/51

31 March 1994

This paper replaces Research Paper 94/47 of 15 March 1994 (Qualified Majority Voting and the Blocking Minority) and Research Paper 94/49 of 28 March 1994 (Qualified Majority Voting: the "Ioannina Compromise"). It considers some of the issues at the centre of the debate on the Qualified Majority Voting threshold and looks at the implications of the agreement on the blocking minority vote at Ioannina on 26-27 March. Additional information is provided on the relationship of votes to populations, the extension of QMV with further enlargement of the Union, the status of the Luxembourg Compromise and the recent working of QMV in the Council of Ministers.

Vaughne Miller **Richard Ware**

International Affairs and Defence Section

House of Commons Library

Contents

*** Statistics provided by Robert Twigger, Economic Policy and Statistics Section**

EUROPEAN COMMUNITIES

Other Papers in this subject area include:

94/49	**Qualified Majority Voting: the "Ioannina Compromise"**
94/47	**Qualified Majority Voting and the Blocking Minority**
94/28	**New European Constituencies: Census & Election Statistics**
94/23	**Votes and Seats for European Parliament Elections**
94/10	**International Human Rights Conventions**
93/90	**The European Economic Area Bill: extending the Single Market**
93/86	**The European Community and the challenge of enlargement**

GOVERNMENT & PARLIAMENT

94/35	**Quangos and Non Departmental Public Bodies**
94/34	**Intelligence Services Bill [HL] Bill 49 of 1993-94**
94/21	**Confidence Motions**

Introduction

In the course of finalising the enlargement negotiations for the four EU applicant states, Austria, Finland, Norway and Sweden, the question of institutional adjustments to accommodate a larger Union became an area of major disagreement. The debate centred on the weighting for Qualified Majority Voting (QMV) and more specifically on the number of votes required in the Council of Ministers to form a blocking minority which can veto a Council decision on a proposal from the Commission. After failing to reach an agreement at the Brussels European Council in December 1993 and at Council of Ministers meetings in early March, European Union Foreign Ministers finally agreed on a compromise arrangement at a meeting in Ioannina, Greece, on 26-27 March 1994. The Declaration agreed at Ioannina set the QMV threshold at 64 votes, but with a significant qualification set out in a Council Decision and a pledge to examine the weighted votes and the QMV threshold at the 1996 review Intergovernmental Conference. Member states were required to respond to this Declaration by the evening of 29 March and all member states notified the presidency that they accepted the proposal. The text of the Declaration is in Appendix B on pages 24-25.

This paper will consider the background to QMV, its use and effectiveness, and the political and legal issues surrounding the Ioannina compromise. It will also look at the so-called "Luxembourg Compromise", which, although rarely used, has been regarded as the ultimate power of veto in cases where very important national interests are at stake.

I The Treaty Basis for Qualified Majority Voting and Amendment/Accession Procedures

Article 148(2) of the Treaty of Rome sets out the voting arrangements for QMV and any amendments to this will require an amendment to the Treaties. As Article 148(2) currently stands, a proposal backed by the Commission is carried by 54 votes out of a total of 76; without a proposal from the Commission a decision may still be carried by 54 votes, but these must be cast by at least 8 of the 12 member states.

All the details of the treaty whereby Austria, Finland, Norway and Sweden would join the European Union in 1995 have now been agreed and the QMV threshold of 64 votes agreed at Ioannina will be included in the Accession Treaty for the applicant states under Article O of the Maastricht Treaty (which replaced Article 237 of the Treaty of Rome). The compromise on the blocking minority will not be in the treaty text and the legal basis for its application are discussed in Section V.

The treaty will require separate ratification by all the member states, which in the UK will necessitate legislation to amend the European Communities Act 1972 with the full parliamentary process. The procedure would be similar to that for the Maastricht Treaty and earlier accession treaties which were applied in the UK by Acts amending the European Communities Act 1972.

The Council of Ministers hopes that the European Parliament will now be able to give its assent to the enlargement applications under Article 0 of the Treaty on European Union on 4 May 1994 so that the accessions can take place on 1 January 1995 as planned. Under the normal UK scrutiny procedure it would be open to the European Legislation Select Committee to recommend that the accession treaty be debated on the floor of the House.

Assuming that the EP gives its assent to the accession treaty, it will be submitted for ratification by all the contracting parties "in accordance with their respective constitutional requirements" (Article 0). At that point UK legislation to amend the European Communities Act 1972 will be needed.

II Weighting of Votes in Qualified Majority Voting: the Current Situation

Article 148(2) currently sets out the allocation of votes for each member state for voting in those areas "Where the Council is required to act by a qualified majority", as follows:

Belgium	5
Denmark	3
Germany	10
Greece	5
Spain	8
France	10
Ireland	3
Italy	10
Luxembourg	2
Netherlands	5
Portugal	5
United Kingdom	10

The votes are weighted roughly according to the population of member states but are disproportionately weighted in favour of the smaller states. QMV requires 54 votes out of

the total of 76 on a proposal from the Commission. On the rare occasions when the Council acts on a different basis, when it determines the salaries of Commissioners, for example, the 54 votes in favour must be cast by at least eight members, so any five member states could form a blocking minority. Abstention has the same effect as a vote against.

A blocking minority is therefore currently formed by 23 votes against or abstaining. This could be formed for example by two "large" member states with 10 votes each and one with 5 or 3 votes or one large member state together with one with 8 votes and one with 5. (Unanimity is required for the amendment of a Commission proposal, except to agree a joint text under the new co-decision procedure (Article 189(a)(I) of Maastricht).

In 1989, when the SEA had been in force for three years, the Foreign Affairs Select Committee considered *inter alia* the occasions on which the UK had been outvoted on issues where QMV had been introduced. At that time there were three such occasions, two of them concerning the same issue, the use of emulsifiers as food additives, and one on the labelling of tobacco products. On both occasions the UK was outvoted in the Health Council. It is difficult to obtain statistics setting out the legal basis for voting in the Council or details of votes since much of its work has, until recently, been carried out *in camera*. In reply to a question on QMV and the position of the UK in Council votes in 1992, Baroness Chalker said:

> The Council and Commission adopted 1,526 regulations and 122 directives in 1992. There are no available statistics identifying which of those measures were adopted on a legal basis requiring qualified majority voting as opposed to unanimity. I can, however, confirm that the United kingdom was not outvoted in any case where a measure was adopted by a qualified majority in 1992.
>
> (HL Deb, 12 October 1993, WA17)

QMV has meant that the decision-making process has been speeded up where it might otherwise have ground to a halt because of lack of agreement or because of the increase in legislation emanating from the EC since the SEA, mainly to complete the single market. QMV has made it impossible for the small states, singly or in combination, to block decisions favoured by all the large states. Often, in practice, voting has been avoided altogether and packages of decisions have been taken involving negotiated trade-offs. There have also been occasions when the small states have used their voting power to swing the balance when the larger states have not reached a consensus. This situation has helped to maintain a balance between the larger and smaller members which the smaller ones are reluctant to alter.

Following a decision at the European Council summit in Edinburgh in December 1992, the Council of Ministers has begun to publish details of voting, except where such publication would damage the interests of member states, the Council or the Community, and this may make it easier in future to identify voting patterns and the use of blocking minority votes. Details of voting records in the official press releases of the Council of Ministers since 4 October 1993 are given in Appendix C of this paper.

III The Debate on the Blocking Minority

A. Votes for the Applicant States

The European Council in Brussels in December 1993 agreed to maintain the current weighting of votes for existing member states whilst allocating additional votes for the four applicant states. No decision was reached as to how the blocking minority would be calculated but the General Affairs Council was asked "to determine the threshold for the qualified majority of votes within the Council in the context of finalising the enlargement negotiations" (Brussels Conclusions, December 1993). The Brussels summit allocated weighted votes as follows:

Austria	4 votes
Sweden	4 votes
Norway	3 votes
Finland	3 votes

This would increase the total number of votes from 76 to 90. As the Prime Minister pointed out in his statement to the House of Commons on 29 March (HC Deb, 29 March 1994, c.797), if Article 148 were not amended, the QMV threshold would remain at 54 votes, but out of a total of 90, and the blocking minority would then be 37.

Britain argued that the principle of a *pro rata* increase in the number of votes required for a blocking minority from 23 to 27 would be undemocratic since it might allow larger states or a grouping such as Britain, Germany and the Netherlands comprising 154 million people to be out-voted by a grouping of small states representing only 45 million people. The UK argued that there should be a stricter correlation between votes and population. At the very least this would imply retaining the status quo in QMV arrangements with the current distribution in favour of the smaller states. However, if a strict correlation were applied, Germany, by far the biggest EU state with almost 80 million people, would have been allocated 18 votes of the 76 votes allocated among the 12 member states or 19 votes out of 90 among the Union of sixteen. In the latter scenario the UK would receive 14 votes, Ireland

would have just one vote and Luxembourg would not qualify for a vote at all. A change such as this would enhance UK influence in the Council but not to the same degree as it would Germany. In any case it would be contrary to the ethos of the Community voting mechanisms which have sought on the one hand to preserve the interests of the smaller countries and on the other to prevent one or two large member states from dominating the rest. Compromises could be sought which could preserve these principles while tilting the mechanism a little further towards proportionality. A British refusal to agree to blocking minority arrangements that would have delayed the accession of the applicant states might damage the country's reputation in the Union given the earlier agreement in the Council on accession provisions and Britain's longstanding support for enlargement in principle.

B. The Arithmetic

All four applicant states would be considered as "small" member states and this would somewhat alter the balance of power between the larger and smaller members. The share of votes of the five big countries (including Spain, which has 8 votes) is at present 48 out of 76, or 63 per cent of the total. With the new additions this would fall to 48 out of 90 votes which would represent 53 per cent of the total, although still an absolute majority of available votes.

The current blocking minority of 23 votes represents 30.3 per cent of the total number of votes. For this percentage to be approximately maintained, the blocking minority would have to be raised on a *pro rata* basis to 27 votes (30 per cent of the total of 90 votes) and could be achieved by combinations involving more smaller states than is now the case. Possible combinations could include 3 large countries or 2 large and 2 small, or 8 small countries. It would also mean that a combination of two large and one small member state would no longer be sufficient to block measures. The increase would mean that a combination of smaller states would technically have greater voting power than two large states together representing 40 per cent of the total population of the Union.

The Prime Minister made this point in his statement on 29 March (c.802) when he said:

> "When we joined the Community, the blocking minority was 30 per cent of population; 27 is now over 40 per cent ..."

The following tables illustrate this point.

i. Qualified Majority Voting in 1973 (rounded to nearest percentage point)

Country	**Population 1973 (millions)**	**Population 1973 (share of total)**	**Votes**
Total votes			58
QMV			41
Blocking minority			18
Germany (West)	62.0	24%	10
United Kingdom	56.2	22%	10
Italy	54.8	21%	10
France	52.1	20%	10
Netherlands	13.4	5%	5
Belgium	9.7	4%	5
Denmark	5.0	2%	3
Ireland	3.1	1%	3
Luxembourg	0.4	0%	2
Total	**256.7**	**100%**	**58**

In 1973 the largest proportion of the Community population which could have failed to form a blocking minority and would therefore have been outvoted was formed by a combination of West Germany, the Netherlands and Luxembourg. Their total votes in the Council amounted to 17 and their combined populations represented just over 29 per cent of the total EC population.

ii. Qualified Majority Voting in 1995 (rounded to nearest percentage point)

Country	**Population 1992 (millions)**	**Population 1992 (share of total)**	**Votes**
Total votes			90
QMV			64
Blocking minority			27
Germany	80.6	22%	10
Italy	57.9	16%	10
United Kingdom	57.8	16%	10
France	57.4	15%	10
Spain	39.1	10%	8
Netherlands	15.2	4%	5
Greece	10.4	3%	5
Belgium	10.0	3%	5
Portugal	9.3	3%	5
Sweden	8.7	2%	4
Austria	7.9	2%	4
Denmark	5.2	1%	3
Finland	5.0	1%	3
Norway	4.3	1%	3
Ireland	3.5	1%	3
Luxembourg	0.4	0%	2
Total	**372.7**	**100%**	**90**

In 1995, assuming a blocking minority vote of 27, the largest proportion of the population which could fail to form a blocking minority and therefore be outvoted would be formed from a combination of Germany, Italy, Denmark and Finland. Their total votes in the Council will amount to 26 and their combined populations will represent about 40 per cent of the total EU population.

However, it should be added that even at this stage the exact nature of enlargement of the Union is not certain. Even now that the voting procedures have been agreed and the problems with Norway over fisheries appear to have been resolved, it is not clear whether referendums will produce a positive vote for entry and so allow all four to accede at the same time on 1 January 1995. This would have an impact on the QMV threshold, as Foreign Office Minister Baroness Chalker explained in a written answer on 30 March:

> "If one or more of the applicants failed to accede to the European Union, the effect on an agreement about the number of votes needed to block a proposal would depend on what the EU had decided on the issue. The Council would have to amend the qualified majority voting article, along with a number of other articles, of the Act of Accession, annexed to the Accession treaty".
>
> (HL Deb, 30 March 1994, WA53)

IV Previous Enlargements

The weighted voting arrangements in the Council of Ministers have been adjusted on a *pro rata* basis on each occasion for earlier enlargements. When the Community was set up by the Treaty of Rome in 1957, the original six member states had the following weighted votes in the Council:

Belgium	2
France	4
Germany	4
Italy	4
Luxembourg	1
Netherlands	2

Of a total of 17 votes, 12 votes were needed for a qualified majority (or 12 votes cast by at least 4 members on proposals other than from the Commission). The blocking minority was

therefore 6 votes or 35.3 per cent of the total.

When the UK, Ireland and Denmark joined in 1973, the arrangements were adjusted as follows:

Belgium	5
Denmark	3
Germany	10
France	10
Ireland	3
Italy	10
Luxembourg	2
Netherlands	5
UK	10

Out of a total of 58 votes, 41 votes were needed for a qualified majority (or 41 votes cast by at least 6 member states...). The blocking minority was therefore 18 votes or 31 per cent of the total.

When Greece joined in 1981, the arrangements were as follows:

Belgium	5
Denmark	3
Germany	10
Greece	5
France	10
Ireland	3
Italy	10
Luxembourg	2
Netherlands	5
UK	10

Out of a total of 63 votes, 45 were needed for a qualified majority (or 45 votes cast by at least 6 member states...). The blocking minority was therefore 19 votes or 30.2 per cent.

When Spain and Portugal joined the Community in 1986, Spain was given 8 votes and Portugal 5, bringing the total number of votes to the present 76, out of which 23 votes (30.3 per cent) represents a blocking minority.

Future waves of enlargement might include Cyprus, Malta and Turkey, followed by the Czech Republic, Hungary and Poland. Appendix D suggests a scenario for possible QMV votes with Union expansion, with future member states receiving similar numbers of votes to current members of a similar size.

V The "Ioannina Compromise"

A. The Agreement

The agreement reached at Ioannina on 27 March and subsequently confirmed by the Member States on 29 March takes the form of two declarations, one by the 12 present Member States and the other by the four Applicant States. The substance of the agreement is in the first declaration: the second confirms that it is also accepted by the four Applicant states since it is intended to continue in force after their proposed accession.

The first declaration consists of four paragraphs. Paragraph (a) confirms that if all four applicant states join the Union, the threshold for QMV will rise to 64 votes, with the effect that 27 votes will be required to constitute a blocking minority. It also spells out that the IGC of 1996 will specifically examine the question of the threshold, as well as the weighting of votes (see Section IX on the 1996 review).

Paragraph (b) records an agreement to set up a "Reflection Group of Representatives of the Foreign Ministers" which would start work in mid-1995 and prepare the ground for the IGC on the issues of QMV weighting and the threshold, taking account of future enlargement, ie enlargement beyond the prospective accession of Austria, Finland, Norway and Sweden.

Paragraph (c) "takes note" of a Decision of the Council of Ministers which, according to the heading of the text, will be published in the Official Journal. According to this Decision, in cases where states representing between 23 and 26 votes under QMV had indicated their intention to vote against a proposal, the Council (collectively) would do *all in its power* to reach a solution which could be supported by at least 68 votes (for full text see Appendix B). In other words, where the "old" blocking minority had been achieved by states opposed to the proposal, but the new blocking minority of 27 votes had not been achieved, the Member States forming the majority on the issue in question would do their best to accommodate the minority, as if the total number of votes required were 68.

The agreement places a particular responsibility on the presidency in office (ie whichever member state occupies the chair under the six-monthly rotating presidency system) to take "any initiative necessary to facilitate a wider basis of agreement in the Council" and the other members of the Council are called upon to lend their assistance.

The agreement recognises that it cannot override two existing sets of rules, that is, those on obligatory time limits which apply to certain stages of Community legislation, eg when the Council is responding to European Parliament amendments under the cooperation procedure, and those set out in the Council of Ministers Rules of Procedure. The current Rules of Procedure (contained in OJ L 304, 10 December 1993) state in Article 7.1:

> The Council shall vote on the initiative of its President
>
> The President shall, furthermore, be required to open a voting procedure on the initiative of a member of the Council or of the Commission, provided that a majority of the Council's members so decides.

This would mean that 9 of the 16 states could decide that the vote should take place and if the threshold of 64 votes were attained the proposal would be carried. In theory this could happen at any time, but, as constrained by the Ioannina decision, the Member States pressing for the vote would be obliged to have done all in their power to reach agreement on the wider basis "within a reasonable time". In practice perceptions of the importance of the issues involved and the degree of political difficulty which they might cause to a small number of member states would be likely to influence the decisions of individual delegations as to the "reasonableness" of delay. According to press reports some private political assurances may have been given about this at the Ioannina meeting.

In the House of Commons on 29 March the Prime Minister said in reply to the Leader of the Opposition:

> "if there were any attempt to use a simple majority to move forward to a qualified majority vote, under this agreement we would certainly be able to go to the European Court of Justice, and we would most certainly do so. I think that it is clear from what is being said by other member states that they would not be likely to go down that route. Certainly on previous occasions, they have not and they know what the impact would most certainly be"
>
> (c 799)

Finally, paragraph (c) of the Declaration states that all of the elements of the Declaration will continue in operation until entry into force of "an amendment to the Treaties, following the 1996 Conference". This agreement appears to have differing impacts on the various elements of the agreement. The raising of the QMV threshold in Article 148(2), once written into the Treaty of Rome by the ratification of the Accession Treaty, will continue in force indefinitely and would only change if it were the subject of a specific amendment to that effect arising from the 1996 review. The agreements to focus on QMV weighting and the threshold at the IGC and in the preparatory Reflection Group will naturally lapse once the IGC ends, whether or not it introduces new amendments to the Treaties. The Decision contained in paragraph 1(c) might lapse because of the agreement recorded in 1(d) on the entry into force of any amendment agreed at the 1996 IGC, but it could be argued that a further Council Decision of the same nature would be required for it to be formally revoked. Under Article 148(1) of the Treaty of Rome such a Decision could be taken by a simple majority of members of the Council. The precise application of the Decision and the way in which it might eventually be superceded may become clearer once the formal text has been published in the Official Journal.

B. Legally Binding

Any published agreement between EC member states has the potential to create legal obligations on all of the parties, provided that it is the intention of the parties to do so and that these obligations do not conflict with existing Community law and particularly with the Community treaties. Even if an agreement is in a form normally used for non-binding acts, the Court of Justice could find that it in fact created binding obligations and was actionable in a legal sense (D. Lasok & J.W. Bridge, *Law and Institutions of the European Communities*, fifth edition, 1991, p.297).

In the present case there does indeed appear to be an intention on the part of the Council that the Declaration contained within its Decision should be binding. The use of the term "Beschluss" (German for "decision" or "resolution") indicates a formal decision which is binding under Article 189 of the Treaty of Rome, but for which no specific provision is made in the Treaty. "Beschluss" decisions have generally referred to institutional matters. The Prime Minister in his statement to the House of Commons emphasised that other member states had recognised the obligation as binding:

> The binding nature of the obligation is clearly understood by our partners, and stems from the form of the Council's decision. For example, Germany has said today that it regards the obligation as binding on the Council, and Germany has no doubt, it says, that all other member states of the Union will also fully respect these procedures.
>
> (c.798).

Moreover, the key undertaking on the part of members of the Council to do "all in their power" to arrive at a solution which can be adopted by at least 68 votes does not seem to conflict with anything else in Community law. Paragraph 1(c) of the Decision explicitly states that the agreement is without prejudice to the time limits laid down by the Treaties and by secondary law and the existing Rules of Procedure of the Council, which require the presidency to move to a vote "provided that a majority of the Council's members so decides", will be respected. Subject to these provisos, the terms of the agreement would be justiciable before the Court of Justice.

Under Article 173 of the Treaty of Rome as amended by Maastricht the Court of Justice can be asked to review the legality of acts of the Council of Ministers and under Article 174 it can declare the act to be void. If a member state felt that the Council had infringed the Ioannina decision, the essential point on which it might seek a ruling would be whether or not the Council had fulfilled its obligation to "do all in its power to reach... a satisfactory solution that could be adopted by at least 68 votes". If other member states could demonstrate that they (the Council majority on the issue in question) had done all in their power to reach a consensus acceptable to a larger majority than that represented by 64 votes, then the Court might rule in their favour, otherwise not. It would be very difficult for the Court to rule on whether or not a reasonable time had been allowed for the attempt to reach an acceptable agreement. Presumably the interpretation of a reasonable time would vary according to the nature of the matter in hand.

Such action would be triggered by a vote in the Council which passed the threshold of 64 votes, but not that of 68 votes. Since, assuming that the accession amendments enter into force, 64 votes would be sufficient to adopt a proposal under QMV, a contested proposal could enter into force under these circumstances. In theory, the member state which alleged a violation of the Ioannina decision could apply to the Court for interim relief, ie the temporary suspension of application of the act in question pending the ruling of the Court. Provision for "interim measures" is made in Article 186 of the Treaty of Rome. In practice the Court has very rarely awarded interim relief and has insisted that the applicant demonstrate serious and irreparable damage to the interests of the Community (J Shaw, *European Community Law*, 1993, pp.127, 200). As it happens, when member states contest the legality of the adoption of a directive, as the British Government is currently doing in relation to the Working Time Directive, the directive often allows some time for implementation, so that interim relief is not appropriate.

VI Further Assurances on Social and Other Legislation

One of the Government's main concerns had been over further Commission proposals in the area of social policy, particularly health and safety measures, under Article 118A of the Treaty, which requires QMV. On Monday 28 March, the Foreign Secretary indicated that this

had not been settled to his satisfaction at the Council meeting, saying that this had been "an area of concern that was not covered" (c.639).

On Tuesday 29 March, the Prime Minister announced that this issue had been resolved, saying:

> "I can now tell the House that we have received assurances from the Commission that it will not bring forward any further proposals under the health and safety articles under its term of office except for measures directly and demonstrably relevant to health and safety at work. This means that we will not face a repetition from this Commission of our experience over the working time directive, which is in dispute between the Council and the European Parliament".
>
> (HC Deb, 29 March 1994, c797)

On 30 March 1994, Mr Hurd replied in a parliamentary answer that the assurances given the day before had been "confirmed this morning" (c.922).

VII Other Views in Europe

Earlier in the debate on enlargement, in September 1993, papers on institutional change and enlargement were submitted by the German CDU politician Lamers and the French MEP Bourlanges (EPP) suggesting a voting system in the Council of Ministers requiring both a majority of member states and a majority taking into account their populations, a condition which would have strengthened the unified Germany. Lamers also suggested a "super-qualified majority": four-fifths or three-quarters of the member states representing four-fifths or three-quarters of the Community's population. These views reflected very much the French and German government views on institutional reform which aimed to streamline the mechanisms to keep the decision-making process flowing more smoothly.

Britain was joined in opposing an increase to a blocking minority of 27 by Spain and somewhat less enthusiastically by Italy. Spain was concerned that enlargement would tilt the political balance in favour of the northern countries and feared the introduction under pressure from the north of more stringent environmental and social measures which it would find difficult to implement. Spain argued for a retention of the 23 vote threshold for core Mediterranean issues and then complicated the debate further by saying that it would accept

27 votes for a blocking minority except when at least two large member states objected, in which case the blocking minority should fall to 23.

El País (28 March 1994) welcomed the Ioannina compromise with the headline "The United Kingdom, last obstacle to enlargement of the Union". The Spanish Foreign Minister Javier Solana presented the formula as a victory, "a success which satisfies the stated expectations of the Government" (*El País*, (ibid). He had declared earlier that Spain was "ready to consider constructive formulas but that all parties had to be flexible" (*El País*, 27 March 1994) and expressed the desire that "between now and 1996, Spain should be able to defend its interests". The Foreign Minister added that "Spain has always taken a firm but constructive position. The British have a problem within the Conservative Party, which is not the case with us" (*El País*, 27 March 1994). According to reports in *El País* on 30 March 1994, Spain was "reasonably satisfied with the negotiations generally". The Spanish Secretary of State Carlos Westendorp and the Secretary for the European Community Javier Elorza did not fully support the compromise on the blocking minority but that Mr Solana had imposed his views.

VIII Is there still a veto? The Luxembourg Compromise

A. Use of the Luxembourg Compromise

The vetoing power of the Luxembourg Compromise arose from a crisis in 1965 when General de Gaulle refused to accept the extension of majority voting and related Commission proposals and withdrew French representation at the Community institutions. The crisis was resolved at a special Council meeting in Luxembourg in February 1966, when the six agreed that where "very important interests of one or more partners" were at stake, they would try to reach unanimous solutions. There was no definition of what constituted "very important interests". The French delegation declared that discussion would have to continue until such agreement was reached. There was a "divergence of views" on this but the six agreed that this would not prevent resumption of the Community's work. There was an agreement to disagree and resume business.

This took place before the accession of Britain, Denmark and Ireland, but on joining the Community, Britian was keen on the Luxembourg arrangement (often described as a "veto") although it stands outside the Treaties and has been a somewhat fragile guarantee of national interests. In April 1982 Britain tried to invoke the Compromise to delay adoption of the agricultural prices for the coming year until a settlement had been reached on the budget. However, the Council refused to accept the linkage of these two issues and proceeded to adopt the proposed prices by majority vote in accordance with Treaty provisions. The

Regulation was adopted and had to be accepted by Britain, though under protest (HC Deb, 19 May 1982, c.352).

The use of the Compromise seems to have been refined since its invention by de Gaulle as a totally unilateral national stance. On more recent occasions, for the veto to be used against a measure for which the Treaties prescribe, a dissenting state has to convince other member states that the matter really is one of vital national interest and therefore appropriate for the use of the Compromise. This has somewhat undermined the potency of the Compromise, as has the increase in QMV brought in by the Single European Act and extended by the Maastricht Treaty.

The UK and France have continued to express support for the Luxembourg Compromise. Douglas Hurd told the Foreign Affairs Select Committee: "We are supporters of the Luxembourg Compromise" (*Europe After Maastricht*, HC 642-II, 1992-93) and the Prime Minister stated in July 1992 that "Nothing in the Maastricht Treaty conflicts with its continuing existence" (HC Deb, 6 July 1992, c.19W). In May 1992, the then French Prime Minister Pierre Bérégovoy, replied to a parliamentary question on the Luxembourg Compromise during a debate in the National Assembly on the revision of the Constitution:

> France has never relinquished and will not relinquish the right, in the event of a serious crisis, to protect her fundamental interests. So the States' mutual commitment to go on seeking agreement between them all, when it has been impossible to achieve unanimity and application of the majority rule would jeopardise interests one of them deems vital, still stands.
>
> (French Embassy press release, Speeches and Statements, 88/92, 21 May 1992)

The Prime Minister said in his statement on 29 March (cc 804-5) that the Luxembourg Compromise would be another option (as well as recourse to the European Court of Justice) if Britain felt that a matter had not been properly developed in the context of the present agreement.

B. Comparison with the Ioannina Compromise

The Ioannina Compromise recalls in some respects the Luxembourg Compromise but is different in form and application. The most obvious differences are that the Luxembourg Compromise applied to matters deemed by a member state to be very important interests and was not legally enforceable. There is nothing in the Ioannina text to suggest a weakening of the Luxembourg arrangement. Both the Prime Minister and the Foreign Secretary have

reaffirmed their belief that the Luxembourg Compromise is still available to be invoked on matters of vital interest to particular member states.

The Luxembourg Compromise was announced in the form of an unheaded minute of the Council of Ministers and has been described variously as "a declaration of intent of a political nature", "an agreement to disagree" or "a face saving solution for France" (Jan Werts, *The European Council*, 1992, p.29). It did not create legally binding obligations because the text adopted reflected the different and contradictory views of France on the one hand and the other five states on the other. It could not, therefore, have been the intention of the Council at the time to create a legally binding agreement. The agreement resolved the crisis because of the underlying political will to continue despite disagreement.

Nor, at the time of the Luxembourg Compromise, did the member states agree on a "reasonable time" to allow for agreement: five member states out of six agreed that discussion of the disputed proposals should be brought to a conclusion "within a reasonable time", but France insisted on indefinite delay and both views were recorded in the Council minute.

The Luxembourg Compromise depended on the willingness of member states to respect the political position of one or more states which had been outvoted, even where they did not agree on the particular question involved. In practice, member states were sometimes prepared to support a state which found itself in the minority and agree to prolong the discussion indefinitely, provided that they accepted the matter in question as one which genuinely touched on "very important interests of one or more partners".

In a written answer of 24 March 1994, the Minister of State at the FCO, Mr Heathcoat-Amory, recalled the assurance given by the British Government in the White Paper of July 1971 on the terms of Britain's accession to the Community:

> "All the countries concerned recognise that an attempt to impose a majority view in a case where one or more member states considered their vital interests to be at state would imperil the very fabric of the Community".
>
> (HC Deb, c.364W).

IX The 1996 Review

A review of the institutional structure and voting procedures has for some time been on the agenda for the 1996 review Intergovernmental Conference. This was confirmed in a declaration in the Brussels European Council Conclusions in December 1993, which stated that "the Intergovernmental Conference to be convened in 1996 will consider the questions relating to the number of members of the Commission and the weighting of the votes of the Member States in the Council". Section IV (3) of the Brussels Conclusions on Implementation of the Union Treaty, states that the European Council has "adopted the position on the place of the applicant countries in the institutions" and "invites the General Affairs Council to supplement that decision by determining the threshold for the qualified majority of votes within the Council in the context of finalising the enlargement negotiations".

In theory this meant that any agreement reached now in the context of finalising the enlargement negotiations could be changed in 1996. In practice, it would be difficult to change any arrangements that were enshrined in the Accession Treaty unless they were included as interim measures with a specific time-limit after which they would automatically lapse, and either be renewed or changed. The agreement in the Brussels Declaration simply to "consider" the question of QMV does not necessarily mean that anything will be changed. Changing the arrangements in 1996 would require unanimity in the Intergovernmental Conference, which might be difficult to achieve, particularly if the arrangements have been working to the satisfaction of some member states.

Both the Foreign Minister and the Prime Minister have emphasised that the Ioannina meeting achieved the pledge of a "root and branch review of the system" at the IGC in 1996. Mr Major said that this "will have to take a fundamental look at the democratic legitimacy of decision-making" (HC Deb, 29 March 1994, c.798). The Ioannina text states in 1(a) that the Twelve have agreed "that the question of the reform of the institutions, including the weighting of votes and the threshold of the qualified majority in the Council, shall be examined during the Conference of representatives of the governments of the Member States which shall be convened in 1996 ...". In neither case is there a guarantee that changes will be made. Since the implications of further enlargement of the Union must be discussed in 1996, discussion of further changes to the QMV votes and thresholds will be inevitable.

VM/RJW/JML

Sources

Treaty setting up the European Economic Community, 25 March 1957.

Cm 455, Treaties Establishing the European Communities.

Cm 1934, Treaty on European Union

Documents Concerning the Accession to the European Communities of Denmark, Ireland, Norway and the UK.

Cmnd 9634, Treaty of Accession to the EC of Spain and Portugal.

Cmnd 7650, Treaty of Accession to the EC of Greece.

European Council Conclusions, Brussels, 10-11 December 1993.

Jan Werts, *The European Council*, 1992.

Josephine Shaw, *European Community Law*, 1993.

D. Lasok and J.W. Bridge, *Law and Institutions of the European Communities*, 5th edition, 1991.

Appendix A

Areas Covered by Qualified Majority Voting

A. The Treaty of Rome

The Community Treaties, the Treaty of Rome, The European Coal and Steel Community (ECSC) and the Treaty Establishing the European Atomic Energy Community established voting procedures for legislation in various areas of Community activity. In the first two stages of the transitional period from 1958 to the end of 1965 most Council decisions were unanimous but the move to the third stage in January 1966 brought in a major extension to QMV and it was at this point that unanimity became a critical issue in the Community. The ensuing statement on a power of veto known as the "Luxembourg Compromise" will be discussed in more detail below. By 1986, Qualified Majority Voting was the norm for budgetary decisions and in a number of other areas, as set out in the following parliamentary written answer in 1986:

(HC Deb, 12 March 1986, cc.511-512W)

B. The Single European Act

The Single European Act (1986) extended the scope of QMV by amending several existing Articles and introducing new ones in areas previously reserved for unanimity. Mrs Chalker's answer sets this out:

(*ibid*, cc.512-513W)

C. The Maastricht Treaty on European Union

The Maastricht Treaty did not extend QMV to the extent that the SEA had done. Maastricht extends QMV to areas in which the Community has already been involved and in areas which are now included in Article 3 on the activities of the Community. The additional QMV areas are set out in the following written parliamentary answer:

(HC Deb, 20 May 1992, c.169W)

Appendix B

The Ioannina Declaration - 28 March 1994

Appendix C

Qualified Majority Votes recorded in the official press releases of the Council of Ministers since 4 October 1993*

On 4 October 1993 the Council agreed to amend its rules of procedure so that in future details of voting would be published:

- where the vote is requested by a Member State
- or where a delegation expressly requests that the vote be made public unless a majority of Member States are opposed to such publication.

On 6-7 December 1993, having encountered practical difficulties in implementing the agreement of 4 October, the Council decided on a different set of criteria for publishing voting details, namely:

- votes to be published systematically whenever the Council makes legislative decisions, unless a simple majority of the Council decides not to publish

- votes in other instances to be published at the request of any one member state, if a simple majority agrees

- votes under Titles V and VI of the Treaty on European Union (ie Foreign and Security, Interior and Justice matters) not to be published unless all the states agree.

The votes in the following list are all of those published since 4 October 1993* when qualified majority voting applied - other votes, eg where a simple majority is required on certain regulations are not included in this list. In general the matters fall within the competence of the various specialised Councils, but some miscellaneous decisions are frequently taken outside the main competence of a given Council.

It should be noted that this information provides only a partial picture of how QMV works in practice: the information is incomplete and does not include cases where the presidency has not pressed a matter to the vote because it was aware that it did not carry sufficient support. The great majority of decisions were in fact taken by consensus without any vote being registered.

General Affairs 4 October 1993

Amendment to regulation on subsidised milk for school children.
Germany and Portugal against (15 votes)

Common position on petrol storage emissions directive.
Germany against (10 votes)

Agriculture 18-19 October 1993

Anti-dumping regulation on magnetic disks from various countries.
UK and Luxembourg against (12 votes)

Regulation on residues of veterinary products in foodstuffs.
Spain and Ireland against (10 votes)

General Affairs 29 October 1993

Adoption of directive on copyright term of protection.
Luxembourg, Netherlands and Portugal against (12 votes); Ireland abstained (3 votes).

Internal Market 11 November 1993

Common position on footwear materials labelling directive.
Germany against (10 votes); Netherlands abstained (5 votes)

Common position on colours for use in foodstuffs directive.
Netherlands and Luxembourg against (7 votes); Germany and Denmark abstained (13 votes).

Economic and Financial 22 November 1993

Decisions on EEC-EFTA Joint Committees
Spain against (8 votes)

Labour and Social Affairs 23 November 1993

Common position on young people at work directive
Spain and Italy abstained (18 votes)

Common position on working time directive
UK abstained (10 votes)

Environment 2-3 December 1993

Anti-dumping regulation on ferro-silicon from various countries.
UK, Germany and Luxembourg voted against (22 votes)

General Affairs 7 December 1993

Anti-dumping regulation on magnesite from China.
Germany, Ireland, Luxembourg and Netherlands against (20 votes)

Mandate for voluntary restraint negotiations on trade in sheep- and goat-meat.
France abstained (10 votes)

Agriculture 14-17 December 1993

Directive on enzymes etc in animal nutrition.
Germany and UK abstained (20 votes)

Directive on feeding-stuff additives.
UK abstained (10 votes)

Internal Market 16 December 1993

Common position on recreational craft Directive.
France against (10 votes); UK abstained (10 votes)

General Affairs 20 December 1993

2 decisions on tariff concessions on import of TV sets and gearboxes from Austria.
Germany, Netherlands, Luxembourg against (17 votes); Greece abstained (5 votes) - vote carried with 54 votes.

Decision implementing code of conduct on public access to documents.
Denmark and Netherlands against (8 votes)

Regulations on malt and barley tariffs.
Belgium and France against (15 votes)

Research 22 December 1993

Anti-dumping regulation on bound photo-albums from China.
UK voted against (10 votes)

General Affairs 7-8 February 1994

Common position on the Biotechnological Inventions Directive
Denmark, Spain and Luxembourg voted against (13 votes)

Economic and Financial 14 February 1994

Regulation on tariff quotas for agricultural and fishery products from Austria, Norway and Sweden.
UK abstained (10 votes)

General Affairs 21-22 February 1994

Decision on US-EC mutual recognition of certain spirit drinks
Greece and Italy against (15 votes)

Common position on amendment of conservation of wild birds directive
Denmark against (3 votes)

Summary (since 4 October 1993)

Member State	QMV votes	Occasions outvoted (including abstentions)
Belgium	5	1
Denmark	3	4
Germany	10	8
Greece	5	2
Spain	8	4
France	10	3
Ireland	3	3
Italy	10	2
Luxembourg	2	7
Netherlands	5	6
Portugal	5	2
UK	10	8

*all press releases received up to 16 March 1994 have been included

Appendix D