



Voting Behaviour in the EU Council

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Author: Vaughne Miller

Section International Affairs and Defence Section

The EU Council adopts legislation, usually with the European Parliament, in a procedure called the Ordinary Legislative Procedure (co-decision). Votes in the Council are weighted roughly according to the size of the Member State. When voting is by a Qualified Majority, which is the default procedure since the Lisbon Treaty came into force, around 74% of the total number of votes is required to adopt legislation.

Analyses of voting behaviour in the Council tend to conclude that even where Qualified Majority Voting (QMV) is required, the Council prefers to reach a consensus. The Council does not vote formally in many cases where QMV is required, and much of the decision-making is believed to be done before proposals even reach the Council, in the Committee of Permanent Representatives (COREPER) and Council working groups. Other factors may influence the outcome of a QMV decision, such as the preference of the Presidency, coalition forming, the 'shadow of the vote', informal bilateral contacts and 'horse-trading'.

Although the Council publishes voting records and other information about its meetings, the lack of transparency in EU decision-making has made the study of voting behaviour both problematic and fascinating.

Studies reveal that in general the UK votes more often than other EU Member States against EU measures, but even so, rarely votes against proposals.

This Note looks at the voting behaviour of Member States in the EU Council when a Qualified Majority is required for the adoption of an EU measure, and at other factors which may influence the outcome of a QMV decision. It also considers the UK's voting record and possible future scenarios when the voting rules change and the Eurozone expands.

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1 Voting in the EU Council

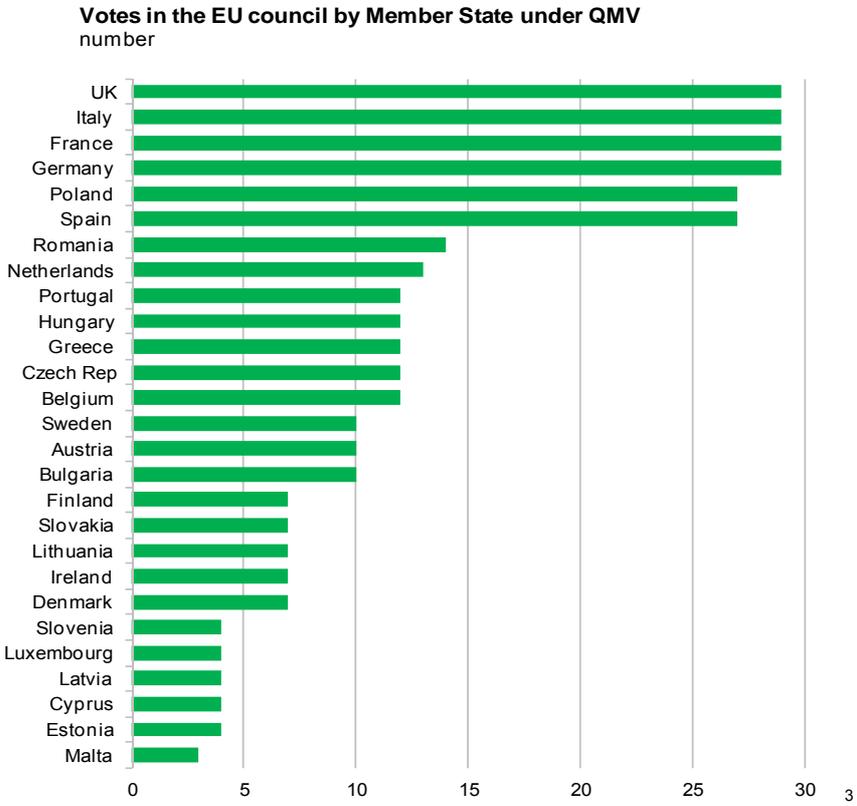
1.1 Weighted votes

Under the [EU Treaties](#), voting in the EU Council is usually either by a simple majority consisting of at least 14 Member States (e.g. for procedural decisions), a qualified majority (e.g. for the majority of policy areas including the internal market, economic affairs, the environment, agriculture and trade), or unanimity (for foreign policy, defence, judicial and police cooperation, taxation).¹ When all 27 Member States are voting, a qualified majority is at least 255 votes out of 345 (about 74%) cast by at least 14 Member States.² In addition, a Member State may ask for confirmation that the votes in favour represent at least 62% of the EU population. A blocking minority may be formed by a coalition of 91 votes or 38% of the EU population. Any Member State can abstain at any time. In Qualified Majority Voting (QMV), abstentions count as no-votes, but in unanimous voting, they do not prevent unanimity being reached, so they count as yes-votes.

¹ See Research Paper 04/54, “[The Extension of Qualified Majority Voting from the Treaty of Rome to the European Constitution](#)”, 7 July 2004 and Standard Note 4639, “[Lisbon Treaty: decision-making by Qualified Majority Voting or Unanimity](#)”, 28 February 2008.

² For proposals that do not come from the Commission, 255 votes are needed in favour, representing at least two thirds of Council members.

Current voting weights are set out in [Protocol 36](#) on Transitional Provisions, attached to the *Treaty on European Union* and the *Treaty on the Functioning of the European Union*. The UK has 29 votes in the Council (about 12% of the QM), the same as Germany, France and Italy, and needs an additional 62 votes to form a blocking minority.



The *Lisbon Treaty* introduced a new ‘double majority’ system, which will enter into force on 1 November 2014. By way of transition, the application of the new QMV system was delayed; the system set out in the *Treaty of Nice* will remain applicable during the transition period up to 31 October 2014 and even up to March 2017 if Member States request it. The new QM corresponds to at least 55% of Member States, comprising at least 15 States and representing at least 65% of the EU population. A blocking minority may be formed by at least four members of the Council.⁴

1.2 Formal voting

The EU Council does not often vote formally on matters where QMV is required. It prefers to continue negotiating until there is consensus in the Council. According to Florence Deloche-Gaudez and Laurie Beaudonnet,⁵ votes in the Council “are usually considered as a ‘last resort’, used only to overcome situations of stalemate in the Council of ministers, when consensus cannot be reached because of a very few number of inflexible opponents. The

³ Table by Gavin Thompson, Economic Policy and Statistics Section
⁴ From 2014, when the Council acts without a Commission Proposal or one from the High Representative for Foreign Affairs and Security Policy being necessary (e.g. in the areas of police and judicial cooperation in criminal matters), the qualified majority must include at least two thirds of the Member States. This reinforced qualified majority comprises at least 72% of Member States and 65% of the EU population.
⁵ [Decision-Making in the Enlarged EU Council of Ministers: A Softer Consensus Norm as an Explanation for its Apparent Adaptability?](#) June 2010

consensus-seeking norm is therefore sometimes put aside and replaced with 'last resort' votes". The so-called 'culture of consensus' is discussed in more detail below.

The QMV rules are still important because they help States to determine the likely outcome if a vote were held, but the lack of a formal vote makes it difficult to evaluate outcomes or to ascertain which States lined up where in the decision-making procedure.

1.3 Transparency issues

The Council has been criticised for a lack of transparency, which it has sought to address over the years. Before the adoption of [Regulation 1049/2001](#) on transparency and access to documents, most Council documents were not publicly available. In 1993 the Council started to publish press releases detailing topics discussed and measures and common positions adopted, indicating which Member States voted against or had reservations. Later came the publication of [timetables and agendas](#), a monthly [summary of Council Acts](#), [Council Minutes](#) and the outcome of voting on legislative acts at [Public Votes](#).⁶ The Council sits in public when it is discussing and voting on a proposal for a legislative act or when there is a general debate.

Sara Hagemann, co-author of a report by *Votewatch Europe* (see below) believes the Council is now more transparent than many national legislatures, and that although before the Lisbon Treaty came into force, the degree of openness depended to a large extent on the holder of the Council's rotating presidency, now "things are a bit more centralised by the secretariat-general of the Council and a bit more consistent". Some argue that opening up more Council meetings to public scrutiny would destroy the consensual nature of decision-making and inhibit national representatives from making concessions. Others counter that national self-interest would still prevail in a more open Council.

Meetings below ministerial level are conducted *in camera*. Working documents from the Committee of Permanent Representatives (COREPER) and working group meetings are not publicly available (with the exception of provisional agendas). Thus it is not clear how agreement is reached before Council meetings, how or when pressure is applied, or by whom, or what other elements affect the behaviour of ministers in the Council when QM decisions are taken. As Professor Helen Wallace told the House of Lords European Union Committee for its [10th Report, 2007-08](#), on the impact of the Lisbon Treaty (Q S175), because of the preference for consensus in the Council:

... explicit voting occurs on only a minority of issues, and does not tell us much about how QMV currently operates in practice. ... "[t]o the extent that it really bites, it bites in a much more implicit way, long before decisions are formally adopted.

2 The aim of consensus in qualified majority votes

Since the Lisbon Treaty came into force in December 2009, the Ordinary Legislative Procedure (co-decision) with QMV has become the general rule for Council decisions. A European Parliament (EP) paper in 2012 stated that "With the Treaty of Lisbon the scope of co-decision almost doubled to reach 85 activity areas ('legal bases') from previously 44 under the Treaty of Nice".⁷ Unanimity is still required in 72 cases, the main areas being taxation, social security, the accession of new States to the EU, foreign and common

⁶ However, there is no public record of how governments voted in the 1970s, 1980s and early 1990s.

⁷ [Codecision and Conciliation: A Guide to how the Parliament co-legislates under the Treaty of Lisbon](#), January 2012

defence policy and operational police cooperation between the Member States. Yet, a [Votewatch Europe](#) report on Council voting behaviour⁸ found that during the period mid-2009 to mid-2012, 65% of Council decisions were taken by unanimity; that Member States preferred to register formal statements expressing their reservations about Council decisions, rather than formally vote against them.

In a section called “Consensus versus controversy”, the report offered an explanation as to why unanimity is sought when only a qualified majority is required:

... Member States prefer to shape the policy in such a way that every participant can agree with the final output - or at least appear to do so. Of the 343 proposals put to the vote during the July 2009 – June 2012 period, 309 were voted on using the qualified majority rule (QMV)⁹ while the other 34 required unanimity.

During the reference period, 90% of Council decisions were formally by QMV and only 10% by unanimity, whereas in fact, the report states, “within the set of 309 where QMV was applicable, 65% of the decisions were still adopted unanimously, while 35% of the votes saw one or more Member States abstain or oppose the proposal”. Other analysts have found that in around 80% of cases since 1993 decisions that could have been taken by QMV were taken without opposition – although this did not mean that in practice the Council looked for general agreement.¹⁰

The search for consensus has given rise to what has been called ‘shadow voting’, which means that if a State knows it will be outvoted, it tends to join the majority. Research has shown that Member States, in preference to voting against a proposal, voice reservations or make statements to ‘clarify’ their decision to support, oppose or abstain on a decision. Jensen notes¹¹ that a no-vote signals that a Member State government strongly disagrees with a proposal; abstentions “represent a milder form of conflict under some circumstances, while under other circumstances they are equivalent to no votes”. Puzzlingly, Member States use both no-votes and abstentions when voting on QMV decisions. Jensen suggests States may abstain rather than vote against a decision to indicate that the disagreement is small and will not jeopardise the negotiations.

The *Votewatch Europe* report found that:

... on average, governments voice concerns about a policy proposal 1.2 times per legislative act adopted by the Council. In the fields of environment, regional development, agriculture and the internal market, this is even higher. In those areas, Member States submitted formal statements indicating disagreement with the proposal (either in whole or in parts) 4.1, 1.7, 1.5 and 1.4 times per legislative act respectively. In reality policy proposals may therefore be more contested than would appear, despite being reported as ‘unanimously agreed’.

During the reference period the UK, the Netherlands and Germany submitted the most statements and reservations, while Slovakia, Romania and Luxembourg made the fewest.

⁸ [Agreeing to Disagree: the voting records of Member States in the Council since 2009](#)” (national voting trends in the Council from July 2009 to June 2012), with accompanying [data annex](#), July 2012

⁹ Qualified Majority is reached in the Council if at least a simple majority of Member States (currently 14), holding at least 255 votes (out of 345) vote in favour.

¹⁰ See [Qualified majority voting from the Single European Act to present day: an unexpected permanence](#) Stéphanie Novak, Notre Europe, 22 November 2011

¹¹ Thomas Jensen, [Time and The Consensus Norm: Examining the Dynamics of Voting in the Council](#), June 2010, p7

Consensus is not defined in the EU Treaties, but is often taken to mean that nobody signifies opposition, rather than that everyone agrees. In a paper in June 2012,¹² Dr. Stéphanie Novak took the view that “consensus is not synonymous with unanimity and that the absence of a vote does not necessarily mean that universal agreement was reached, but that Governments do not want to be seen to be out-voted. Since voting records were first published in 1993, “it is implemented in such way that it rarely constrains ministers to reveal their positions”. Despite the publication of votes, the author maintains, “the role of QMV remains unclear because we do not know whether consensus excludes any influence of this procedure” (p.3). Novak attempts to explain the low official rate of opposition (about 20%) and the 80% of uncontested measures in QMV areas. She considers two competing hypotheses (p.5):

1. that consensus is the equivalent of unanimity: the Council tries to reach general agreement without having to resort to a formal QMV vote. This makes it easier to implement adopted measures in Member States which opposed them.
2. that consensus is different from unanimity and means the absence of explicit opposition. There is a possibility of a vote; QMV is a ‘shadow’ and governments know they could be outvoted, which is enough to make them “tone down or even suppress their opposition”. The lack of a vote is not because there is general agreement but because opponents do not want to be identified, whereas when a QMV vote is taken, it means that opponents wanted their opposition to be known.

Novak also refers to “apparent consensus”, when the Presidency sums up the debates, asks if there are objections, and states that his/her synthesis is adopted if there is no objection.

Novak tested the hypotheses (her methods are described in the paper and are based largely on data compiled from the Council website and interviews with national delegations) and her results show that ministers do not try to reach general agreement but seek to comply with the QMV rule. The results also show that the QMV rule is respected throughout the process, from initial Working Groups, through COREPER to the Council itself. She also found that the Presidency does not necessarily wait until consensus or near-consensus is achieved, but is content to adopt a proposal as soon as the QM is reached. This conclusion invalidated the first hypothesis. The curtailing of discussion once a majority has been reached was also described by Florence Deloche-Gaudez and Laurie Beaudonnet,¹³ who noted that the extent to which this happened varied between sectoral Council meetings:

For instance, on average, under QMV, in the AGRIFISH configuration, the decision to end negotiations and ask ministers in the minority to make their opposition public if they wish to do so, occurs 265 days after the Commission transmitted the proposal to the Council. In the EPSCO configuration, it takes almost three more years to agree on taking such a step!

The second Novak hypothesis was partially confirmed by her results: the Council does not vote formally even though QMV is the formal decision-making procedure, and public opposition and abstentions have been low, because “ministers in the minority do not want to appear defeated, even if their peers know who is in the minority” and “formal voting is not used partly because it could humiliate the minority” (p.13). She believes that the Presidency’s

¹² [Transparency versus Accountability? The Case of the EU Council of Ministers](#), Transatlantic Conference on Transparency Research, Utrecht, 8 June 2012.

¹³ [Decision-Making in the Enlarged EU Council of Ministers: A Softer Consensus Norm as an Explanation for its Apparent Adaptability?](#) June 2010

assessment that a QM has been achieved is based largely on “information collected through bilateral talks” and is “usually better informed than the delegations who do not know the positions of their peers”. National representatives, she maintains, “avoid obstructionist strategies because they might have costs in future negotiations”. Formal voting is avoided because it reveals the positions of governments which can make it harder for them to negotiate. It also reveals opponents, which may threaten the ‘culture of consensus’ and obstruct decision-making.

Hagemann and De Clerk-Sachsse suggest that governments use formal statements to register their opposition rather than a vote against because in so doing, they “are able to affect a sense of the old culture of consensus without at the same time sending a political signal of deviating from their initial policy preferences”. But they also note that although this may avoid “policy gridlock through contested voting”, formal statements are less transparent, making it harder to identify where individual states stand on each issue.¹⁴

Florence Deloche-Gaudez and Laurie Beaudonnet believe that since 2004,

... the ministers have paid less attention to the requirements of the informal consensus norm, and thus have given more weight to formal rules. Under QMV, once the majority threshold reached, they have been inclined to put an end to the discussions more often and/or more rapidly. This supposition is in line with the constructivist and institutionalist argument: what matters is not only the formal rules, but also, perhaps more importantly, the way they are interpreted and implemented by the various actors involved (Peterson, Shackleton, 2006; Pollack, 2005).¹⁵

However, the authors conclude that since the 2004 enlargement the consensus norm “could have to compete more with another narrative: that under QMV, the informal consensus norm has lost ground in favour of the majority threshold Therefore, a change in the influence of the informal consensus norm has resulted in giving more weight to the formal QMV rule!”.

2.1 The ‘shadow of the vote’

Novak’s evidence showed that in 80% of cases in which QMV was the rule, decisions were made without opposition. She examined the thesis that the ‘shadow of the vote’ has a deterrent effect on ministers by checking whether the level of dissent was higher before the publication of votes became compulsory in December 1993. Archival research indicated that the amount of dissent was already extremely low before 1994 (p.17):

In 1988, the Council adopted 320 legislative proposals pertaining to the qualified majority rule. But negative votes or abstentions are reported in the minutes for only 34 legislative texts: about 10% of adopted acts were contested. This proportion is lower than the average proportion of contested acts for the period 1994-2010 (about 20%).

Novak concluded: “The shadow of the vote combined with the norm of silence caused the low rate of negative votes and abstentions”. However, she observed further uncertainties and differences that have arisen since 1994 between the informal adoption of a proposal in COREPER and the official Council adoption (p. 18):

¹⁴ [Decision-Making in the Enlarged Council of Ministers: Evaluating the Facts](#), January 2007

¹⁵ [Decision-Making in the Enlarged EU Council of Ministers: A Softer Consensus Norm as an Explanation for its Apparent Adaptability?](#) June 2006

... votes are published only for adopted acts. There is usually a lag of a few weeks between the informal adoption of a measure by the Coreper and its official adoption by the Council. After the unofficial adoption of a measure, the presidency sends a general email to the permanent representatives. It informs them of the date on which the measure will be officially adopted by the Council, and notes that those who want to vote against the measure or abstain have to register their vote before this date. Knowing that the measure will be adopted, the delegations can decide which vote to publish. Therefore, the published votes can differ from the positions taken behind closed doors – except in the few cases of strict parliamentary mandate.

She notes that “the peculiar way in which votes are registered allows ministers to publish votes against measures (or abstentions) even if they did not oppose them behind closed doors”. Where there has been public opposition to a measure, this may allow Ministers to derive domestic benefits.

2.2 Council voting coalitions

Studies of voting behaviour in the Council have taken into account a number of Member State variables: large versus small, north versus south; net contributors to and recipients from the EU budget, rich and poor States, old and new Members, left and right political orientation.

Sara Hagemann described the findings of a 1999 - 2004 study of Council voting behaviour as a “bargaining game between strategic, self-interested actors who conform into policy-connected coalitions based on the distribution of voting power”. Of the variables mentioned in this note, her study found that:

... only a country’s left/right ideology, its voting power and whether or not it is holding the Presidency are of significance for its propensity to oppose the majority at voting stages prior to the final adoption. Only at the last voting stage does a country’s role as a contributor or beneficiary to the EU budget also matter¹⁶.

Overall, alliances in the Council are complex and overlapping; and there is evidence that some established patterns changed after the major EU enlargement by 10 new States in 2004. Tim Veen noted that after the 2004 enlargement, the “Eastern countries appear to collaborate more often with the North than with the South”. France, Germany and the UK continued to be central networking States, linking the North, South and East.¹⁷ Robert Thomson found that the: “UK, Sweden, Denmark and the Netherlands tend to be close to each other and far from France, Spain and Italy”.¹⁸ Ingvild Olsen speculated about geographical divides:

Exactly what causes this line of conflict is still an open question. Some researchers claim that the North-South conflict dimension reflects the diverging interests of the net contributors and the net receivers of the EU budget. Other

¹⁶ [Decision-making power in the European Union’s Council of Ministers: New Empirical Findings and Suggestions for a Research Agenda](#), paper prepared for 2005 MPSA Conference 7-10 April 2005

¹⁷ [“Actor Alignments in the Council of the European Union: On Stability and Determinants”](#), 17 June 2010 (Paper prepared for fifth Pan-European Conference on EU Politics, Porto, Portugal, 23-26 June 2010).

¹⁸ [Resolving Controversy in the European Union: Inputs, Processes and Outputs in Legislative Decision-Making before and after Enlargement](#), Robert Thomson, Trinity College Dublin, January 2011

researchers point at a related issue, namely diverging interests when it comes to the level of regulation in the European Union.¹⁹

Wim Van Aken concluded that before 2004 there were three “recurrent coalitions”:

The first is a silent majority of more proximate Member States that contest less frequently and are generally supportive of EU legislation. The second group comprises a vocal minority of countries which are less proximate to each other and are regularly outvoted. Germany (what we may call the third coalition) is the only country that stands out as it contests frequently but more often on issues that attract less opposition from other Member States.²⁰

But that after the 2004 enlargement “most of the newer Member States joined the silent majority in the Council and Germany also became more proximate to this group. Finland, Czech Republic and Malta joined the vocal minority”. The UK, he found, was “the only country in the EU to have moved away from existing coalitions and stand apart, which indicates that there is growing divergence”. Van Aken charted the post-2004 changes:

Turning to the EU-27 the diversity has increased to four groups The silent majority (1) is now composed of 18 countries with 14 smaller and four bigger Member States (France, Spain, Italy and Poland).³² France and Spain still make up the core of the silent majority as countries that infrequently express their opposition and vote on more similar issues. They rarely find themselves outvoted in the Council and are joined by a silent grouping of newer Member States. The vocal minority (2) now represents six countries with two new and similar countries, Malta and the Czech Republic.³³ Interestingly, Germany and Austria (3) stand somewhat apart and form a pivot that joins the silent majority and the vocal minority in the Council last. The UK (4) is now the only country in the EU that is least similar in its voting behaviour to other Member States.

Although the older Member States (the EU-15) continued to behave as they had done before, recording higher levels of contestation, tending to contest alone, and often forming an older-Members-only coalition, there was a dramatic decline in single State contestation of proposals in the Council, with contesting coalitions of two or more Member States becoming the norm.²¹ The UK did not join the other large EU States (Germany, Italy, France and Spain) in less explicit contestation of the majority; the UK was the only one of the large Member States to contest more often, and was the “furthest removed in its voting behaviour from the other coalitions in the Council”. Although playing “in a league of its own”, van Aken states that the UK was still not “as removed in the graph as Germany was in the pre-2004 period”.

Somewhat surprisingly, the new Member States did not contest EU proposals *en bloc* “and only 4.1 % of total contested decisions come from the new Member States only” (p.50).

Bjørn Høyland and Vibeke Wøien Hansen look at studies of the effects of EU enlargement on voting behaviour:

Mattila and Lane (2001) show that the Council had a preference for finding a solution that is acceptable for all member states in the period from 1994 to 1998, and that the expansion of memberships (from 12 to 15 states) did not

¹⁹ [The Council Working Groups – Advisors or de facto Decision Makers?](#) June 2010

²⁰ “[Voting in the Council of the European Union: Contested Decision-Making in the EU Council of Ministers \(1995-2010\)](#)”, SIEPS 2012

²¹ Wim Van Aken, “[Voting in the Council of the European Union: Contested Decision-Making in the EU Council of Ministers \(1995-2010\)](#)”, Swedish Institute for European Policy Studies, 2012

affect voting patterns in any significant way. In general, the tendency is for one or two countries to oppose the majority and rarely three or four countries. Heisenberg (2005, 68) explains this tendency as the result of a more than 40-year long history of negotiations among the same partners. The new members are immediately introduced to the norms governing this culture of consensus. Because of the high frequency of meetings and negotiations, she stresses that the trust among the partners is very high and that reputation matters a lot. Hence negotiations may be more personalised in the Council than in other multilateral settings (Heisenberg, 2005, 68). This norm of consensus is also evident in the new EU. Thomson (2009) concludes his analysis regarding actor alignment after the enlargement by noticing the absence of clear winners and losers, and takes this as support for both the continuation of consensus-based decision-making and the EU's capacity to deal with the challenges that the enlargement presented for the decision-making processes. Even though the extensive working group level and the norm of consensus facilitate few clear winners and losers, it is still possible to determine some patterns of bargaining and conflict in the Council.²²

The study of voting records has generally been the basis for studies of voting behaviour and coalition forming, and there is a vast amount of academic literature on this subject. Běla Plechanovová notes the validity of the voting record approach: "it is the official final position of the actors which is crucial for the fate of the legislative proposal and the shape of the policy and hence the study of the voting behaviour patterns has merit in its own right".²³ However, as Thomas Jensen points out, horse-trading and 'logrolling' influence voting behaviour to an extent that may make voting records alone unconvincing:

... it appears that in the absence of strong ideological or re-distributional conflicts in the Council a norm of consensus appear to dominate everyday decision making. However a recent critique has resurfaced with regards to what can be learned from voting behavior. König and Junge (2009) argues that from the inspection of voting records alone it is difficult to make any inferences about a norm of consensus. The voting records might reflect that the Commission only introduces dossiers that it know will find a majority among the member states, thus relieving the member states of the necessity to use their no vote. Another explanation for the high degree of unanimity could also be log-rolling. Given the sectoral organization of the Council there are many possibilities for log-rolling within the different policy areas, and in COREPER and Council sessions there is room for log-rolling across policy areas. Thus voting records do not seem to be a useful dependent variable to analyze when explaining the causal effect of the norm of consensus.²⁴

Jensen concluded that "there is no norm that governs how the level of conflict fluctuates in the Council". Dorothee Heisenberg argued in 2008 that "the small number of decision-makers, and the idiosyncratic nature of decision-making in the Council lends itself better to qualitative empirical studying"²⁵ and that "the quantification of preferences adds more measurement error than it contributes to new understandings of the dynamics of decision-making" (p.262). In an earlier study, Heisenberg looked at the extent of cross-sectoral bargaining in the Council:

²² [Voting in the Consensual Council of Ministers](#), 5 June 2010

²³ *AUCO Czech Economic Review* 5 (2011), [Coalitions in the EU Council: Pitfalls of Multidimensional Analysis](#), Běla Plechanovová

²⁴ [Time and The Consensus Norm: Examining the Dynamics of Voting in the Council](#), June 2010

²⁵ D. Heisenberg, "How Should We Best Study the Council of Ministers?" in D. Naurin and H. Wallace (eds.) "Unveiling the Council of the European Union: Games Governments Play in Brussels", 2008, p.261.

Bargaining between Member States can involve informal vote trading within the existing legislative agenda ('log rolling') or inter-temporal vote swapping because the number of interactions is so high and the reputation and trust conditions obtain. And, although the structure of the Council institution mitigates against bargaining across issue areas by organizing along functional lines, there is in fact a great deal of coordination (GAC, COREPER and even the European Council) so that in practice, cross-issue bargains can be struck.²⁶

2.3 The role of the Council presidency

The EU Presidency aims to adopt the highest number of proposals possible. To encourage the Council to adopt proposals the Presidency often has to grant concessions to governments by modifying the Commission's proposals. Ministers negotiate rather than vote, but keep their strategy ambiguous so as to obtain the greatest concessions possible. The Presidency is often reluctant to press for a vote because a vote can open up divisions which can sink a proposal.

Analysts disagree as to the extent of the six-monthly presidency's influence over Council outcomes, although many believe their preferences can influence results. The Council President can help Member States to reach agreement through bilateral meetings about areas of concern. He/she also represents the Council in negotiations with the EP and in trilogues. Thomson points out:

Council presidents have privileged access to information regarding other actors' policy preferences and the decision outcomes those actors would be prepared to accept. Presidents obtain this information in ... bilateral meetings with other states. The Council Secretariat, which supports the presidency, is another important source of information for presidents. This information enables presidents to formulate proposals that are both acceptable to other actors and as close as possible to their own policy positions.²⁷

Thomson also notes evidence that decision outcomes in the Council of the EU-15 were "somewhat closer to the policy positions of member states that held the Council presidency at the time the decision was taken than to other policy positions". Some studies suggest that this is no longer the case in the enlarged EU, as Presidents have had to put aside their own national interests more than they did before, while others detect no real change in presidential influence over outcomes. Thomson concludes that "Council presidents have an information advantage over other states, which gives presidents the potential to influence decision outcomes (e.g. Tallberg 2006: 29-39). This effect of the Council presidency has weakened in the enlarged EU, although is still significant".

3 Pre-Council preparation

Most decisions are in fact made by the Committee of Permanent Representatives (COREPER – comprising national civil servants), and confirmed by the Council. According to Bjørn Høyland and Vibeke Wøien Hansen:²⁸ "Most decisions (70%) are ... in practice made before reaching the Council level". Other figures vary between 70% and 90%.

The Council discusses A-points and B-points. A-points are decisions that COREPER has already taken and which can be adopted without further discussion in the Council. B-points

²⁶ *European Journal of Political Research* 44: 65–90, 2005, [The institution of 'consensus' in the European Union: Formal versus informal decision-making in the Council](#)

²⁷ [The Council Working Groups – Advisors or de facto Decision Makers?](#) June 2010

²⁸ "Voting in the Consensual Council of Ministers", 5 June 2010

are proposals which COREPER has not yet agreed and which need further discussion and possibly a vote.

3.1 COREPER and Council Working Groups

There is extensive preparation of proposals in working groups composed of national officials and experts and a member of the Commission.²⁹ The EU website, [Europa](#), states that COREPER: “seeks to reach agreement at its own level on each dossier, failing which it may suggest guidelines, options or suggested solutions to the Council”. COREPER *de facto* takes most of the final decisions, which the Council usually subsequently adopts. Ministers in the Council discuss only the most contentious issues, which could not be resolved either in the working group or COREPER. According to Olsen, “it has been estimated that around 70-90 % of the Council’s decisions actually are clarified at the preparatory level and are adopted by the Council of Ministers without further discussions”.³⁰ The EP does not participate in the negotiations at this stage but later has to reach agreement with the Council in the trilogues between the Council, the EP and the Commission. Under the 2007 [Joint Declaration](#) on the co-decision procedure, the EU institutions are encouraged to reach agreement at first reading if possible (Article 11). The Council therefore tries to take into account the EP’s views at an early stage in the negotiations.

The working groups examine the proposal and write a report indicating areas where there is agreement and disagreement. Olsen comments on the ability of the working groups “to create compromises and solutions on an ever growing amount of issues and policy areas”, their shared “solid commitment to finding common solutions”, but also their willingness “to minimize the number of issues left for Coreper and the Council of Ministers to decide upon”. Olsen underlines the tension for working group members between defence of national interests and “the pull of the collective forum” (Hayes-Renshaw & Wallace: 1997: p.279).

There are also so-called “I points”, which are COREPER’s version of A-points (see above): if a QMV proposal looks as if it has agreement in a working group and the Presidency believes there is a QMV, the working group or committee can take a vote and decide there is a qualified majority. The head of UKRep, Sir Jon Cunliffe, told the European Scrutiny Committee (ESC) how this worked:

They [the presidency] will normally conclude there is agreement between member states, and this does not need to go to a Council. The agreement exists, etc. That will then be proposed on the Coreper agenda as an I point- it is our version of an A point- which says, "This proposal has been agreed and can go forward." If it goes through Coreper as an I point, it will then go to a Council as an A point. It can go to any Council. The Council is indivisible, so an economic issue-the budget-can go to the Health Council or Education Council, etc., and Ministers there will not discuss it; it will just go through.³¹

There is no full account of COREPER activity, but Rory Creedon states in a useful analysis of voting in the EU Council that the implicit decision rule in COREPER is consensus, rather than QMV, when QMV is the formal voting requirement, and that “this consensus is reached both by trying to accommodate divergent views, and vote trading across issues”. This would appear to contradict Novak’s conclusion (see above) that the QMV rule is respected

²⁹ The Commission usually presents its proposal and explains its purpose at the start of the meeting.

³⁰ [The Council Working Groups – Advisors or de facto Decision Makers?](#) Paper presented at fifth Pan-European Conference on EU Politics Porto, Portugal, 23-26 June 2010

³¹ [Uncorrected oral evidence](#) to ESC, 8 May 2013

throughout the process, including in COREPER and the working groups. Creedon [also comments](#):

Although COREPER never formally votes it does take decisions and has “de facto legislative competencies”^[11]. This institutional design means that observed voting data at the Council level do not have much descriptive power as COREPER is unlikely to send a proposal to the Council if it is likely to fail subsequent to Council negotiations. This is evidenced by the fact that a majority of points passed to the Council for deliberation are “A points” on which no further discussion is needed.^[12]

[11] Lewis Op cit. p 264,

[12] Matilla Op cit. p. 30

Sercan Gidisosglu emphasised the importance for officials in COREPER of achieving agreement rather than a compromise:

... the dominant preoccupation in the mind of technocrats and politicians working in Brussels is the success of the decision-making procedure over all other concerns. It is proposed here to label this effect as the informal ‘shadow of compromise’; and it is believed that this informal ‘shadow of compromise’ constitutes a stronger motivation in EU decision-making than the famous formal ‘shadow of vote’.³²

COREPER is also important once a proposal comes before the Council, as COREPER sets the Council agenda and its members attend Council meetings as advisers to national ministers. It is also COREPER which liaises with the EP and the Conciliation Committee in the co-decision procedure.

3.2 Informal influences

Informal bilateral meetings between the EU institutions and Member States, conversations and lunches have been useful, if not always reliable, ways of sounding out opinion and seeking allies. Sara Hagemann and Julia De Clerck-Sachsse considered the importance of informal negotiations in an ever expanding Union:

... since compromise agreements are difficult to achieve in the formalised rounds, more pre-negotiation talks take place and have further moved the agenda to the informal settings of luncheon tables and Council corridors. Second, the facilitators of the negotiations – the European Commission, Council Secretariat or the presidency – are commonly known to have increased their influence in the brokering of agreements³³.

4 UK voting behaviour in the EU Council

4.1 UK contestation and alignment

Votewatch Europe found in its 2012 study that of the EU-27, the UK voted against the majority most often, while France and Lithuania always voted with the majority: “The UK had a minority position in one out of ten votes. Germany, Austria, Denmark and the Netherlands follow suit. At the other end, we found that France and Lithuania always voted with the majority, followed by Cyprus, Greece, Finland and Latvia”.

³² [“Who is deciding in the EU?: The growing role of EU’s institutional culture and informal procedures in decision-making”](#), June 2010.

³³ [Decision-Making in the Enlarged Council of Ministers: Evaluating the Facts](#), January 2007

Between June 2010 and October 2012, the UK voted against a proposal as a minority of one on 15 occasions. Justine Shares commented “Given that allies are theoretically easier to find than they were in the 1980s, Britain’s position is arguably more extreme today than it has ever been”.³⁴ Denmark and Sweden, also non-Eurozone States, usually align with the UK on the single market and the need for EU flexibility.³⁵ The Minister for Europe, David Lidington, told the House of Lords European Union Committee that “some of the newer Member States were often UK allies on single market issues”, supporting UK initiatives relating to smarter regulation, growth and the digital single market, for example.³⁶ The Netherlands is another traditional UK ally and Germany has often supported the UK on financial services proposals to counter demands for stricter controls from France.

According to the *Votewatch Europe* data annex table 6, the UK Government voted in favour of adoption in 90.7% of decisions from July 2009 to June 2012. The following table shows votes cast against EU proposals by Member State:³⁷



In another analysis by Wim Van Aken,³⁸ from 1995 to 2010 Germany was the State which least preferred to join a majority consensus (7.7% of total contestation), with the UK in second position (7.5%). Both States preferred to vote against rather than abstain (see Van Aken, Figure 6, below).

³⁴ *Public Service Europe* [Britain battling 'alone' against EU in Council of Ministers](#), Justin Stares, 6 November 2012

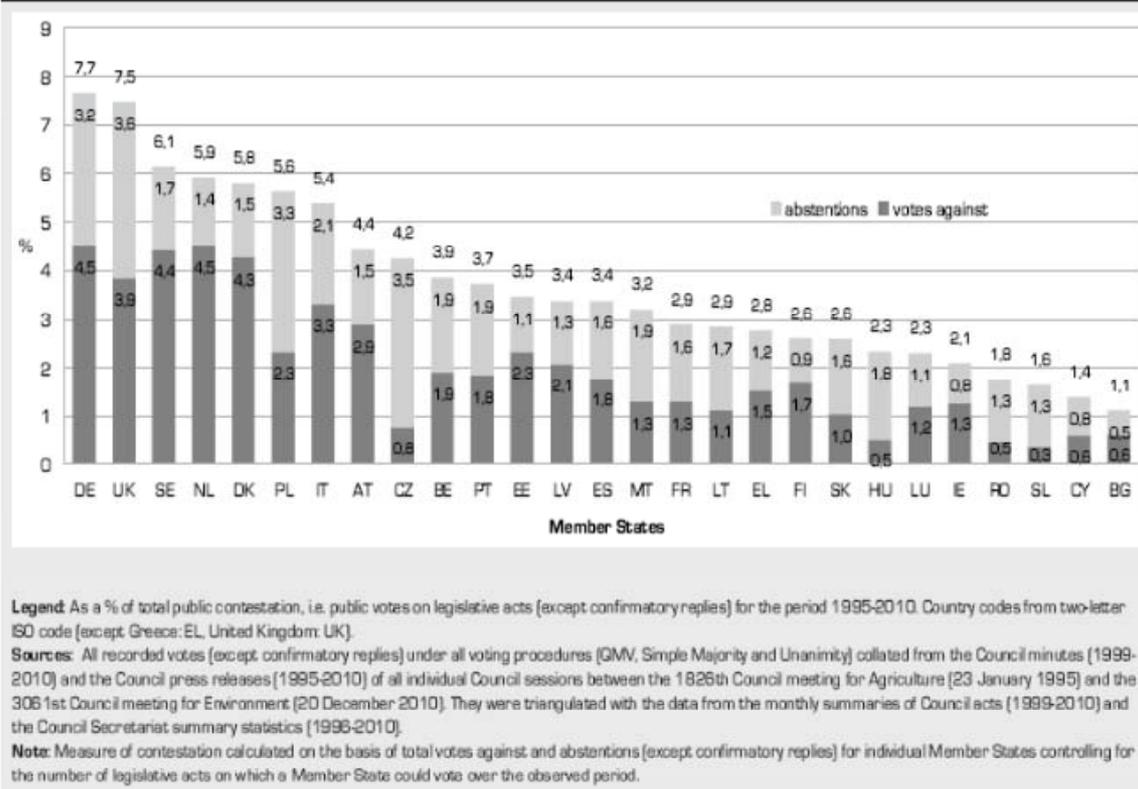
³⁵ [EurActiv 23 January 2013](#)

³⁶ [10th Report 2012–13](#), The future of EU enlargement, 6 March 2013

³⁷ Table by Gavin Thompson, Economic Policy and Statistics Section

³⁸ [“Voting in the Council of the European Union: Contested Decision-Making in the EU Council of Ministers \(1995-2010\)”](#), 2012

Figure B: Explicit contestation of EU legislation by Member States (1995-2010)



4.2 UK behaviour in COREPER

During oral evidence to the European Scrutiny Committee on 8 May 2013, the Committee Chair, Bill Cash, questioned the head of UKRep, Sir Jon Cunliffe, about the UK's behaviour in COREPER:

The policy clearance comes from the Cabinet Office, or whatever is the co-ordinating body that comes to you. But if you have reported to it in advance that we would not get it through on a qualified majority vote, can you answer me this question? Are you, at that point, going to refer back to it to say, "We're dead in the water on this vote, so for practical purposes we might as well get policy clearance from you because we are not going to win this"? Some might call it a stitch-up; others might call it a prudent withdrawal.

Can you have a look at that with us, because it is very interesting? We put down a scrutiny reserve because we think it is of legal or political importance. Through the machinery, there comes a point when it is either a policy

clearance, or it is not. How do you find in practice, given the figures that I have got here, that we arrive at 90% going through?³⁹

Sir Jon made clear that the Government's mandate on a measure remained throughout the process:

The Government's mandate is set, and if things change the Minister will write back to the Cabinet Committee. So unless there is a trade-off between Departments-that can often happen in areas such as energy and climate, for example; with the Treasury you have three or four Departments determining the line, and it would go back to the Cabinet Office for clearance of the line-normally it is the Department concerned.

In the 16 months I have been in the job, I have not had anything like that happen unexpectedly at I point level. All of these proposals go through working groups. Some of the working groups go on for a very long time. Some of the legislation is 2,000 pages long. Some of the working groups deal with the renewal of a mission, or whatever, and it is quite a short proposal. But I will know what is happening on the dossier and where we are.

Coreper is split in two. I head Coreper II, which deals with foreign policy, justice and home affairs; economic, institutional and single market matters go through my deputy, Shan Morgan, in Coreper I. One of us will know where the file is. The desk officer will come to us some time before and say, "Look, we haven't got a blocking minority any more. Some of our friends have peeled off, and we have to choose what to do." That can happen during the trilogue process as well, but I would know about it long before it came to Coreper as an I point.

At that point, there is a decision to be made by the policy department. There is a value placed on consensus in Brussels, and you do not say, "I might as well give in," but, "Alright, we will go along with this, but we require the following changes." In order to have consensus, people will say, "Okay. Let's do it in that way." Sometimes you cannot do that, and sometimes one wants to vote against or abstain because the position is very clear.

I am not sure about the 90% figure-whether it is a good or a bad thing. But in all those cases, a decision will have been made where to vote. And on any file of any significance, that will have gone through ministerial clearance in the Department. By the time it gets to me as an I point, I either let it through because we have written confirmation, or-this does happen occasionally-there has been a mistake in the process. A lot of these things go through.

Sometimes I think there is the odd bounce. Something turns up, and the I point co-ordinator says, "This has not cleared scrutiny", "This has not got policy clearance" or "This has not even been agreed with the working group", and then we say, off the agenda, that there has to be a substantive discussion. I am sorry, that is a long answer to your question.

4.3 Is there a risk of the UK being outvoted by Eurozone Members?

On 7 May 2013 Lord (Nigel) Lawson, former Conservative Chancellor, told *The Times* the UK should leave the EU: "We are now becoming increasingly marginalised as we are doomed to being consistently outvoted by the eurozone bloc". There is now, he believed, a clear case

³⁹ [Uncorrected evidence](#), ESC inquiry, European Scrutiny in the House of Commons, 8 May 2013

for UK withdrawal from the EU, “the economic gains would substantially outweigh the costs”, and he would vote against staying in the EU in a referendum on continued EU membership.

Open Europe also identified potential Eurozone caucusing in a submission to the Foreign Affairs Committee inquiry, [The future of the European Union: UK Government policy](#), 22 May 2012:

A well-documented risk is that Eurozone states start to act and vote as a ‘caucus’ – not only in areas of direct concern to the running of the Eurozone but also, for example, in single market legislation, social policy or financial services regulation

The Foreign Secretary, William Hague, told the Committee that there was a threat of Eurozone caucusing:

There is a threat. So far it has surfaced only in the way that we have described, but of course there could be much more far-reaching changes in the eurozone, when they have resolved their own debates, that present, for instance, a greater threat of caucusing within the EU on a wider range of issues.

However, the UK’s Permanent Representative to the EU, Sir Jon Cunliffe, told the Foreign Affairs Committee in February 2013 that it was far from certain that the Eurozone would always outvote the UK.

In most areas, the alliances that countries make across different dossiers do not reflect the eurozone. Across the single market, some of the alliances can be very strange, but in agriculture, fisheries, single market, foreign policy and justice the alliances are very different. They are very dossier-specific. But the countries that normally group around what I call the northern economic liberal alliance look to the UK, Sweden, Denmark—all of them noneurozone countries—to be part of those alliances when they come to single-market issues such as trade. There is no evidence of caucusing around that. Indeed, from the start of the euro, the evidence has been that those countries very much want non-euro countries of similar mind in the discussions, because it adds weight—particularly the UK, because we are a large and influential member state.⁴⁰

4.4 The UK in ECOFIN

UK Government concerns have centred on EU proposals that might damage the UK’s financial sector and the City of London; proposals, therefore, that are decided by the Economic and Financial Affairs Council (ECOFIN). ECOFIN matters are mainly subject to QMV, in consultation or co-decision with the EP, except on fiscal matters which are decided by unanimity.

In a News brief in March 2013,⁴¹ *Votewatch Europe* looked at voting in ECOFIN over the last two decades, noting that “Although EU governments rarely take a decision on economic and financial issues until all of them agree, there have been instances where proposals have been put to qualified majority voting”. According to the [Votewatch Europe table](#) showing how many times each Member State had been in a minority in ECOFIN, from 14 July 2009 to 11 March 2013, of the 46 formal votes, the UK did not vote against any proposals but abstained

⁴⁰ [Corrected transcript](#) of evidence to FAC, *The Future of the European Union: UK Government Policy*, 6 February 2013

⁴¹ [Regulating banks and their bonuses: can the UK block a compromise?](#)

twice (the highest number of abstentions, followed by Finland, Germany and Portugal, with one abstention each) and made four statements.

During this reference period the UK **matched** 90% of its votes in all policy areas with Lithuania, Malta, Cyprus, Belgium, Hungary, Slovenia, France, Sweden and Greece. It matched least often with Germany and Austria (85%). In ECOFIN the UK matched 23 EU Member States in 96% of votes, but Germany, Portugal and Finland in 93% of votes.

4.5 Impact of future changes to Qualified Majority Voting

When the current transitional voting arrangements end, the post-2014 changes to weighted Council votes and what constitutes a qualified majority will make mustering a blocking minority more difficult for non-Eurozone States.

An *Open Europe* report in December 2011⁴² commented that “the UK and other non-euro countries will never be able to form a blocking minority if the eurozone votes as a caucus”, and shows how the UK could be outvoted by a Eurozone caucus.

CHANGES TO QMV IN 2014/2017

From 1 November 2014 until 31 March 2017 the new weighting applies, but Member States can demand the application of the previous weighting rules.

From 1 April 2017 the double majority system is obligatory. The Council adopts a decision when it is approved by at least 55% of Member States comprising at least 15 States and including States representing at least 65% of the EU population. A blocking minority is formed by at least four Member States.

Under the current voting rules, the Eurozone, with 213 Council votes out of 345, cannot form a qualified majority (255 votes) on its own. After the voting rules change in 2014/17, if the Eurozone votes as a caucus, it would represent 66% of the EU population and would therefore achieve the threshold of 65% of the EU population needed to adopt a proposal. The Eurozone would have, as *Open Europe* put it, “a permanent in-built majority” in the Council, which “could leave the UK consistently outvoted on measures with a profound impact on its economy and the City of London, simply because it is

outside this new inner core”.

Croatia is due to join the EU on 1 July 2013, but will not adopt the euro on entry. Croatia will have seven votes in the Council, out of a new total of 352. At least 260 votes will be required for legislation to be adopted by qualified majority.

Latvia, with four Council votes, is on course to adopt the euro on 1 January 2014 and Lithuania, with seven votes, possibly in 2015. These new States would bring the Eurozone bloc up to 224 votes out of 345, representing 67.15% of the EU population. If Poland and the Czech Republic were to join – unlikely in the short term – their votes would take the total number of Eurozone votes to 263 and 76.87% of the EU population.

5 Further reading

EurActiv “[Council voting: Who are the EU hardliners and ‘yes men’?](#)” 19 July 2012, updated 23 July 2012

“[Voting in the Consensual Council of Ministers](#)”, Bjørn Høyland and Vibeke Wøien Hansen, 5 June 2010

⁴² [Continental Shift: Safeguarding the UK’s financial trade in a changing Europe](#),

[“Decision-Making in the Enlarged EU Council of Ministers: A Softer Consensus Norm as an Explanation for its Apparent Adaptability?”](#) Florence Deloche-Gaudez (LSE), Laurie Beaudonnet (European University Institute), Fifth Pan-European Conference on EU Politics Porto, Portugal, 23-26 June 2010

[“The Council Working Groups – Advisors or de facto Decision Makers?”](#) Ingvild Olsen, Department of Political Science, Aarhus University, Fifth Pan-European Conference on EU Politics, Porto, Portugal - 23-26 June 2010

[“Time and The Consensus Norm: Examining the Dynamics of Voting in the Council”](#), Thomas Jensen, Fifth Pan-European Conference on EU Politics, Porto, Portugal - 23-26 June 2010

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Wim Van Aken, [“Voting in the Council of the European Union: Contested Decision-Making in the EU Council of Ministers \(1995-2010\)”](#), 2012

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European Union Politics March 2013- 14, [“Everyone’s a winner \(almost\): Bargaining success in the Council of Ministers of the European Union”](#)