

CONV 838/1/03
REV 1

CONTRIB 374

NOTE DE TRANSMISSION

du: Secrétariat

à: la Convention

Objet: Contribution présentée par M. Andrew Duff, membre de la Convention:
-"Garantir le fonctionnement de la Constitution: vote à la majorité qualifiée,
codécision et responsabilité de l'exécutif - avec propositions de modifications
procédurales portant sur la Troisième partie"

Le Secrétaire général de la Convention a reçu la contribution figurant en annexe de
M. Andrew Duff, membre de la Convention.¹

¹ Ajout de la page 6 qui manquait dans la version précédente.

Making the Constitution work: qualified majority voting, co-decision and executive accountability - with proposals for procedural amendments to Part III

When Part III was first debated at the Convention meeting on 31 May, a clear majority spoke in favour of a wider extension of qualified majority voting (QMV) for the Council, coupled in most cases with parliamentary co-decision (the legislative procedure). The reasoning is threefold.

First, experience to date shows that wherever and whenever QMV has been introduced into the Treaty it is much easier for the Council to reach a decision. This is not always because a vote has actually been taken. In most cases it is only the possibility of a vote being taken that spurs the ministers on to achieve a consensus. The mere prospect of QMV creates a positive ambience. No minister likes to have to vote down another minister. Instead, faced with the imperative of voting, ministers do their utmost to accommodate each other. Serious and reasoned objections from a minority are noted and respected. The Council, after all, is not a one-off diplomatic negotiation but a Union institution. Everyone has to live with each other the next morning. Often the decision reached under the 'shadow' of QMV is a decision not to proceed further with a draft proposal. QMV has not led to uncontrollable legislative activism on the behalf of the Council. Similar self-restraint by the Council will also be highly likely to occur if QMV is extended into common foreign and security policy.

Secondly, the Union faces enlargement. The Convention knows better than any other body of the Union how the increase in membership from 15 to 25 states affects performance. Already, in the European Council and the Council, 'tours de table' are laborious, and are increasingly dispensed with for items not of the utmost sensitivity. In the Council, as in the other institutions, package deals are brokered on the basis of compromise rather than confrontation.

Unanimity, already rare, will be an improbable eventuality amongst a group of 25 (and more) highly motivated ministers. Sometimes there is one obstinate minister who blocks a decision on fairly spurious grounds often completely unconnected to the actual matter in hand. To continue to insist on unanimity, therefore, leads unerringly to the lowest common denominator. QMV makes agreement possible at a higher level. It facilitates but does not enforce a decision. On the assumption that no one Member State has a monopoly of virtue, QMV will tend to improve the quality of the policy finally agreed.

Thirdly, QMV is more democratic. Thucydides would have insisted on more QMV. One of the main injunctions of Laeken was to make the Union more democratic. This means, among other things, the widest possible extension of QMV in the Council. We know that European integration is now biting into some areas where national interests have been considered to be particularly sensitive. The harmonisation of the structures of indirect taxation in order to improve the operation of the single market would be one such example.

However, there is simply no equation that says that democracy should be applied in inverse proportion to the delicacy of the matter in hand. To refuse to accept QMV in a problematic area is to close off any realistic chance of reconciling disagreements. Introducing the pressure of QMV promotes serious engagement between governments in the business of settling differences.

The Convention has made many great strides towards turning the EU into a mature, post-national constitutional democracy. Let us not take fright at giving the Council the capacity to take decisions. Clinging to unanimity for fear of something worse will be seen to mean that Member States do not want to do something together.

Here below we list the areas in which we are proposing a move to QMV or super QMV. In cases where a change is needed to either to the Council's relationship with the Parliament or to the Council's relationship with the Commission, this is also indicated. We work on four main assumptions:

- unanimity in the Council of the enlarging Union threatens stagnation;
- laws should be passed by both the Council and the European Parliament;
- simplification is desirable for its own sake;
- the authority of the Commission should not be diminished.

QMV must therefore be the rule in all legislative areas. Exceptionally, for matters of greatest sensitivity, super-qualified majority voting should be used. The legislative procedure provided for in Article I-33.1 is the norm. Where this is not possible, legislation should not, as a rule, be adopted without the agreement (or 'consent') of the European Parliament. Only in very specific cases (for instance, the need to react fast to a specific situation) should a law of the Council be adopted with Parliament being only consulted, as derives from Article I-33.2.

LEGISLATIVE PROCEDURE

New Article	Existing Article	Subject	Proposed Change
5	Ex-Article 13	Non-discrimination	Legislative procedure
8	Ex-Article 20	Diplomatic protection	Legislative procedure
60	New	Tax - combating fraud and admin cooperation	Legislative procedure
65	New	Language regime for intellectual property	Legislative procedure
125	Ex-Article 175	Environment	Legislative procedure
144	Ex-Article 166	Research	Art I-35 procedure (Delegated law)

Certain exceptionally sensitive cases include:-

COUNCIL LAW AND FRAMEWORK LAW

New Article	Existing Article	Subject	Proposed Change
6	Ex-Article 18	Free movement	Super-QMV + EP approval
7	Ex-Article 19	Citizen's vote	Super-QMV + EP approval
59	Ex-Article 93	Fiscal provisions	Super QMV + EP approval
165	Ex-Article 14	Judicial cooperation in civil matters - family law (para. 3)	Super QMV + EP approval
166	Ex-Article 15	Judicial cooperation in criminal matters - extension of scope (para. 2.d)	Super QMV
167	Ex-Article 17	Definition of European crimes - extension of list (para. 1)	Super QMV
170	Ex-Article 20	Public prosecutor	Super QMV
171	Ex-Article 21	Police cooperation	Super QMV + EP approval
173	Ex-Article 23	Hot pursuit	Super QMV + EP approval
227	Ex-Article 190	Uniform electoral procedure (para. 1)	Super QMV + EP approval and without national ratification

In a few other exceptional cases, both the Council and the European Parliament can enact laws on their own. These include, for the Parliament, the appointment of the ombudsman, the establishment of temporary committees of inquiry, and the Statute of Members of the Parliament. In the last case, in Article III-227(2), the Council still insists on a derogation from the norm by acting by unanimity over the matter of the taxing of MEPs' salaries. This should be changed to QMV.

In the interests of clear accountability, there should be greater separation of the executive from the legislative functions of the Council. Acts that are clearly of an executive nature should always be adopted as Commission regulations or decisions and not Council regulations or decisions, as follows:-

COMMISSION REGULATION OR DECISION

New Article	Existing Article	Subject	Proposed Change
36	Ex-Article 26	Common customs tariff	Commission regulation or decisions
49	Ex-Article 83	Competition	Commission regulation
55	Ex-Article 89	State aid	Commission regulation
133	Ex-Article 75	Transport	Commission regulation or decision (para. 3)
149	Ex-Article 171	Joint undertakings in research	Commission regulation or decision

In the areas where Member States will insist on keeping autonomous Council acts, consultation with the European Parliament should nevertheless be the norm, as follows:-

COUNCIL REGULATION OR DECISION

New Article	Existing Article	Subject	Proposed Change
46	New	Freezing of assets	EP consultation
121	Ex-Article 36	CAP	EP consultation
122	Ex-Article 37	CAP	EP consultation
335	Ex-Article 290	Language regime	EP consultation
339	Ex-Article 296	List of Armaments	QMV + EP consultation

In the fields of external economic relations and common foreign, security and defence policy substantial steps forward towards QMV are required if the Union is to be able to live up to the Convention's aspiration to enhance its capacity to act at home and abroad. We propose the following:-

EXTERNAL ACTION

New Article	Existing Article	Subject	Proposed Change
189	Ex-Art. 2	General provisions	- para. 2 joint proposal by Foreign Minister + Commission = QMV
196	Ex-Art. 9	Foreign and	- para. 1, delete blocking minority of constructive

		Security Policy	abstentions; - para. 2(b), joint proposal by Foreign Minister + Commission = QMV;
198	Ex-Art. 11	Foreign and Security Policy	- EP consultation about appointment of special representative
207	Ex-Art. 19	Security and Defence Policy	- Arms Agency: Council law + EP approval
210	Ex-Art. 22	CFSP Financial Provisions	- Council Decision + EP consultation
212	Ex-Art. 24	Commercial Policy	para-4 - QMV
216	Ex-Art. 28	Cooperation with 3rd Countries and Aid	Super-QMV
222	Ex-Art 33	International Agreements	- para. 4, Commission leads negotiations except in CFSP.