

BEGELEIDENDE NOTA

van: het secretariaat

aan: de Conventie

Betreft: Bijdrage van de heer Andrew Duff, lid van de Conventie
- "Zorgen dat de Grondwet werkt: stemmen met gekwalificeerde meerderheid, medebeslissing en uitvoerende verantwoordingsplicht - met voorstellen voor procedurele wijzigingen in deel III"

De secretaris-generaal van de Conventie heeft van de heer Andrew Duff, lid van de Conventie, de bijdrage ontvangen die in bijlage dezes staat.¹

¹ In de vorige versie ontbrak bladzijde 6.

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 |

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| | | 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. |
