







Qualified majority voting  
from the Single European Act  
to the present day:  
an unexpected permanence

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## Summary

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This study probes the way in which the use of the qualified majority voting has developed in the Council of the European Union. The investigation begins with the Single European Act, which expanded the field of decision making by qualified majority in an effort to facilitate the adoption of the directives concerning the Single Market. Quantitative data and interviews with members of the Council point to unexpected continuity.

- The number of legislative acts adopted despite negative votes and abstentions was low throughout the period investigated (on average, less than a quarter of the documents requiring a qualified majority).
- Yet the search for a qualified majority rather than for universal agreement is the driving force behind negotiations. The negotiators' main goal is to determine whether or not there is a blocking minority against any given decision. The existence or the absence of such a minority determines the moment when the presidency of the Council proposes a document's adoption. Today as in the past, concern over effectiveness explains why the presidency resorts to the use of a qualified majority as a weapon of dissuasion towards negotiators who fear ending up in a minority.

- Despite this, the minutes of these Council meetings point to a low opposition and abstention rate, because ministers who fail to gain satisfaction tend to rally to the majority once they know that a measure is going to be adopted.
- The publication of votes, which began in 1993, has not put paid to this strategy. Most decisions are taken by the preparatory committees that prepare Council meetings (Coreper and Special Committee on Agriculture), but the measures have to be officially adopted by the Council of Ministers, which gives the member states the opportunity to rally to the majority between the time a measure is unofficially agreed on and the moment it is officially adopted.
- However, ministers of member states in which there is stringent parliamentary oversight cannot avail themselves of that opportunity. Thus it is going to be necessary to assess the extent to which the increase in national parliaments' role laid down in the Treaty of Lisbon has a practical impact on voting in the Council.

## Aim of the study

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This study aims to show how the use of qualified majority voting has evolved in the Council of the European Union from midway through the 1980s until today. We would like to state from the outset that it is not about looking into the gradual substitution of qualified majority voting for unanimity in different fields, nor into consecutive reforms of the voting procedure as these have been widely studied. Qualified majority voting is based on a weighting of the votes of member states awarded mostly according to their populations. A key feature of it is its fairly high qualified majority threshold (about 70% of the votes). Successive enlargements of the European Union have meant that the weighting needed to be redefined, which gave rise to tense negotiations between the governments of member states. The most famous of these is no doubt the one that took place during the intergovernmental conference in Nice in 2000. However, sometimes people argue that these stormy debates are unwarranted because, generally speaking, the Council does not vote and decides ‘by consensus’. On average, since 1993, the year when the results of votes began to be published, about 80% of legislative acts coming under

the qualified majority voting procedure have been adopted unopposed.<sup>1</sup> Does that mean that when an act is adopted unopposed, that happens following a search for consensus during which qualified majority voting has been left to one side? What role does this rule play when decisions seem to be taken unopposed? Has the role of qualified majority voting evolved since the Single Act (1986), which extended the area governed by qualified majority to facilitate the adoption of directives making up the Single Market?

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1. Cf. Mattila, M. and Lane, J.-E., 'Why Unanimity in the Council? A Roll Call Analysis of Council Voting', *European Union Politics*, 2001, 2/1, p. 31 – 52; Hayes-Renshaw, F. et Wallace, H., 'When and Why the EU Council of Ministers Votes Explicitly', *Journal of Common Market Studies*, 2006, 44/1, p. 161-94; Dehousse R., Deloche-Gaudez F. et Duhamel O., *Élargissement : comment l'Europe s'adapte [Enlargement: How Europe adapts]*, Paris, Presses de Sciences Po, 2006; Hagemann S. et De Clerck-Sachsse J., 'Old rules, new game: decision-making in the Council of Ministers after the 2004 Enlargement', Special CEPS Report, Center for European Policy Studies, Bruxelles, 2007-03.

## Method, sources and limitations

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**W**hile the Council has a reputation for being a non-transparent institution, this research also had to find the means to get around a sizeable obstacle, which is that the publication of votes only became compulsory in December 1993. In addition, the votes published as from 1993 only cover adopted legislative acts. We do not have data on the acts that were not adopted by the Council. It is very rare for a text to be rejected by a vote because, when the presidency of the Council considers, following its bilateral contacts with the representatives of member states, that the number of votes needed to adopt a text has not been reached, it does not ask delegations to vote. It sends the text back to the Committee of permanent representative<sup>2</sup> or to the working group, which will try to grant additional concessions to opponents to get rid of the blocking minority.

This study is based firstly on about sixty or so interviews with Council personnel carried out between 2006 and 2010. We would like to thank the persons who agreed to be interviewed. We asked them for general descriptions of their practices in plenary session (the ways decisions were reached, the role of qualified majority

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2. Or to the Special Committee on Agriculture (SCA) if the text pertains to this field.

voting during negotiations, opposition strategies, etc.) and we tried to obtain information on the impact that some objective changes might have had:

1. The publication of votes as from 1993;
2. The extension of codecision with the European Parliament;
3. The growing number of members of the Council due to successive enlargements.

One could, for example, presume that this increase has made votes more frequent and that the famous substitution of the vote with consensus was a feature of the Council's business when there were fewer member countries.

We have tried to cover the different stages of decision-making, i.e. the working groups, the Committee of permanent representative 1 (Coreper 1)<sup>3</sup>, the Special Committee on Agriculture (SCA) and the Council. We have made sure that we have interviewed people who carry out the different possible roles: presidency of the Council, national representative, member of the General Secretariat. We also interviewed two representatives of the Commission in Coreper 1 and in the Council. For interviews with country representatives, we tried to diversify and balance out the sample by consulting categories according to which one customarily considers member states: size, how long they have been EU members, geographic location.

This research is also based on a consultation of minutes before and after 1993. We compared the number of legislative acts that had qualified majority as a legal basis that were adopted in spite of negative votes and/or abstentions during the last year of the Delors I Commission in 1988, and during the last year of the Barroso I Commission in 2008.<sup>4</sup>

We were obliged to set out certain limitations to this study.

First of all, we took into account the fact that voting practice can vary from one sector to another (the Agriculture and Fisheries Council has, for example, a repu-

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3. Until the implementation of the Treaty of Lisbon, the Coreper 1 was in charge of most dossiers that had to be decided by qualified majority, while the Coreper 2 dealt mostly with dossiers to be decided by unanimity.

4. For 2008, the data were provided by the Observatoire des institutions européennes [Observatory of European Institutions], IEP, in Paris. Our thanks to Florence Deloche-Gaudez. For 1988, they are the result of our own research in the Council's archives.

tation for voting more often than other Councils) but we did not study the possible sector-by-sector variations in a systematic way.<sup>5</sup> Several interviews were done with officials from Coreper 1, which deals with a big share of the files coming under qualified majority. Although the issue of sector-by-sector variations was raised during the interviews with these people who have a crosscutting vision, it merits a much more detailed study. As the scope of qualified majority has expanded over the years, it would be necessary to select sectors in which qualified majority voting has been in place for quite a long time for a sector-by-sector comparison to be relevant.

Also, voting habits differ from member state to member state. Some systematically avoid being outvoted. They accept a compromise early and are not outvoted for that reason (that is the case for France for example). Others have a reputation for having fewer complexes about being outvoted – this is the case for Germany.<sup>6</sup> We take this factor into account in this study in general but we could also do a more detailed study on the evolution of these habits.

Finally, this study does not include the particular case of qualified majority voting in comitology, in particular on the issue of genetically modified organisms (GMOs).<sup>7</sup>

5. For a sector-by-sector comparison, see Dehousse R. et al., *Que fait l'Europe?* [What is Europe doing?], Presses de Sciences Po, 2009, p. 86 sq.

6. We can identify three main reasons: 1. when the German representatives are put in a minority, they can thus go beyond the position of the Länder; 2. the Single Market represents an advantage for the Germans in any case;

3. German interests in some commercial and antidumping policies are in conflict with the Commission's positions.

7. Cf. Pollack, Mark A. and Shaffer, Gregory C., 'Risk regulation, GMOs and the limits of deliberation', in Naurin, D. and Wallace, Helen, *Unveiling the Council*, Basingstoke, U.K., Palgrave MacMillan, 2008, p. 144-164.



## I. Low level of negative votes and abstentions in 1988 and 2008

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To shed light on the trends in voting practices, first of all we tried to determine how frequently member states recorded negative votes and abstentions<sup>8</sup> in the 1980s. We chose to compare the number of legislative acts adopted despite negative votes and abstentions in 1988 and 2008. The scope of this comparison is limited by the fact that there has been an increase in the number of areas coming under qualified majority voting. In 1988, this was mainly agriculture, fisheries and the Single Market.

In 1988, around 320 legislative acts with qualified majority voting as their legal basis were formally adopted by the Council.<sup>9</sup> Negative votes or abstentions only appear for 34 legislative acts coming under qualified majority voting, i.e. a bit more than 10% of acts adopted that could have legally been adopted despite opposition. We can add to these 34 votes a dozen or so cases in which the minutes note that an act was decided on ‘by qualified majority’. This form of words means that there were opponents who did not want to appear in the minutes. We will come

8. When the rule is a qualified majority vote, abstention counts as a negative vote.

9. We counted directives, regulations and decisions. We only took into account formally adopted acts and not Council common positions for which the European Parliament’s opinion is needed before formal adoption.

back to this practice. For now, we will note that, if one takes into account these few cases, the proportion of texts adopted despite opponents rises to about 14%. In 2008, 30 legislative acts out of 200 acts coming under qualified majority voting were adopted despite negative votes and abstentions, which amounts to 15% of acts adopted despite opposition. There are therefore not many cases of resorting to a negative vote or abstention for the two years that we have looked into.

However, this comparison is limited because the officials involved in the decisions taken before 1993 state that the votes were not recorded with the greatest of rigour on the minutes. We will also come back to this point.

As we indicated, if you compare the distribution of negative votes and abstentions by sector in 1988 and 2008, we come up against the fact that the area coming under qualified majority voting has expanded. However, the table below offers a sector-by-sector comparison:

**SECTOR-BY-SECTOR COMPARISON - 1988 AND 2008**

SECTOR	YEAR	1988	2008
AGRICULTURE		10	7
FISHERIES		12	2
SINGLE MARKET AND INDUSTRIAL POLICY		6	7
ENVIRONMENT		1	2
NUMBER OF ACTS VOTED ON IN THE ABOVE SECTORS / TOTAL NUMBER OF VOTES		29/34 <sup>10</sup>	18/30 <sup>11</sup>

This table shows that, partly because of this extension, 12 of the acts contested in 2008 do not come from sectors where opposition was expressed in 1988. However, more than half of the acts contested in 2008 belong to the same sectors as most of the acts contested in 1988, namely agriculture, fisheries, the Single Market and environment.

10. The five acts not detailed in this table are commercial agreements with non-EU countries, a budgetary decision and a decision concerning the cooperation programme between the universities and companies in terms of training in the area of COMETT II technologies.

11. The 12 acts not detailed cover transport, the customs union, free movement of people, work, information, the statute of European civil servants and the budget.

This distribution appears to confirm the reputation that the Agriculture/Fisheries Council has for voting more often than other Councils. However, the proportion of public votes is not distributed in the same way between the fisheries and agriculture sectors for the two periods. According to data from the Observatory of the European institutions, for the agriculture sector for the period from January 2002 until June 2007, 37% of the acts coming under qualified majority voting ended up with a public vote. This proportion is lower than 15% for the fisheries sector<sup>12</sup>. For 1988, in the agriculture sector, ten acts out of 140 were adopted despite the explicit opposition – and in two cases the abstention – of member states, which amounts to 7% of contested acts. In addition, while, in 1988, 12 acts out of 47 were contested in the fisheries sector (i.e. about 25% of contested acts), in 2008 only two acts were contested in this sector.

One should note that the high number of contested acts in 1988 can be partly explained because Spain was then the main country contesting Council decisions in the area of fisheries. Soon after it had joined the EU, Spain would often vote against proposals that it did not consider in line with its interests before it gradually yielded to the ‘culture of consensus’. Ireland and Denmark also opposed several regulations in the same sector in 1988.

This leads us to look at the distribution of negative votes and abstentions by member state. Comparing the distribution by country has limited relevance due to the enlargements. The table below only takes into account the countries that were already EU members in 1988. The countries are ranked based on the number of decisions that they opposed in 1988, in descending order.

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12. See *Que fait l'Europe ?* [What is Europe doing], p. 98-99.

**DISTRIBUTION BY MEMBER STATE (IN %)**

<b>MEMBER STATE</b>	<b>YEAR</b>	<b>1988</b>	<b>2008</b>
<b>SPAIN</b>		3.75	1
<b>DENMARK</b>		3.1	2
<b>GREECE</b>		2.5	1.5
<b>IRELAND</b>		1.9	1.5
<b>UNITED KINGDOM</b>		1.9	3.5
<b>ITALY</b>		1.6	1
<b>FRANCE</b>		1.25	0.5
<b>PORTUGAL</b>		0.9	1
<b>GERMANY</b>		0.9	2
<b>NETHERLANDS</b>		0.6	1
<b>BELGIUM</b>		0	2
<b>LUXEMBOURG</b>		0	1.5

The number of negative votes and abstentions by member state is on average higher in 1988 than in 2008. In 1988, the 34 votes were spread between ten countries (out of 12). In 2008, the 30 were spread between 23 countries (out of 27).<sup>13</sup> In 1988, the maximum number of negative votes or abstentions for a country was 12 (for Spain) whereas it was only seven in 2008 (for Great Britain, the countries not taken into account for 2008 having all voted less than six times).

If we look at the countries individually, we note that Germany, which today has a reputation for not hesitating from ending up in a minority, was in 1988 among the countries that voted the least often against the measures adopted or abstained. Greece, which opposed decisions in various sectors in 1988 only opposed three decisions in 2008. By contrast, Denmark was, in 1988, already among the countries that contested the measures adopted the most often.

In general, this comparison shows that the Council was already tending to adopt legislative acts without explicit opposition in 1988 although apparently some member states abstained or voted more easily against the adopted acts. However, given the different limits of this comparison, it is important to complement it by hearing from officials in the Council.

13. The fact that over 300 acts coming under qualified majority voting were adopted in 1988, against 200 in 2008, is another limit to the scope of this comparison.

## II. From an automatic to a sophisticated use of qualified majority voting<sup>14</sup>

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The interviews show that qualified majority voting has been used fairly consistently since the Single Act. It acts like a deterrent, as one official put it, used by the presidency of the EU *vis-à-vis* member states, who avoid opening up voting procedures as far as possible, be that by raising their hands or via a ‘tour de table’. The delegations know that they can end up in a minority and try to be constructive so as not to be marginalised. That is why most decisions seem to be taken unopposed. According to a permanent representative, out of the 260 directives that the Single Market has put in place, only about forty have led to a vote.<sup>15</sup> However, while it has been possible to adopt all these directives efficiently, that is due to the option of having a vote. Since the Single Act, the Council has worked and generally continues to work as follows. When a proposal reaches the working group and then Coreper or Special Committee on Agriculture (SCA), the players – the presidency, the secretariat, the Commission, national representatives – try to determine if there is a blocking minority. That is why, during plenary sessions and bilateral meetings, qualified majority calculations go on all the time. However, it is done implicitly. It is not based on an open vote of delegations during the session but is deduced

14. These terms are those of a Permanent Representative to the Council during the period studied.

15. De Schoutheete Philippe, *Une Europe pour tous* [A Europe for everyone], Paris, Odile Jacob, 1997, p. 20.

by people listening to the positions expressed in plenary session or unofficially as delegations do not explicitly refer to a vote. When the presidency thinks that there is no longer a solid blocking minority against a proposal or a presidency compromise solution, it declares that it can be adopted by encouraging those in the minority to join the majority through cosmetic concessions. The proposal tends to be adopted unopposed because those in the minority do not see any interest in voting against an adopted text (we will come back to their reasons for that).

As one participant in the Transport Council put it: “If an observer were to attend Council meetings he or she would notice next to no evidence of qualified-majority voting. It is very unusual for presidencies to ask delegations to vote. The official explanation is that presidencies will seek consensus around the table and will thus avoid isolating colleagues. This expression of *noblesse oblige* is, of course, very welcome but is only part of the explanation. Qualified-majority voting is like the sword of Damocles hanging above the negotiation table. It is in the mind of everyone. The Presidency, Commission, and delegations assess the state of negotiation – almost permanently and automatically – in terms of whether there is a qualified majority or a blocking minority. [...] A lack of official voting [...] does not mean at all that the qualified-majority system is absent, nor does it mean that finding consensus is the general rule.”<sup>16</sup>

While this mechanism is constantly at play, some of those interviewed said that the qualified majority voting engine has not always worked with the same power or, to put it another way, the threat of being in the minority has not always been used with the same vigour by different presidencies. We will try to highlight some of the major phases although it is difficult to determine with precision if the influence of qualified majority voting has varied as it is used implicitly so often.

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16. Bal, Leendert Jan, 'Member states operating in the EU Council of ministers: inside impressions', in Meerts, Paul W. et Cede, Franz (ed.), *Negotiating European Union*, Houndmills, Basingstoke, Hampshire; New York, N.Y.: Palgrave Macmillan, 2004.

However, it seems that we can isolate a first phase from the time of the Single Act to 1992.<sup>17</sup> The remarks from members of the Council at that time converge. The need to build the Single Market led to full use being made of the potential of qualified majority voting, with the presidency playing on ministers' fear of being outvoted to push for the adoption of directives. The vote was used in an abrupt way in the early years, without any real diplomatic niceties, like a 'procedural guillotine', to use the words of one representative. It seems that the highest number of formal votes took place in 1986 (80 or 90 votes according to sources<sup>18</sup>) before this number gradually declined. While remaining the engine behind decision-making, qualified majority voting began to work in a more implicit way. The bad relations that explicitly putting people in a minority created and the danger of a representative or minister brutally isolated by the presidency taking revenge in subsequent negotiations encouraged people to make the use of qualified majority voting more 'sophisticated'. For example, the presidency avoided referring to the majority or the minority in plenary session and sought to grant concessions to those in the minority so that they would join the majority without losing face. That is why we sometimes think that the Council has replaced the qualified majority voting rule with the practice of achieving a consensus. The hypothesis according to which qualified majority voting has gradually become more widespread, whereas the small number of officials made it possible to seek general agreements initially is therefore not backed up by what interviewees said. In fact, the contrary is the case.

17. For data on votes before 1993, cf. J.-L. Dewost, "Le vote majoritaire : simple modalité de gestion ou enjeu politique essentiel ?" [The majority vote: simple management tool or essential political tool] in *Du droit international au droit de l'intégration, Liber amicorum Pierre Pescatore*, Baden-Baden, Nomos Verlagsgesellschaft, 1987, p. 167-175; Ponzano, Paolo, "Le processus de décision dans l'Union européenne" [The decision-making process in the European Union], *Revue du Droit de l'Union Européenne*, 2002, 1, p. 35-52, p. 43, Dewost J.-L., cité, p. 168 et Louis, Jean-Victor, "Les nouvelles procédures : conclusions et perspectives" [The new procedures: conclusions and prospects], in Engel, Christian et Wessels, Wolfgang, *From Luxembourg to Maastricht. Institutional change in the European Community after the Single European Act*, Bonn, Europa Union Verlag, 1992, p. 161. This data match and both the average proportion of decisions taken despite negative votes and abstentions (which count as negative votes) seem, since 1985, to be close to that established after the results published since 1993.

18. 80 according to Jean-Louis Dewost, 90 according to Paolo Ponzano. According to Jean-Louis Dewost, a legal advisor at the Council's Secretariat, this is how the use of the vote has evolved: "We are moving [...] towards a situation in which majority voting becomes the normal management arrangement for the Community whilst the need to have consensus remains for some essential political choices [...] Two interesting phenomena deserve to be highlighted in the analysis of the use of the vote in recent years: not only has the number of votes in the Council increased considerably but also their 'meaning' tends to change. [...] In term of *scale*, we note that we have moved from some isolated votes per year to a dozen or so votes in 1980 then to twenty or so in 1982, to forty or so in 1984 and again in 1985, to end up close to 80 votes in 1986. This is a completely remarkable trend that has escaped a large number of observers. It concerns all the Council's sectors of activity but more particularly agriculture, fisheries as well as trade policy, not to mention budgetary and statutory issues that have experienced a very old and uninterrupted use of the vote." Dewost J.-L., cited p. 168. However, according to Paolo Ponzano, the number of votes before 1985 was lower than Jean-Louis Dewost says.

According to one participant in the 1980s negotiations, who came back to the Council in the social affairs sector in the mid 1990s, once the directives setting up the Single Market were adopted, delegations took fewer risks. People began to talk about ‘looking for consensus’, which, according to him and several members of the secretariat interviewed, ‘doesn’t mean anything’. It is possible that, in the 1990s, one presidency after another hesitated before using the vote as a deterrent because the Single Market had been completed. However, it is important to put this change in context. On the one hand, texts adopted in the social affairs sector only account for a small minority of decisions taken by the Council. On the other hand, the testimony of this person could lead one to establishing a dichotomy between looking for consensus and using the vote as a deterrent. But, as one official put it, these are two sides of the same phenomenon. It is the possibility of a vote that leads participants to reach agreement.

While qualified majority voting may have had less influence after 1992, the interviews done with officials in the Council who were all in the Council at least since the beginning of the 2000s revealed an unexpected phenomenon. Generally speaking, the presidency does not look to associate all the participants with the final compromise. In truth, on the one hand, overly watered down compromises would be a result of this and, on the other, decision-making would be slowed down too much whereas every presidency is motivated by a wish to be productive. Generally speaking, the presidency proposes the adoption of its compromises once it thinks that there is no longer a blocking minority. The exceptions to this rule are the cases when a big member state refuses to be put in a minority and those where a vital interest of a member state is threatened by a text that has sufficient support to be adopted. We tried to obtain a general view of the role of qualified majority voting by interviewing about twenty members of Coreper 1 (which deals with most of the sectors coming under qualified majority voting). When we asked members of Coreper 1 if they saw differences between sectors, they tended to reply that the search for productivity was a feature for all the sectors that they knew about.

### III. The norm for getting minorities to join the majority

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**A**ccording to people involved in decision-making before 1993, the ‘figures [in terms of votes] have no meaning’ because the general rule was that the presidency noted a qualified majority without a vote and those in the minority chose to remain silent. ‘The minutes don’t mean anything’ because those who were not satisfied did not want to appear like the ‘black sheep’. This phenomenon of joining the majority prior to 1993 is thus noted by the presidency of the Council in 1990: “The difficulty in providing statistics (on votes in the Council) is related to the way in which votes are taken in the Council. On many occasions, when a Member State sees that a vote will not be to its advantage, it joins the consensus rather than ask for a vote which would not alter the situation. Consequently, even if records were available, I am convinced that they would not be especially reliable.”<sup>19</sup> However, getting those in a minority to join the majority has not been made more difficult by making votes public. Meetings with decision-making interviewees in recent years, whether they belong to the secretariat or the permanent representation of a member state, show that joining the majority continues to be the norm.

19. *Answer of President-in-office of the Council to question No. 89 (H-609/90) of Mr. De Vries, European Parliament, verbatim report of 13 June 1990*, cited by Bieber, R., “Majority Voting and the Cooperation Procedure”, in C. Engel et W. Wessels, *From Luxembourg to Maastricht. Institutional change in the EC after the SEA*, Europa Union Verlag, Bonn, 1992, p. 57.

In a reply to a member of the European Parliament in 2001, the Council secretariat noted this phenomenon in its way: “Qualified majority voting can in practice promote the agreement of all the delegations on a text to the extent that delegations who do not agree with it can be inclined to vote in favour of it once they know that they are going to be outvoted.”<sup>20</sup>

National representatives refer more precisely to different motivations:

- In the Council, voting against an adopted text or abstaining is looked on badly by the Commission and the presidency. The Commission and the presidency try to listen and to take into account the demands of the different ministries: not joining in with the majority is considered as a lack of respect for their work. Because they will have to negotiate again with the same partners, representatives find it more prudent to join the majority when they have not secured what they wanted. This shadow cast by the future is all the more influential because the presidency is a rotating one. The ministers who could show that they are not satisfied by voting against a measure adopted or by abstaining avoid drawing attention to themselves so that the presidency of their country will not be blocked by this kind of behaviour.
- Representatives of member states fear that public votes against proposals and abstentions might have harmful consequences at the national level. They need to face journalists during the press conferences following Councils and tend to withdraw from the obligation to justify a negative vote or an abstention which run the risk of being perceived as failures in the negotiations. Moreover, they fear that a vote against a measure adopted or an abstention might be used by their political opponents, making the implementation of the measure which they opposed difficult. While ministers sometimes look to give publicity to their opposition (for example, German representatives can therefore show the *Länder* [German regions] that were opposed that they fought against a measure but that it was adopted and that it is going to be necessary to implement it or when Great Britain was headed up by a Conservative government, the then prime minister John Major had no hesitation in voting publicly against adopted texts, behaviour that the Blair government distanced itself from), in general they look to keep quiet the fact that their demands have not been satisfied during negotiations.

20. Written question E-3938/00 asked by Christopher Huhne (ELDR) to the Council. Number of qualified majority votes, *Official Journal* n° C 364 E of 20/12/2001 p. 0004-0005.

According to national representatives, voting against a proposal or abstaining leads to that country drawing attention to itself, which is desirable neither in the Council nor at the national level. When ministers do not respect the call to join the majority, their peers regard their behaviour as being incomprehensible and excessive, incompatible with the diplomatic workings of the Council. The case of the Polish government, often described as obstructionist, was cited during almost all the interviews we held with those witnessing the decision-making process in recent years. We would note that an opponent or a country abstaining runs the risk of drawing attention to themselves all the more so as the qualified majority is high. When a text is adopted, the number of opponents or countries abstaining can only be low such that they are like a 'fly on milk' [an equivalent expression in English is to 'stick out like a sore thumb'], to quote the expression used by a Spanish representative.

Moreover, when the Council examines a text in codecision with the European Parliament, the rule is that representatives of member states defend the Council's common position en bloc against MEPs. Although this rule is informal, it is respected by the delegations. It can be explained by the fact that groups of MEPs could use divisions in the Council to have the text changed to what they want. The extension of codecision to new areas has contributed to decisions being persistently taken apparently unopposed and the proportion of votes is lower when the decisions need to be taken by codecision.

The Council's famous culture of consensus thus consists of not opposing a text which is going to be adopted even if one disagrees with it. That is a diplomats' culture, which means that the presidency of the Council and the Commission satisfy every member state before having a text adopted. In the sphere of qualified majority voting, national representatives are very active and come together by themselves. However, while the fact that countries in the minority join the majority partly explains why, in the 1980s and today, a large proportion of decisions are taken unopposed, how is it possible to make them join the majority? Has the growing openness of the Council changed this practice?



## IV. The presidency's trump cards and the lack of transparency of member states' positions

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**W**hen we spoke to interviewees, two contrasting visions emerged. In the Council, everyone knows everything and in the Council, nobody knows the exact state of positions. However, interviews with all the past and present officials lead us to state that the presidency is better informed than national negotiators. The presidency leads the debates and looks for compromises on the Commission's proposals together with the Commission. The negotiations make headway thanks to bilateral contacts which allow the presidency, assisted by the Council secretariat, to be better informed about the delegations' positions. This privileged level of information is noted by both those witnessing decision-making before 1993 and present day witnesses.

A second fundamental particularity remains. The aim of any presidency is to have the highest number possible of proposals adopted. The presidency looks as far as possible to achieve a qualified majority on the different files that it inherits for its six-month period. This six-monthly rhythm stimulates rivalry between presidencies.<sup>21</sup> The interviews revealed that the presidency has put its more precise

21. It is possible that the new presidency system put in place by the Treaty of Lisbon might lead to reducing the impact of this factor but this effect cannot be evaluated as part of this study.

knowledge of the positions of delegations at the service of this search for efficiency both yesterday and today. How does it use its privileged level of information?

Those witnessing negotiations before 1993 explained that very often decisions were taken unopposed because the presidency ‘noted’ that a text could be adopted without asking delegations to vote by raising their hands or by expressing their position during a ‘tour de table’. This assertion was made on the basis of information gathered in plenary and thanks to bilateral contacts with different delegations. This second source of information was the most reliable because, in meetings, delegations remained vague to keep some margin for manoeuvre in negotiations and so as not to appear defeated vis-à-vis their peers if they did not obtain what they wanted. In reality, being clear about one’s position, whether in a positive or negative way, prevented countries from obtaining more concessions. A member state stating that it was against a proposal was no longer listened to by the presidency, which was looking to win the support of delegations that were apparently more flexible. A member state stating from the outset that it was in favour of a proposal ran the same risk once its vote was won. So remaining vague was the better strategy. That is why the presidency sought to determine what the real demands were in bilateral meetings. When it considered that there was no longer a blocking minority, it proposed the adoption of the text. The presidency only made an exception to this rule if a big country refused to be put in the minority or if the national interest of a country was considerably threatened by the text that was in the middle of being adopted.

This method led to decisions being taken when the positions of delegations were not necessarily clear. National representatives were not very sure of the state of positions because bilateral contacts and granting concessions led to general instability. They relied on the presidency’s assertion that they thought better informed than their own. When the latter declared that a proposal had enough support to be adopted, they did not oppose it. It is because of these practices that our interviewees stated that it is not possible to determine how many legislative acts have been adopted before 1993 without the support of all member states.

The presidency used its information to push for the adoption of proposals by taking care, in particular, of how it gave the floor to countries. In plenary session, a

member of the secretariat would note down the names of delegations that wanted to speak. The presidency would consult the list and it would happen that it did not give the floor to the first country that had asked to speak but to the second, which the first country contested. The presidency would reply that it decided on the order of speakers. In fact, the order of speakers was meant to ‘bank’ declarations of support for its compromise. It thus tried to dissuade those that would then speak from expressing their disagreement in the hope that it would more easily achieve a qualified majority.

What is more, if, during plenary sessions, the presidency judged that there was a blocking minority, it could decide to interrupt the meeting to speak with one or two delegations individually. It would again open the meeting after these exchanges by stating that “we have a qualified majority compromise”. However, nothing had changed in the compromise that had not been supported by a qualified majority before the interruption. The representatives could deduce from that that the presidency had made some oral promises to one or other of the delegations after it/they had gone back during the bilateral exchange on the position that it/they had backed in the meeting. In that way, the presidency could have a text adopted that was on the way to being rejected. Nobody contested its method because a delegation that would have asked for a vote would have found itself in an embarrassing situation if the vote had ended up with a qualified majority. The prospect of negotiating again with the same people acted as a deterrent for opposing the presidency’s assertion, which was deemed as better informed than all the delegations.

In addition to its superior information, the presidency could use its procedural privilege to favour the adoption of texts which member states were opposed to. Rather than asking “who is opposed to this compromise?”, which might have encouraged opponents to declare their hand and might have unleashed a chain reaction, it could get around the difficulty by saying to Coreper or to SCA: “I intend to present this text as an ‘A point’ at the Council” (an A point is a text that the ministers will formally adopt in Council because only they have a right to vote, but without discussion, as an agreement has been reached at Coreper or SCA level). Countries in the minority would conclude from that that the qualified majority had

been reached and would keep quiet.<sup>22</sup> The presidency would thereby discourage a possible blocking minority from expressing itself, or, if there were not enough opponents to block the decision, it meant that the fact that they were in a minority was not revealed.

However, it is important not to believe that all the delegations fell for these manoeuvres. The fact of there not being a vote could be useful to them. This was the case, for example, when, rather than having a vote, the presidency declared: “I note that the conditions are there for a decision to be taken because there is an agreement.” This ambiguous wording could mean that there was a qualified majority or that there was a general agreement in favour of the text proposed for adoption. Delegations could play on this ambiguity when they were not against a proposal but did not want people in their country to know that they had supported the proposal. They could say: we were against it but there was a qualified majority so we had to adopt the text. In addition, when trade agreements with non-EU countries were adopted, the fact that there had been a qualified majority without a vote allowed delegations who did not want the non-EU countries to know that they had been opposed not to be identified.

Have the publication of votes and the general policy of transparency on the activities of the Council put an end to these practices? A former permanent representative explained that, in the early 1990s, ministers and representatives feared that the obligation to vote publicly might lessen the efficiency of taking a decision by hardening the positions of delegations. It would no longer be possible to use the adage that perhaps best reflects the workings of the Council: “He/she who says nothing agrees.” These fears turned out to be without foundation because decisions are mostly taken by Coreper or SCA. The partial opening of sessions only concerns meetings of ministers in Council. Coreper and SCA meetings are held entirely behind closed doors. In these circumstances, members of Coreper and SCA have kept the usual practices from before 1993. The presidency continues not to make delegations vote to prevent their position from hardening and so that

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22. The delegations could also ask the presidency to put the text down as a ‘false point B’. Point Bs are texts that will be discussed by ministers because they include problems that Coreper or SCA has not resolved. Either these texts were then sent back to representatives in Coreper or SCA to be reworked or they were adopted directly by the ministers. When a text is a ‘false point B’, representatives have found an agreement but, during its adoption, a minister wants to make a statement opposing or supporting it.

measures are adopted more easily. The texts can still be adopted in silence, by soft consensus, without the positions of all the delegations being clear. Noting a qualified majority without having a vote is therefore a 'quite practical practice' to use the words of a permanent representative. The presidency can move texts from one working group to Coreper or SCA or from Coreper or SCA to the Council even if a qualified majority is not solidly established. As from the moment when the presidency of Coreper or SCA notes that a text can be adopted as a 'point A' by the Council without having a vote, the uncertainty on the state of positions is mixed with the reasons set out above, which therefore encourages the countries in a minority to join the majority.



## V. The shadow cast by the future and conforming: two permanent features

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The combination of two permanent features particular to the Council explains how the methods used by the presidency are effective.

First of all, the shadow cast by the future plays a big role. Members of the Council try not to harm each other to avoid retaliation.

In addition, there is a strong tendency towards countries wanting to conform and this works in favour of proposals being adopted. Diplomats are wary not to stand out in a circle that they frequent almost every day. They need to have major difficulties to take the floor because they always run the risk of being seen as obstructionist or as an individual that is delaying the meetings without good reason. According to interviews with current officials, we may have the impression that the impact of wanting to conform has only grown with the enlargements to include small countries. The presidency and the Commission seek the support of big countries as a priority because they thereby achieve a qualified majority more quickly. If a small country opposes a proposal without a very good reason, it runs the risk of not being heard by the presidency, which will be looking for the support of countries that have the most votes. To be heard, it is therefore very much in the interests of the

representatives of small countries to limit the number of times they take the floor. In addition, sometimes the material means are missing at the national level for the representatives of small countries to receive instructions, which seems to lead them pretty mechanically to rely on the Commission's expertise, or, less often, on that of representatives of big countries. Finally, they have a smaller range of interests than do the bigger countries. As they have no interest at stake in certain proposals and have therefore every incentive to go in the direction of the Commission, their default position is to support its proposals. It is important to point out here that the Commission's proposals are reputed to represent on average more the interests of small countries than those of the big countries. According to current decision-taking officials, this trend for small countries to conform is a 'deadweight' in negotiations that makes the formation of blocking minorities by big countries more difficult.

## VI. The policy of transparency and its effects

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**I**n theory one might think that publishing votes<sup>23</sup> forces delegations to give an account of positions that they have defended behind closed doors. But things are more complicated because only the results of votes are made public. The adoption of texts by a vote is not itself public and it would be difficult for it to be so as the presidency does not open the voting procedure up in plenary session. The decision-taking organisation allows countries in the minority to join the majority between the informal adoption of texts behind closed doors and the publication of votes. In this context, only the delegations of member states in which national MPs control the vote of their ministers in the Council are obliged to note their position behind closed doors via their public vote. This is in particular the case in Denmark, the Netherlands and Sweden.<sup>24</sup> While the publication of votes is certainly progress, the lack of systematic control by national parliaments and the organisation of decision-making in the Council do not make it possible to fully benefit from the transparency rules in the Council. When we were doing research for this report, it

23. The results of votes are published on this site:

<http://www.consilium.europa.eu/documents/legislative-transparency/public-votes.aspx?lang=en>

24. Cf. *UE : la réforme du Conseil des ministres* [EU: the reform of the Council of Ministers], Seminar organised in Paris on 4 September 2000 by Notre Europe and the association Friends of Europe, under the chairmanship of Jacques Delors and Étienne Davignon, Report by Jean-Louis Arnaud, February 2001, p. 5.

was still too early to assess to what extent the growing influence of the national parliaments – stipulated in the Treaty of Lisbon – has changed the practices of vote.

The organisation of decision-making in the Council is such that the registering of the votes by the permanent representatives is a phase that is so to speak independent of negotiations. As we have pointed out, most decisions are in fact informally taken by Coreper (or by the Special Committee on Agriculture (SCA) if measures pertain to the latter field), which works behind closed doors. During Coreper or SCA plenary sessions, delegations do not say that they will vote against a text or will abstain. Things happen in a much more subtle way. It is during bilateral meetings with the presidency that delegations communicate their intention to vote against a text or to abstain. In general, once the presidency has declared in Coreper or in SCA that there is a qualified majority in favour of a text, it proposes that the Council adopts it in a future meeting. It then sends an electronic message to the permanent representations asking those who want to vote against or abstain to write to it before a certain date. Those who do not reply are considered as having approved the text. During the official adoption in the Council, the presidency reads out the list of countries voting against or abstaining and a table shows the results of the ‘vote’. But ministers do not vote in the meeting. The votes are pre-entered into electronic machines. This organisation encourages countries in the minority to ‘drop things’ as the text is to be adopted anyway and so they usually consider that they have no interest in voting against it or abstaining.

The policy of transparency also implies that part of the Council sessions are broadcast on the internet. Now, just as it did when the Council was only working behind closed doors, the presidency can still interrupt meetings when it considers that a conversation with a delegation will enable it to get around a blocking minority or the resistance of a minister to the adoption of a text. More generally, country officials find ways to get around the transparency, for example by negotiating during a lunch break.

Despite the obstacles which the policy of transparency comes up against, the publication of votes does constitute notable progress. Before the publication of votes, from 1985 to 1993, the presidency would use the technique of ‘silent qualified

majority' to have texts adopted against which there was in fact a blocking minority. That was for example the case when it was necessary to take decisions on the status of European civil servants and their remuneration. It transpired that too many member states were opposed to the increase in remuneration for it to be adopted. The governments of these countries argued in particular that they could not give European civil servants who were already "paid too much" what they were not giving their own civil servants. However, because there were trade union movements in the Council staff who were driven on by a very strong minority that threatened to go on strike, the secretariat and the presidency encouraged representatives of member states to vote for increases in remuneration. The representatives of governments against this did not want to go beyond their instructions but did not want the work of the Council to be interrupted by a strike by the staff either. That is why the presidency noted a qualified majority and asked representatives who had instructions to vote against it to keep silent. The latter then told their capitals that they had been put into a minority but without mentioning the other opponents. The increase in remuneration could therefore be adopted despite the existence of a blocking minority. Given that votes are published today, it would be impossible for permanent representatives not to respect the instructions of their ministers and for the Council to adopt texts against which there is a blocking minority.

Apparently, by the expression 'silent qualified majority' used by those witnessing decisions taken before 1993, one should not understand only these cases of false majorities but also decisions taken by real qualified majority without the opponents being identified. As we have pointed out, when the minutes of Councils in 1988 include the reference: "Council has adopted directive x by qualified majority", this wording is not just a reference to the legal basis of the decision. It means that there were opponents of the decision that did not want to be recorded in the minutes.

The publication of votes prevents these ambiguities. Either the opponents of a legislative act adopted and those abstaining are identified in the minutes or it is indicated that all the member states approved the adopted text.<sup>25</sup> However, as we have pointed out, the opponents are today only obliged to note their opposition or their abstention when a strict national parliamentary control obliges ministers to show loyalty to their MPs. They must then publicly oppose it or abstain if the national parliament has expressed its disagreement with a directive or a regulation. So it is necessary that the policy of transparency in the Council is accompanied by a growing role of national parliaments in order to develop the advances in this area contained in the Treaty of Lisbon.

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25. However, this is recent notation (2008): for a number of years, in the column 'results of votes', only countries voting against a proposal or abstaining were mentioned. When no delegation had recorded a vote of opposition or an abstention, the 'results of votes' column was empty. In addition, on the Council's minutes before 1993, negative votes and abstentions – except in a tiny number of cases – are only indicated for B points. For texts adopted as A points, no mention is made of opponents or those abstaining. This reference does not appear on the minutes of the Coreper meetings consulted either (those for 1988). However, officials of the time noted that when the presidency of Coreper or SCA noted that a file was going to be adopted as an A point in Council, that did not mean that there was no opponent and that a general agreement had been found but that the countries in a minority accepted not to oppose the adoption of the text. By contrast, today, when the presidency reads out a list of A points adopted by the Council, it mentions the negative votes and the abstentions.

## Conclusion

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**T**hus, it does not seem that the use of qualified majority voting has evolved considerably in the Council. Qualified majority has been the driver of decision-making since the middle of the 1980s. Bitter negotiations on the weighting of votes during different enlargements are far from being unwarranted contrary to what has sometimes been argued. With the formation of blocking minorities being at the heart of decision-making, governments have a real and considerable interest in seeking to obtain as many votes as possible.

Although, since 1993, in around 80% of cases, the decisions that could have been taken by qualified majority were in fact taken without opposition, that does not mean that in practice the Council looks for a general agreement. It is qualified majority itself that encourages delegations fearing that they will be put in a minority to make compromises and join the majority. This decision-making rule is therefore much more effective than the unanimity rule. This study also shows that, while presidencies do not aim to satisfy all the member states but aim for a strict qualified majority, it is because they seek to have the largest possible number of legislative texts adopted. This search for efficiency has been noted by those that have taken part in the Council's activities in the 1980s, 1990s and 2000s.

Examining minutes from the Council reveals that, at the end of the 1980s, the norm was, as today, to adopt legislative texts without negative votes or explicit abstentions. The considerable proportion of decisions taken without apparent opposition was already due to the fact that countries in a minority tend to join the majority once they know that they can no longer block the adoption of a text. The publication of votes as from 1993 has not put an end to this practice because ministers are not forced in most member states record their opposition behind closed doors by publishing a negative vote or an abstention. The publication of votes does of course constitute progress, but for it to allow better democratic control of positions taken by ministers, national parliaments would need to be more involved in the decision-making. From this point of view, the Treaty of Lisbon constitutes progress (see the ‘Protocol on the role of national Parliaments in the European Union’). It will be necessary to assess its effects on the practices of vote. At this stage, we can only say that the proportion of legislative acts adopted in spite of negative votes or abstentions seems to have increased in 2010 and 2011.

We would finally note that the Treaty of Lisbon should help for the development of transparency in the Council. It stipulates that the Council must deliberate and vote in public<sup>26</sup> and extend codecision to the whole of the agriculture sector and the justice and home affairs sector – which implies that meetings of the corresponding Councils should be made public. In order to strengthen the transparency of the Council, the question needs to be asked as to how one can lift the veil of secrecy on two stages of the decision-making process:

1. The activity of the Committee of permanent representative, which continues to be in charge of the biggest part of the decision-making;
2. The ‘trialogues’ and the conciliation committees which are not public either.

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26. Article 16-8 TEU..

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## Visions of Europe

### Qualified majority voting from the Single Act to present day: an unexpected permanence

This study, the second in the series that *Notre Europe* has devoted to the "institutional triangle", probes the way in which the use of the qualified majority voting has developed in the Council of the European Union. The investigation begins with the Single European Act, which expanded the field of decision-making by qualified majority in an effort to facilitate the adoption of the directives concerning the Single Market. The data that we analyse point to remarkable continuity in this field. The number of measures adopted after a formal vote remains low, despite a considerable expansion of the areas in which such a vote is permitted. Yet the search for a qualified majority rather than for universal agreement is the driving force behind negotiations. This study explains this seeming paradox, on which the publication of votes that began in 1993 has had hardly any impact at all.

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