RESEARCH PAPER 00/49
19 APRIL 2000

Intergovernmental Conference 2000: the main agenda

A European Union Intergovernmental Conference or IGC opened on 14 February 2000 to discuss amendments to the EC Treaties prior to enlargement of the Union within the next few years.

The preparatory group set up in Helsinki in December 1999 is committed to discussing at least the three main issues not resolved at the last IGC, namely: the size and composition of the Commission, the weighting of votes in the Council of Ministers and the extension of Qualified Majority Voting. Other institutional reforms and issues might be added to the agenda.

This paper considers contributions to the IGC so far by the institutions and the Member States on the three main issues and on some of the other matters being discussed in the preparatory group.

The general issues surrounding institutional reform are considered in Research Paper 99/54, *Institutional Reform in the European Union*, 20 May 1999.

Vaughne Miller

INTERNATIONAL AFFAIRS AND DEFENCE SECTION

HOUSE OF COMMONS LIBRARY

Recent Library Research Papers include:

00/34	The Euro-Zone: Year One	27.03.00
00/35	The *Criminal Justice and Court Services Bill*: Children and Family Court Advisory and Support Service, Disqualification from Working with Children, and Truancy [Bill 91 of 1999-2000]	24.03.00
00/36	The *Criminal Justice and Court Services Bill*: Probation, Community Sentences and Exclusion Orders [Bill 91 of 1999-2000]	27.03.00
00/37	The *Criminal Justice and Court Services Bill*: Drug Testing [Bill 91 of 1999-2000]	27.03.00
00/38	Direct taxes: rates & allowances 2000-01	29.03.00
00/39	The *Learning and Skills Bill* [HL] [Bill 96 of 1999-2000]	28.03.00
00/40	The *Nuclear Safeguards Bill* [HL] [Bill 59 of 1999-2000]	30.03.00
00/41	Economic Indicators	03.04.00
00/42	Advisers to Ministers	05.04.00
00/43	*Census (Amendment) Bill* [HL] [Bill 100 of 1999-2000]	05.04.00
00/44	The *Local Government Bill* [HL]: Local government leadership etc [Bill 87 of 1999-2000]	06.04.00
00/45	The *Local Government Bill* [HL]: Electoral Aspects [Bill 87 of 1999-2000]	06.04.00
00/46	The *Local Government Bill* [HL]: welfare services and social services functions [Bill 87 of 1999-2000]	06.04.00
00/47	The *Local Government Bill* [HL]: the 'Section 28' debate [Bill 87 of 1999-2000]	06.04.00
00/48	Unemployment by Constituency – March 2000	19.04.00

Research Papers are available as PDF files:

- *to members of the general public on the Parliamentary web site, URL:* ***http://www.parliament.uk***
- *within Parliament to users of the Parliamentary Intranet, URL:* ***http://hcl1.hclibrary.parliament.uk***

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. Any comments on Research Papers should be sent to the Research Publications Officer, Room 407, 1 Derby Gate, London, SW1A 2DG or e-mailed to PAPERS@parliament.uk

ISSN 1368-8456

Summary of main points

The Intergovernmental Conference (IGC) to amend the EC Treaties opened on 14 February 2000 in accordance with the Conclusions of the Helsinki European Council on 10-11 December 1999. A preparatory group was established which has met on a regular basis to discuss the issues and submissions by the Presidency, the Member States, the EU institutions and other organisations. The representatives in the group are senior officials, generally the Member States' Permanent Representatives to the EU. The General Affairs Council also meets monthly for political discussion of the topics covered by the preparatory group.

The IGC is likely to concentrate on the three issues not resolved during the last IGC, namely the size of the Commission, the weighting of votes in the Council of Ministers and the extension of Qualified Majority Voting (QMV). A limit to the size of the European Parliament is also under discussion and will probably be decided by the IGC. Other matters might be added to the agenda during the course of the negotiations and contributions so far have included proposals on reform of the European Court of Justice (ECJ) and the Court of First Instance (CFI), closer cooperation (or flexibility), the structure of the Treaties, incorporation of the Charter of Fundamental Rights into the Treaties, and security and defence issues. However, there is diminishing enthusiasm among the Member States for a wider IGC agenda that might delay implementation of the final treaty.

The European Council will meet at the end of the Portuguese Presidency in Santa Maria da Feira to consider Treaty reform proposals of the Portuguese Presidency. It is envisaged that the final treaty will be agreed at the European Council summit in Nice in December 2000. This text will then have to be ratified by all the Member States in accordance with their national constitutional procedures before it can come into force.

CONTENTS

I The Need for an Intergovernmental Conference

The need for another Intergovernmental Conference (IGC) has arisen largely from matters linked to EU enlargement that were left unresolved in 1997, when the Member States signed the *Treaty of Amsterdam*. As a result of Amsterdam the more difficult institutional issues, namely the future size and composition of the European Commission, the re-weighting of Qualified Majority Voting (QMV) in the Council of Ministers and the extension of QMV, remained subject to interim provisions set out in Protocol 7 of the Amsterdam Treaty, pending a timetable for the first enlargement of the Union.[1] However, in the view of the Commission and most Member States, events have overtaken the Amsterdam provisions and action is needed more urgently in these, and possibly other, areas. Commission President Romano Prodi told the European Parliament (EP) in November 1999:

> Although the Amsterdam protocol on the institutions and enlargement provides for a two-stage process for reform, it is nevertheless obvious that such measures have now been overtaken by events. The necessary changes to our institutions must be completed before the end of 2002, because negotiations with candidate countries which are at a more advanced stage will then be coming to an end.
>
> It follows that the reform package must be agreed by the end of the Intergovernmental Conference which will take place in December 2000. This really is the last chance to put our house in order.[2]

II A Wide or Narrow Agenda?

The Cologne European Council on 3-4 June 1999 concluded in a section entitled *Intergovernmental Conference on Institutional Questions* that the IGC would tackle the three main Amsterdam 'left-overs' outlined above. The European Council also recommended that an "appropriate exchange of views should be held with the applicant countries within existing fora".[3] The IGC will initially confine itself to negotiating only the key institutional issues, which are themselves sensitive and tricky matters.[4] However, other measures might be added to the formal agenda, depending on progress made in the main areas. What Mr Prodi has called "the necessary agenda"[5] included not only the Amsterdam 'left-overs' but other institutional reforms, together with defence and security

---

1 *Protocol on the Institutions with the Prospect of Enlargement of the European Union*, Cm 3780, p.88.
2 Speech to EP, DN: SPEECH/99/158, 10 November 1999.
3 Conclusions to European Council, Cologne, 3-4 June 1999.
4 These are considered in Library Research Paper 99/54, *Institutional Reform in the European Union*, 20 May 1999.
5 Speech to EP, 10 November 1999.

issues, and reorganisation of the Treaty. This would be an ambitious agenda, yet Mr Prodi is also adamant that the IGC should conclude by the end of 2000.

If the important institutional and organisational problems are not settled during this IGC, another IGC would probably have to be convened shortly afterwards to settle them, something for which Mr Prodi believes the public, the institutions, the Member States and applicant states have little will. In his speech to the EP on 10 November 1999 the Commission President said:

> Personally I can only see pitfalls and dangers in the illusion that radical reform can wait until a later conference. The most obvious pitfall is that all the most striking problems from the forthcoming conference will be left hanging and put to one side until the following conference. At this stage, the danger is that the second conference will begin to seem a necessary condition for enlargement, thereby delaying the whole process, with the risk that the moment of greatest impetus and drive will be lost forever.
>
> That is not all. As a result of the Single European Act, Maastricht and Amsterdam, we have fifteen years of experience in reforming the Treaties behind us, and … I do not find the prospect of having to hold another Intergovernmental Conference after the one that is about to take place appealing in the slightest. In fact I am convinced that our citizens would be annoyed and bewildered by a Europe which seems to spend its time turned inwards on itself, obsessed with never-ending institutional reform. And the last thing that we want to do at the moment is to alienate European citizens even further from us![6]

III The Dehaene Report

In September 1999 Romano Prodi (then Commission President-designate) invited Jean-Luc Dehaene (former Belgian Prime Minister) to lead a group of "Wise Men", including Richard von Weizsäcker (former German President) and Lord Simon of Highbury (former Chairman of BP and former Government Minister), to "give their views in complete independence … on the institutional implications of enlargement".[7] The group's mandate was to "identify institutional problems which needed to be tackled and to present arguments indicating why they needed to be dealt with by the IGC".[8]

The report, according to the authors, did not aim to find solutions but to discuss the institutional problems on which the IGC should concentrate in order to prepare for enlargement. The report contained a number of suggestions and recommendations:

---

6 Speech to EP, 10 November 1999.

7 *The Institutional Implications of Enlargement*, Report to the European Commission, 18 October 1999, *Agence Europe doc. 2159.*.

8 *Ibid.*

- There should be 'global' reform for a Union of more than twenty members, removing the distinction set out in the Amsterdam Treaty Protocol between measures to accommodate a Union of up to twenty members and measures for a Union of more than twenty.
- The issues outstanding from the Amsterdam IGC cannot be tackled in isolation. They are linked to other issues such as the use of the co-decision procedure and the size of, and representation in, the Court of Justice and the other institutions.
- The legislative role of the EP should be enhanced through an extension of co-decision.
- All Member States will want one Commissioner, so the Commission will remain a large body. This will mean strengthening the role of the Commission President.
- QMV should become the rule in an enlarged EU, with unanimity reserved only for a few, specified areas of particular national sensitivity. Even the Common Foreign and Security Policy and Justice and Home Affairs pillars should become subject to more decision-making by QMV.
- The weighting of votes should be revised but, more importantly, the Council of Ministers' work and responsibilities need to be re-thought, particularly the role of the General Affairs Council in external affairs.
- There should be more "enhanced cooperation" and flexible arrangements for the dynamics of the integration process, in order to avoid Schengen-type arrangements and EMU opt-out situations. The Amsterdam Treaty is still too rigid in this respect.
- The Treaties should be made more accessible and more transparent. There should be a distinction between basic provisions and implementing provisions. The former would be amended only by unanimity at an IGC, as at present, while the latter would form a separate text for which modification by the Council of Ministers would be simpler and more flexible (by unanimity or QMV).
- The Cologne principles on defence should be implemented before the end of 2000.[9]

The British Government's reaction to the Report's recommendations was cautious. The Minister for Europe, Keith Vaz, considered the Dehaene Report in a speech at Wilton Park on 1 November 1999. He questioned the proposals on flexibility and restructuring the Treaty (background information on the flexibility provisions in the Treaty can be found in Appendix 1):

> The Amsterdam Treaty already has provisions for flexibility. But the Treaty only came into force on 1 May this year, and its flexibility provisions have not been tried. I think it would be premature to revise the agreements we made at Amsterdam before we know whether they work or not.

---

[9] See Research Paper 00/20, *European Defence: From Pörtschach to Helsinki*, 21 February 2000, and House of Lords European Communities Select Committee Paper 118, 1998/99, *Enlargement of the EU: Progress and Problems*, 9 November 1999, for a discussion of the Dehaene report and other institutional matters linked to enlargement.

> Secondly, reopening this issue might send the wrong signal to the applicant countries. We would send a message that the existing members of the EU are trying to protect their own status post enlargement. It might also undermine the negotiations with the applicants to sign up to the acquis. Do we really want the applicants to seek flexibility on the CAP, environmental regulations, or single market rules?
>
> To be honest, we have not yet been presented with an argument explaining what, in practical terms, greater flexibility could be used to achieve. It may also be that the proposed changes to the Treaty are modest. This is an issue to which we will, I am sure, return.
>
> On restructuring the Treaty, my own view is that this is not the right time to consider this question. I agree that simplification is a laudable aim. Amsterdam has made some simplification of the Treaties. But the Dehaene report suggests that, after restructuring, the smaller, constitutional part of the Treaty would continue to be amended through IGCs and ratification by national parliaments, whereas the larger policy part would not. Instead, that part of the Treaty could be amended by the Council - either by unanimity or QMV. I do not think this idea will be attractive to most Member States. Certainly in the UK, I do not see Parliament accepting that it would henceforth have no role in overseeing Treaty amendment. That would reduce, not increase, democratic control.
>
> So I do not think these ideas are for the current negotiations. The purpose of this IGC is to make sure that the institutions function after enlargement. The scope of those negotiations is broadly clear. It may be right to have a wider look at some of the other ideas at a later debate. But it is not appropriate now. We need to keep a grip on the task at hand - enlargement.[10]

IV Commission Proposals for the IGC

A. Report on Institutional Reform

On 10 November 1999 the Commission published a report on EU institutional reform, entitled *Adapting the Institutions to make a Success of Enlargement*.[11] The report, tabled by Mr Prodi and Michel Barnier, the Commissioner responsible for the IGC, did not propose solutions to the institutional questions but set out the issues the Commission believed the IGC should tackle. The Commission report proposed five main areas for "thorough-going reform":

---

[10] "The EU after 2000" Conference, Wilton Park, 1 November 1999.

- **Decision-making:** QMV should become the rule, subject to exceptions for a few fundamental or highly sensitive issues. QMV could be extended to fields presently requiring a combination of unanimous votes and the co-decision procedure (e.g. rights of movement and residence for EU citizens, coordination of social security for workers, culture issues); more combined with the co-decision procedure between the Council and the European Parliament.
- **Revamping the Treaties**: support for the Dehaene report, i.e. separating the fundamental passages from implementing rules. This would have the advantage of keeping the Treaties open to further change, since the implementing parts could be amended using a simplified procedure. This exercise should not result in altering the present powers of the Union or the Community.
- **Representation of the Member States within the Council**: Council decisions should be made more representative of the relative weight of the different Member States within the Union, while safeguarding the spirit and the balances implicit in the Treaty of Rome. Decision-making should be made easier.
- **The other institutions**: enlargement will mean decisions on the size of the EP. The Commission should preserve collegial nature of its deliberations, its effectiveness and its decision-making by simple majority of the Members. The Court of Justice and the Court of Auditors will need to adjust to the requirements of enlargement.
- **The workings of the Institutions**: all the institutions will have to review their working methods.

The report drew attention to other major challenges:

- prevention of the "watering-down" of a wider Union;
- the need for the Union to present a "coherent front" in external fora;
- the need to continue with the political construction of Europe, particularly in the area of European security and defence.

B. Opinion on Institutional Reform

The Commission published a follow-up report in the form of an *Opinion* on 26 January 2000, setting out specific proposals for reform as provided by Article 48 of the Treaty.[12] The key proposals were:

- 700 should remain the upper limit for EP membership, with some MEPs elected on Europe-wide lists.

- Number of Commissioners:

---

[11] Full text in *Agence Europe Documents*, 18 November 1999.

[12] "The government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties on which the Union is founded".

  - either to be kept at 20 regardless of number of Member States, with a Treaty-based rotation system based on the principle of equality of the Member States; or
  - one Commissioner per Member State, with adjustments to organisation and operating methods.

- EU's justice system should be enhanced to improve operation of ECJ, with addition of a judicial dimension to action to combat fraud against the Community budget.[13]

- Reform of other EU bodies, including Court of Auditors, Economic and Social Committee and Committee of the Regions.

- QMV should become general rule, with five main exceptions:

  - decisions requiring ratification by the Member States;
  - decisions on the operation and balance of the institutions;
  - decisions on taxation and social security not related to the operation of the single market;
  - the conclusion of international agreements on matters where the Council acts unanimously;
  - derogations from the common rules of the Treaty.

- Decision-making procedures should be made simpler, more effective and more coherent by:

  - creating a stronger link between co-decision and QMV;
  - extending scope of Common Commercial Policy rules to cover all services, investment and intellectual property rights;
  - enhancing EP powers in trade matters;
  - removing cooperation procedure altogether.[14]

- There should be dual simple majority voting in the Council: a decision would be adopted if it had the support of a simple majority of the Member States and a simple majority of the total population of the Union;

---

[13] See also *Corpus Juris*, edited by Mireille Delmas-Marty,1997. This is a study carried out at the request of the EP by researchers from the Association of European Lawyers for the Protection of the Financial Interests of the Community, under the aegis of the Directorate General for Financial Control at the European Commission. It is not an official proposal for EC legislation or an official EC document. It proposes a legal and judicial system to deal with fraud against the Community budget that would draw on all aspects of the legal traditions of the Member States and would establish *inter alia*, a European Public Prosecutor for this purpose alone.

[14] The Amsterdam Treaty replaces the cooperation procedure by the co-decision procedure, except as regards monetary union.

- Treaty provisions on closer cooperation (to include the Common Foreign and Security Policy) should be extended and improved.

V Reforming the Council of Ministers

In addition to the re-weighting of votes, enlargement of the Union will necessitate further changes to the Council's working methods in order to facilitate the adoption of EC legislation in a larger and increasingly diverse Union. The Council has long been criticised for its secretiveness. This has led to the implementation of reforms such as allowing greater public access to documentation and meetings, but more change may be needed to make the Council more transparent and accountable. Some changes will not require amendments to the Treaty, which means that the IGC will be able to concentrate on the main constitutional issues such as the weighting of votes and the extension of QMV.

A. Re-weighting of QMV Votes

How QMV Works

The Council of Ministers has legislative and decision-making powers. It generally coordinates EU activities, including those in the second and third 'pillars' of the Union, the Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA). The EC/EU Treaty has established cases in which the Council acts either by a simple majority, or by a qualified majority or unanimously, although there is an increasing tendency, particularly in the Community or main Treaty pillar, to act by QMV. In the Council each Member State has an allocation of votes ranging from 10 for the larger States to 2 for the smallest ones (Amsterdam Article 205, ex-Article 148).

During the enlargement negotiations in 1994-95 to include Austria, Sweden and Finland (Norway was included in the negotiations but did not join), the issue of the number of votes granted to Member States in the Council and the number of votes needed to block legislation (the 'blocking minority', roughly a third of the votes) was a key obstacle to agreement. The British Conservative Government objected to the formula by which the blocking minority was to be increased in absolute terms, since this would limit its power (that is to say, the power of the large Member States) to block certain proposals in an enlarged Union. The then Conservative Government argued vigorously for a system that preserved the *status quo* as far as the blocking minority was concerned. The Accession Treaty was finally agreed, but only with the so-called "Ioannina Compromise", which was later formalised in a Council Decision reflecting the British point of view. The compromise was to the effect that in circumstances where there was a clear indication of a dissenting minority representing 23-25 votes (out of a total of 87), negotiations should

continue in order to "facilitate a wider basis of agreement in the Council".[15] A satisfactory solution would be sought on the basis of at least 65 votes.

The following tables show, (a) how Council votes are distributed at present and (b) how they might be distributed under the present system of allocation (which favours the smaller states) if thirteen new states were to join the Union[16]:

(a) Present Member States

Current Members	Population (millions)	Weighted Votes
Belgium	10.2	5
Denmark	5.3	3
Germany	82.0	10
Greece	10.5	5
Spain	39.4	8
France[17]	59.0	10
Ireland	3.7	3
Italy	57.6	10
Luxembourg	0.4	2
Netherlands	15.8	5
Austria	8.1	4
Portugal	10.0	5
Finland	5.2	3
Sweden	8.9	4
United Kingdom	59.4	10[18]
Total	**375.5**	**87**
QMV		**62**
Blocking minority		**26**

(b) Prospective member states

Prospective Members	Population (millions)	Weighted Votes
Poland	38.7	8
Czech Republic	10.3	5
Slovak Republic	5.4	3

15 95/1/EC, Euratom, ECSC, *OJL 1*, 1 January 1995.

16 Tables compiled by Joe Hicks, Social and General Statistics Section.

17 Population at 1.1.99 is based on 1990 census and live births, deaths an net migration estimates from 1990-98.

18 Source: *Eurostat (Statistics in Focus), First Demographic Estimates for 1999, Population at 1 January 1999*.

Hungary	10.1	5
Slovenia	2.0	2
Bulgaria	8.3	4
Romania	22.5	7
Lithuania	3.7	3
Latvia	2.5	2
Estonia	1.5	2
Malta	0.4	2
Cyprus	0.7	2
Turkey	63.0	10[19]
Total	**544.6**	**142**
QMV		**101**
Blocking Minority		**42**

In this scenario the small countries voting together with one large country and two medium-sized countries (e.g. Poland and Romania) could form a blocking minority with a combined population of only half of the total EU population. A combination of Malta, Cyprus, Estonia, Latvia and Slovenia would have 11 Council votes, representing just over 7 million inhabitants, while Germany has 10 votes and represents over 80 million inhabitants. Also unacceptable for the large Member States would be a blocking minority formed from the combined vote of all the small Member States (i.e. those with two to four votes), representing only about 12 per cent of the EU population.

In spite of fears about alliances, in practice it is probably fair to say that there is no alliance of small states against larger ones, but varying coalitions of large and smaller States on almost all issues.

Options for Reform

If the present pattern of weighting is changed, a range of options might be discussed, some of which were considered in the preparatory stage of the last IGC. These included a system of weighted voting that reflected, at least in part, the population of each Member State. Croft *et al* summarise some of the possible systems:

> … a weighting system based on population but with upper and lower limits which still produce a bias in favour of the smaller countries (otherwise Germany would have 240 times as many votes as Malta, the UK 39 times more than Estonia, and so on). This essentially removes the 'anomalies' described above. The fourteen

[19] Source: Council of Europe, *Recent Demographic Developments in Europe*, 1999. Population as at 1 January 1998.

> small countries that could form a blocking minority under the present system could only muster just over half (seventeen) the votes required under this revised system. Conversely, it would take only three of the large countries, or even two of them and one 'near-large' country, to produce a blocking minority. This would have a degree of political legitimacy, since these various combinations would always represent at least 32 per cent (and up to 41 per cent) of the EU's population. However, it may arguably redress the balance too far in favour of the large member states and would be politically unacceptable for small members, particularly the Benelux countries.
>
> Between these two extremes are various compromise positions. For example, it might be possible to have a variable qualified majority that was set higher for the more politically contentious issues. An alternative approach might be to require a double majority (and presumably a double blocking minority): in terms of the weighted voting system (the current version) and of population.[20]

IGC Proposals

The present IGC is seeking to establish a weighting of votes that achieves the aim of allowing legislation to be adopted in an efficient and transparent manner, while satisfying the demands of both the larger and smaller states.

The preparatory group discussed QMV extension on 28 March 2000, on the basis of a Presidency Note of 24 March.[21] The Presidency left aside the question of choosing between reweighting votes or introducing a dual majority and concentrated on basic issues that would help give direction to future discussions. These included the criteria to be used as the basis for majority voting, the minimum population threshold required for a qualified majority, the minimum number of Member States required for a qualified majority, the use of population as an absolute or a relative criterion, the general approach on reweighting and the QMV threshold (i.e. the number of votes needed to adopt legislation).

The Presidency notes the general view that the size of population was the most objective criterion to use as a basis for amending the system and asks whether, in the interests of democratic legitimacy, there should be a minimum threshold expressed in terms of total EU population. The present level of the EU population represented by a qualified majority is roughly 58%. This percentage could be raised or lowered by either of the preferred means, that is to say, either by reweighting the votes or by a dual majority system. The Note points out that at present a QMV vote represents at least half of the Member States and that for acts adopted by the Council other than on the basis of a

---

[20] Stuart Croft, John Redmond, G.Wyn Rees and Mark Webber, *The Enlargement oaf* Europe, 1999, p 72.
[21] CONFER 4728/00.

Commission proposal (the norm) there is an additional requirement that a qualified majority must comprise two-thirds of Member States.

On the population criterion, it asks whether clusters of Member States in either the larger or smaller categories should have the same number of votes, as at present, or whether greater differentiation should be introduced. The Presidency also questions whether, in the general approach to reweighting, the exercise should be confined only to those Member States that gave up their second Commissioner, or whether it should take place across the board. Finally, the Note asks whether the qualified majority threshold should remain at its present level of around 71% of total votes, and whether any amendments to the system should become effective after ratification of the Treaty or only on the first enlargement?

VI Extension of QMV

A. The Need to Extend QMV

There are currently over 70 Treaty Articles and sub-articles in the main EU Treaties that are subject to unanimous voting in the Council of Ministers. It is generally accepted among the Member States and by the EP that some extension of QMV is needed if the EU is to operate effectively in the future with between 20 and 30 Members. The guiding principle is likely to be that matters which are not constitutional should be decided by QMV, although this raises the question of what is and is not constitutional. In January 1999 the German Foreign Minister, Joschka Fischer, outlining to the EP his proposals for Germany's EU Presidency, called for the national veto to be abolished in most EU decision-making, with unanimity used only for "questions of fundamental importance such as treaty amendments".[22]

However, there are indications of a split between those Member States which are willing to give up their right of veto in all but a few areas and those wanting to retain most of the present areas of unanimity. A significant extension to QMV is supported by the governments of Germany, France, Italy and the Benelux countries,[23] while the UK, Spain, Austria and the Scandinavian countries would like to retain unanimity in several areas (see also national submissions below).

---

[22] Speech to EP, 12 January 1999; www.eu-presidency.de/ausland/englisch/03/0302/00098/index.html

[23] France, Italy and Belgium noted in Declaration 6 to the Amsterdam Treaty that the last IGC did not "meet the need … for substantial progress towards reinforcing the institutions" and called for a "significant extension of recourse to qualified majority voting," Cm 3780, p 108.

B. IGC Proposals

The Preparatory Group has considered proposals for extending QMV to Articles on social provisions, the environment, Justice and Home Affairs matters and taxation.

Social Provisions

A Presidency Note on 22 February 2000 acknowledged that unanimity governed politically highly sensitive subjects "rooted in national policies with radically different legal concepts, underlying philosophies and approaches to funding".[24] However, it suggested that QMV might be used for some social provisions "closely linked to the establishment and operation of the internal market, particularly to the free movement of workers". Articles proposed for the move to QMV were:

- Article 42 (TEC) on social security measures for migrant workers and their dependants;
- Article 137(3) (TEC) concerning funding to promote employment and job-creation; conditions of employment for third-country nationals legally residing in the EU; representation and collective defence of interests of workers and employers; protection of workers whose job contract is terminated; social security and social protection of workers;

Environment

Environmental provisions in the Treaty are already largely subject to QMV, with the exception of Article 175(2) and (3). A Presidency Note on 22 February suggests that this might be transferred from unanimity to QMV.[25] Article 175(2) concerns environmental provisions of a primarily fiscal nature, town and country planning measures, land use (except waste management and general measures, which already require QMV) and management of water resources.

The Presidency notes the belief that unanimity may hamper the development of environmental protection by preventing essential fiscal measures. It suggests that making fiscal measures in this context subject to QMV should be considered together with the more general reflection on procedures to be envisaged for taxation (see section on taxation, below).

Article 175 also provides for unanimous voting for measures "significantly affecting a Member State's choice between different energy sources and the general structure of its

---

[24] CONFER 4708/00.
[25] CONFER 4709/00.

energy supply". The Single European Act had stated in a Declaration on Article 130r (new Article 174):

> The Conference confirms that the Community's activities in the sphere of the environment may not interfere with national policies regarding the exploitation of energy resources.[26]

However, the Presidency text proposes that, since energy policy has become a Community objective and a key factor in attaining sustainable development, and is also covered by most single market and trade policies already subject to QMV, the SEA reference to national interest is less relevant now than it was in 1986.

The Note also considers the use of QMV in some environmental provisions of a fiscal nature, if it were found to be impossible to use it for all such provisions:

> If this were to be the case, a distinction could be made either between taxes on emissions, on polluting substances and on harmful products (pesticides), or between tax revenue (used to finance environmental measures) and on revenue from income tax (added to the public budget), or between financing taxes (which offer an incentive and constitute an important source of revenue, for example for financing aid) and tax incentives (which are designed to affect prices, whereas the revenue that they generate is in principle of secondary importance).

Article 175(3) concerns the adoption of measures 'necessary' for implementing general action programmes setting out priority objectives "in other areas". The Note suggests that clarifying "other areas" would be a starting point for a consideration of some of the issues mentioned above.

Justice and Home Affairs

Measures in this area were adopted by unanimity on an intergovernmental basis under third pillar arrangements in the TEU. The Treaty of Amsterdam brought some of the third pillar measures into the Community pillar and made them initially subject to unanimity but subject to QMV after a transitional period of five years.[27] The Presidency suggests that some Title IV areas[28] might become subject to QMV. This might apply to Article 62 (controls on crossing internal and external borders), Article 63 (asylum, refugees, immigration), and Article 65 (decision-making procedures). The Member States' right of initiative would in this case be abolished. The Note does not propose changing the

---

[26] Cm 372, May 1988; Treaty Series No. 31 (1988).

[27] See Library Research Paper 97/112, *The European Communities (Amendment) Bill: Implementing the Amsterdam Treaty*, 5 November 1997, for a discussion of the JHA arrangements under Amsterdam.

[28] *Visas, Asylum, Immigration and other Policies related to Free Movement of Persons.*

unanimity requirement or decision-making in Title VI (TEU),[29] which covers the remaining JHA areas.

Taxation

a. Presidency Note[30]

On 22 February 2000 the Presidency suggested that, given the 'particularly sensitive' nature of the subject, only the partial introduction of QMV in the area of taxation ought to be explored by the Conference. This included a degree of coordination of tax laws to "help ensure compatibility between national tax systems", with a specific provision for QMV to adopt measures that would eliminate discrimination in the single market arising from differences between national tax laws and distortions of competition. The Note points out that national tax laws might have considerable cross-border effects, suggesting that tax bases and rates might therefore need to be harmonised. It asks whether QMV might be introduced for:

- Fixing minimum rates
- Defining the concept of a taxable person
- Adopting procedural measures
- Setting excise duty on measures pursuing environment/energy objectives
- Taxing company profits
- Other forms of direct taxation

b. Commission Communication

On 14 March the Commission presented a Communication detailing proposals on the use of QMV in certain tax measures. It recommended that decisions on direct taxation and methods of collecting levies should remain subject to unanimity, but that rules which currently prevent the proper functioning of the internal market should be decided by QMV under the co-decision procedure involving the European Parliament. The following areas would be included:

- Coordination measures to remove direct obstacles to the functioning of the Single Market (e.g. double taxation);
- Measures to modernise and simplify existing rules on indirect taxation to eliminate distortions of competition;
- Measures to guarantee uniform application of existing indirect taxation rules;
- Tax measures of "direct and significant" effect whose main purpose is protecting the environment;
- Measures to fight fraud, tax evasion and tax avoidance of direct and indirect taxation;

---

29 *Provisions on Police and Judicial Cooperation in Criminal Matters*.
30 CONFER 4707/00, 22 February 2000.

- Measures to coordinate national legislation on social security to assist the free movement of persons, including third country nationals;
- Social security matters that have repercussions for the Single Market, including the prevention of distortions of competition caused by lowering minimum levels of social protection.

C. Work and Organisation of the Council

In March 1999 a Council-appointed working group set up to consider reform of the operation of the Council published its report, *Operation of the Council with an Enlarged Union in Prospect (Trumpf/Piris Report): Report by the Working Party set up by the Secretary-General of the Council*.[31] It concluded:

> The Treaty has given the Council powers to govern and powers to legislate. In using its powers to govern, the Council must at all times have an overview of all Union policies. For that purpose, there must be available at the heart of the system a single chain of coordination capable of ensuring that the Union action conforms to the will of its political leaders. This chain of command, around which all the different actors and activities must position themselves, starts at Member State level with effective inter-Ministerial coordination and arbitration bodies and extends through the Union via Coreper[32], the General Affairs Council and finally the European Council. The Council's ability to meet the new challenges that lie ahead will largely depend on maintaining and strengthening the effectiveness of this channel – the backbone of the system.
>
> The Council must also ensure that its decisions are acted upon and that its day-to-day business operates smoothly. To ensure continuity of the Union's action in areas such as the CFSP, there is a need for bodies endowed to varying degrees with "delegated authority" and able to act rapidly and effectively under the Council's supervision. First and foremost there is the Presidency, which should see its role formally established and its backup strengthened; it should also have greater permanence, but without calling into question the six-monthly rotation of the Council and the European Council Presidency.
>
> More generally, the Council will have to adapt its working methods – particularly in its legislative activity, which is more and more subject to the co-decision process. It will be vital here to see systematic development of all the preparations that go on in connection with meetings, under the auspices of the Presidency, the General Secretariat and the Commission. In the absence of such preparation upstream and greater discipline in plenary debates, discussions in a Union of 25 or 30 members risk becoming completely ineffective.

---

[31] Brussels, 10 March 1999, No. 2139/99.

[32] Committee of Permanent Representatives

> The Council will, finally, have to tackle matters which on the surface seem more mundane, such as the layout of rooms, translation, interpretation and document production. Far from being minor matters, these practical issues are crucial to the smooth operation of the Council, and new, imaginative and pragmatic solutions must be sought if the Council is to continue to be effective in an enlarged Union.
> For various reasons, the scale and intensity of the challenge posed by the coming enlargements is particularly great in the case of the Council. This challenge will not be met unless, once the problems have been identified and carefully analysed, major coordinated reform is initiated at every level in order to preserve the Council's "capacity for action" on which, in the final analysis, the capacity of the Union itself largely depends.

In a "Europe survey" in the *Economist* Robert Cottrell commented that the Council of Ministers needed "a more coherent shape" to make it "more visible to the public". The General Affairs Council (GAC), which is made up of the foreign ministers of the Member States, was the "weak link", according to Cottrell:

> The scope and volume of EU business has expanded so much that foreign ministers can no longer keep control of it all, especially when they have diplomatic crises to deal with at the same time. As the EU's area of responsibility expands into justice, home affairs, foreign affairs and even defence, the likelihood of sectoral interests prevailing is likely to grow. [33]

Suggestions have been made for ways of dividing up the responsibilities of the Council of Ministers into new councils. One envisages a new general affairs council, composed of the Europe ministers of the Member States, which would ensure that European Council[34] decisions were carried out. This council would be helped by other full councils, such as a council of economic and finance ministers and a council for foreign affairs and defence, perhaps also a council for ministers of justice and home affairs. Councils such as the present health, agriculture, transport, culture councils would become ministerial committees subordinate to the new general affairs council.[35]

Romano Prodi told the EP in his November 1999 speech:

> The institution likely to be most affected by enlargement is the Council, which ought by now to be making frantic efforts to reform its procedures and structures. The report issued last March by the Council's Secretary-General makes this clear. For example, the General Affairs Council is already having great difficulty co-ordinating and arbitrating the affairs of the other Councils while at the same time handling foreign relations business. Some of the Council reforms needed may

---

33 *Economist*, 23 October 1999.
34 The meeting of heads of state or government that meets twice or three times a year.
35 Suggestion by Ben Hall of the Centre for European Reform, *Economist*, 23 October 1999..

require Treaty amendments, and in any case all Council reforms ought to be completed by December 2000.[36]

VII European Parliament Proposals for Reform

The EP is not likely to be a major focus for reform at the IGC. This is not because there are no areas in which reform is desirable, but because many of the reforms that have been proposed for the EP can be achieved without Treaty change. Some reforms are already under discussion and are shortly to be adopted.[37] However, any extension of QMV that is accompanied by extended use of the co-decision procedure would increase the powers of the EP by giving it co-legislative powers with the Council in a greater number of areas of EC decision-making. The EP is therefore in favour of increasing the use of the co-decision procedure.

One proposal from the Amsterdam negotiations that the IGC will probably agree is a maximum limit of 700 of MEPs. This will mean reducing the number of seats for existing Member States with a view to allocating seats to the applicant states.

On 27 March 2000 the EP's Constitutional Affairs Committee adopted a report on its proposals for the IGC, taking into account the opinions of other EP committees.[38] The report included a range of institutional reforms beyond the Amsterdam 'left-overs'. The main points were:

Council

- QMV should be extended to all legislative decisions;
- Co-decision should be used for all matters decided by QMV in Council;
- Unanimity should be limited to decisions of a constitutional nature;
- EP should participate in Treaty revision under the assent procedure;
- Double majority voting should be used with QMV.

Commission

- From 2005 to 2010 Commission should be composed of one Commissioner per Member State and thereafter of the President and twenty other Commissioners;
- EP should have right to elect Commission President and, in consultation with the Member States, to appoint the rest of the Commission;

---

36 DN/SPEECH/99/158, 10 November 1999.

37 For example, the new Code of Conduct and agreement on payment of expenses etc. These are discussed in Library Research Paper 99/54, *Institutional Reform in the European Union*, 20 May 1999.

38 EP Doc A5-0086/2000, Rapporteurs Giorgos Dimitrakopoulos (Greece, EPP) and Jo Leinen (Germany, PES). Adopted by 12 votes to 7 with 4 abstentions.

- EP should have the right to ask European Court of Justice (ECJ) to compulsorily retire any Commissioner under Article 216 of Treaty.[39]

EP

- From 2009 ten per cent of MEPs should be elected on Europe-wide lists;
- Number of MEPs to remain capped at 700, with seat allocation determined by size of population.

Community Courts

- Limitations on jurisdiction of ECJ in Titles IV and VI of Treaty (JHA matters) should be removed.
- EP should have right to bring action in the ECJ on grounds of misuse of powers, lack of competence, infringement of essential procedure, breach of the Treaty or any rule of law relating to its application, or failure to act.
- Creation of an independent European Public Prosecutor's office for cases of fraud against the Community's interests.

Closer Cooperation

- This should be used only when the EU is "genuinely incapable of collective action";
- It should involve at least one third of Member States and be authorised by the Council acting by QMV on a proposal from the Commission and with EP assent.

Charter for Fundamental Rights

- The European Charter of Fundamental Rights should be incorporated into the Treaty to give it binding legal force, and the EU should sign the European Convention on Human Rights.[40]

The EP made a number of other proposals, including Treaty reorganisation and a greater role for the Parliament in the Union's external relations, in particular in the conclusion of international trade agreements.

---

39 "If any Member of the Commission no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council or Commission, compulsorily retire him", Treaty of Amsterdam, Cm 3780.

40 For more information on the Charter, see Library Research Paper 00/32, *Human Rights in the EU: the Charter of Fundamental Rights*, 20 March 2000.

VIII European Court of Justice and Court of First Instance

A. The Need for Reform

Statistics show that there has been a constant increase in Community litigation over the last few years[41] and the time taken for cases to come to judgment now averages 21 months in the ECJ and 30 months in the Court of First Instance (CFI).[42] The average time needed to deal with a preliminary reference to the ECJ rose from 17 months in 1988 to 23 months in 1999.[43] According to Carlos Rodriguez Iglesias, who is President of the ECJ, this is partly attributable to inadequate budgetary resources, particularly in the translation service.[44] He suggests that the main reasons for the increase in the Court's workload are the "increase in scope and quantity of the EU's legislative activity". The new areas of jurisdiction introduced by the Treaty of Amsterdam in May 1999 also account in part for this increase, and enlargement is expected to exacerbate the situation.

The ECJ has suggested various reforms to help it cope with the increased workload from new areas of jurisdiction arising from conventions adopted under the third pillar and since the implementation of Amsterdam. Specific proposals include amendments to the ECJ Rules of Procedure,[45] and a proposal for transferring from the ECJ to the CFI jurisdiction in actions for the annulment of acts in certain areas and in actions based on an arbitration clause.[46] In a discussion paper published in May 1999, entitled *The Future of the Judicial System of the European Union*, the ECJ proposed:

> … an in-depth examination of the role and structure of the judicial component of the Union is needed to find solutions sufficiently wide-ranging to provide a lasting response to the difficulties which are to be expected, and [that] such an examination must be undertaken as a matter of urgency.[47]

The ECJ paper summarised the difficulties the Community Courts already faced and identified the consequences that the Amsterdam Treaty and other EU developments would have for the Courts. The three main changes proposed would not require Treaty amendments:

- The power for the ECJ to amend its own Rules of Procedure;

---

41 According to Commission press release IP/00/213, 1 March 2000, there has been an 87% increase in requests for preliminary rulings in nine years and a doubling of cases before the CFI in seven years.

42 Commission PR IP/00/213.

43 Gil Carlos Rodriguez Iglesias, "Balancing Europe's Scales of Justice", *Financial Times*, 18 April 2000.

44 *Ibid*.

45 Council Doc. 9803/99, 2 July 1999.

46 Council Doc 5713/99, *Proposed Transfer of Jurisdiction from the European Court of Justice to the Court of First Instance*. See FCO Explanatory Memoranda of 4 May and 20 May 1999.

47 ECJ Discussion Paper, 10 May 1999.

- A filtering mechanism restricting appeals to the ECJ in cases which have already been the subject of initial review before being referred to the CFI;
- Establishment of inter-institutional tribunals to deal with staff cases.

Enlargement would also require the Court to address the question of the number of judges in order to prevent the Court crossing "the invisible boundary between a collegiate court and a deliberative assembly".[48] The study did not explicitly suggest a limit to the number of judges, while implying that it saw some merit in this. It also suggested the establishment of judicial bodies in the Member States with either Community or national status, to be responsible for dealing with references for preliminary rulings from courts within their territorial jurisdiction. The Court's paper was discussed by the JHA Council on 27/28 May 1999, which concluded that "some of the proposed reforms might be considered by the next Intergovernmental Conference".[49]

B. IGC Proposals

The Commission presented a contribution to the preparatory group on 1 March 2000[50] on reform of the ECJ and CFI. This report took up and commented on proposals put forward by a Commission-appointed Working Group which had adopted a report on *The Future of the European Communities' Court System* in January 2000. The Commission's key proposals concerned the redistribution of jurisdiction, and the membership and operation of the Courts, as follows:

- Although the ECJ has exclusive jurisdiction in matters of EC law, the role of the ECJ and the national courts should be clarified to give greater responsibility to the latter for preliminary rulings.
- Greater selectiveness should be used in preliminary ruling procedure.
- CFI should have general jurisdiction to hear direct actions;[51]
- Reform of infringement procedure should be examined.
- In specialised areas (e.g. trade marks, patents, public service) the number of judges could be increased to help CFI to cope with increase in workload. Alternatively, CFI could be relieved of jurisdiction in favour of autonomous specialised tribunals, with appeals against rulings heard by the ECJ.
- Number of Judges:
  - either to preserve the rule of one Judge per State but with plenaries limited to 13 judges; or
  - to restrict the number of judges in the ECJ to 13.

---

48 *Ibid*.

49 Press Release 8654/99, 27 May 1999.

50 CONFER 4724/00, 10 March 2000.

51 The CFI currently hears actions by natural and legal persons, while the ECJ hears actions by Member States and the institutions.

- Number of Advocates-General in ECJ should be reduced and appointments to both Courts should be made by QMV in the Council.

The ECJ President has suggested the following solution to the problem of overload in the Court:

> One solution could be to transform the Court from a judicial collegiate body into a more deliberative assembly. But the majority of cases would then have to be decided by smaller chambers of judges thus jeopardising the coherence of the case law. The advantages gained in limiting the number of judges have to be weighed against having all the national legal systems represented.[52]

IX British Views on the IGC

A. Government White Paper

The Government published a White Paper in February 2000 setting out its approach to the Conference and its position on key IGC subjects.[53] The main points are summarised as follows:

Size of the Commission

- The UK and the other Member State governments should be willing to move to one Commissioner per Member State, "provided that an appropriate modification of voting weights in the Council takes place at the same time".[54]

- The Commission could still grow to "an unwieldy size", so the IGC should examine further measures for limiting its size, such as a future cap of between 21 and 25 Commissioners.[55]

- Some restructuring of the Commission would be inevitable, and options would include Commissioners working in teams on particular issues under the leadership of senior Commissioners.[56]

In the debate on the White Paper the Foreign Secretary considered that allowing the smaller Member States and applicant states to retain one Commissioner "at any rate

---

52 *Financial Times*, 18 April 2000.
53 *IGC: Reform for Enlargement*, Cm 4595.
54 Cm 4595, Para. 44.
55 *Ibid*, Para. 45 and 46.
56 *Ibid*, Para. 47.

through the first wave of enlargement" was "a reasonable bargain which has something in it for all the present members".[57]

Re-weighting of Council votes

- Voting system should not be entirely proportional to population.

- Either one or a combination of the following approaches would be considered:

  - retain the present system but change the number of votes per Member State, giving more weight to population;

  - introduce dual majority system: for a proposal to be adopted, it would have to attract a certain number of votes and those votes would have to represent a certain percentage of the population;

- More votes should be given to larger Member States to ensure the right degree of influence and to compensate for the loss of a Commissioner.

- The qualified majority threshold for the adoption of legislation must represent the right balance "between the ease with which legislation can be passed or blocked".

In the debate on the White Paper Mr Cook expanded on the Government's position on relating weighted votes to population:

> At present time, we would prefer that the existing broad banding be retained; that would mean that all four larger countries would remain in the same band. However, additional weight needs to be given to the votes of the four countries within that band. … we seek an outcome that is more proportional, but we do not seek to disturb the principle that all member states are equal, so votes should not be strictly proportional to population. We do, however, require that fair recognition be given to the size of our population so that we do not find ourselves in the absurd position in which three of the four largest countries do not even constitute a blocking minority.[58]

Extension of QMV

- Important constitutional issues such as Treaty change and accession should remain subject to unanimity; it should also be retained in areas of key national interest, such as taxation, border controls, social security, defence and 'Own Resources';

---

57 HC Deb, 15 February 2000, c 778.
58 HC Deb, 15 February 2000, c 779.

- Some areas, such as Council approval of ECJ Rules of Procedure, should move to QMV;

- Other cases will be considered on a case-by-case basis: e.g. appointments to the Economic and Social Committee or Committee of the Regions; aspects of transport policy that potentially obstruct the Single Market.

Other possible agenda items

The Government also sets out briefly its views on possible additions to the IGC agenda:

- In addition to supporting QMV for amending ECJ's Rules of Procedure, ways might be found of filtering appeals to the ECJ from the CFI and for setting up a tribunal to deal with EU staff complaints.
- Some extension of the co-decision procedure would be sensible to accompany the move from unanimity to QMV, though not in all cases.
- The EP should not be granted new powers to dismiss individual Commissioners.
- A 700-seat ceiling on membership of the EP is acceptable and consideration would be given to different models for the re-allocation of EP seats to create a sustainable formula for future enlargements.
- Regarding closer cooperation or flexibility, more evidence is required of the need to change provisions in the Amsterdam Treaty, which have not yet been tested, and assurance is needed that such arrangements would not undermine the Single Market or be used against the interests of a minority of Member States.
- On defence there is a need for a decision-making procedure to allow some Member States to support but not participate in an EU-led operation, and for some non-EU-allies to participate, with decision-making rights over the conduct of the operation.
- No restructuring of the Treaties should be undertaken at this IGC.

The Government has also set out its views on future Treaty revision in parliamentary statements, answers[59] and speeches both inside and outside the House. Keith Vaz spoke about institutional and Treaty reform in his Wilton Park speech in November 1999, extracts from which are in Appendix 2. In recent parliamentary answers the Government has said that it sees "little merit in a Europe-wide list system for the European Parliament"[60] and that it supports reforms to the ECJ that will make it "strong and effective" and will allow it to cope with the extra pressures of enlargement.[61]

---

59 See, for example, HC Deb, 14 March, cc 150-1, 152-3 and 164; 1 February 2000, c 484W and 541W.
60 HC Deb, 10 April 2000, c79W.
61 *Ibid*.

B. Opposition Views

Conservative

The Conservative Opposition front bench appears to be taking an increasingly 'Eurosceptic' position with regard to future Treaty changes. John Maples, speaking in his capacity as Shadow Foreign Secretary in the debate before the Helsinki European Council, said that Mr Prodi's agenda for the IGC was "an agenda for a European super-sate and the Commission would be the government of Europe, which is totally unacceptable for us and, I believe, to most British people".[62]

Archie Norman, the Conservative spokesman on Europe, expressed the Party's opposition to the extension of QMV into approximately 19 new areas, some of which were "vital to our national interests, including transport, supervision of credit institutions, Council procedure, own resources, co-operation with the Organisation for Economic Co-operation and Development, culture and the harmonisation of aid".[63] The Conservative Party vision of Europe, he continued, was of an EU "that is free trading, flexible, outward looking, deregulatory and enlarged".[64]

In the debate on the Government's IGC White Paper, Francis Maude, the new shadow foreign secretary, also drew attention to what he described as Mr Prodi's federalist aims[65] and questioned the Government's position on the extension of QMV on a case by case basis, which in his view would result in "the creation of the single European super-state".[66]

Liberal Democrat

In the February IGC debate the Liberal Democrat spokesman, Menzies Campbell, welcomed the White Paper, which built on his earlier joint declaration with the Foreign Secretary.[67]

X Views in the EU and Applicant States

Some but not all of the Member States have made formal contributions to the preparatory group. These generally comment on the three main issues, but also on a range of other matters that the individual States would like the Conference to address.

---

62 HC Deb, 1 December 1999, c 334.
63 *Ibid*, c 398.
64 *Ibid*, c399.
65 HC Deb, 15 February 2000, c 771.
66 *Ibid*, c 772.
67 *Ibid*, c 773.

A. EU-15

Finland

The Finnish contribution to the IGC is based largely on views expressed during the Finnish EU Presidency (July to December 1999). On the more controversial issues, the reweighting of Council votes and the extension of QMV, the Finnish government supports changes to the weighting system "provided that satisfactory results are achieved in other institutional issues". It prefers a "clear and simple system" of re-weighting rather than a dual majority and does not consider it necessary to change the present QMV threshold.[68] An extension of QMV might include the following:

> … issues related to Union citizenship, free movement of persons, approximation of legislation (to be separately analysed in relation to taxation) and the Community budget, which closely concern the operation of the internal market; – good financial management; – Community policies (industry, culture and the environment); – trade policy (services, intellectual property) and – certain institutional issues (such as the approval of the rules of procedure of the Community Courts, procedure for the exercise of implementing powers conferred on the Commission); – issues presently falling within the framework of unanimous decision-making, which are subject to the codecision procedure (the right of movement and residence of Union citizens, migrant workers' social security, measures to promote cultural policy).[69]
>
> Issues related to the basic nature of the Union which do not concern increasing the efficiency of decision-making should remain subject to unanimous decision-making.
>
> Such issues include amendments to the Treaties and other primary law, Council decisions which need to be approved separately by the Member States, as well as changes to the common institutional system, certain financing arrangements outside the budget, and the division of competence between the Union and the Member States.
>
> Unanimity is also required in decisions concerning derogation from the key principles of the internal market, defence policy (Title V of the Treaty on European Union), and issues related to public order and security and the use of coercion (legally binding instruments in intergovernmental cooperation in Title VI of the Treaty).
>
> The Government considers that the codecision procedure should, as a general rule, be extended to cover groups of issues which will be subject to qualified majority decision.

---

68 CONFER 4723/00, 7 March 2000.

69 *Ibid*.

Denmark

The Danish contribution on 7 March 2000 emphasises the need to resolve the three main issues and respect the IGC timetable. It suggests a dual majority voting system in the Council involving a qualified majority which also represented at least half of the EU's total population. The Danish government wants the threshold for weighted votes to be maintained at around the current level (i.e. 71%).

Denmark is prepared to accept the extension of QMV and makes specific proposals for 'green' taxes. However, subjects that should remain subject to unanimity include provisions for Treaty revision, "other fundamental institutional provisions and the own resources system".[70] It continues: "Each Member State shall also in the future be permitted to pursue its own policy with regard to distribution of income and maintain or improve social welfare benefits".

Denmark supports the proposal of one Commissioner per Member State and calls for "changes in the functioning of the Commission" to accommodate this. The proposal also calls for internal Commission reforms.

Denmark will consider on an individual basis whether areas that become subject to QMV should also involve co-decision with the EP.

Netherlands

The Dutch government submitted a contribution on 6 March 2000.[71] It favours a wide agenda including consideration of the operation of the ECJ, sound financial management, differentiated cooperation between Member States and the European Security and Defence Policy (ESDP). The Dutch government is willing to accept "for the time being" the solution of one Commissioner per Member State, noting that "If it eventually proves necessary to discuss limiting the size of the Commission, the Government will formulate stringent conditions for such a reduction".

On the weighting of votes, the Netherlands also prefers the simpler option of reweighting the votes rather than introducing a more complicated dual majority system, with the size of population as the deciding factor. The Note suggests:

> The most populous states could receive the same number of votes as now, multiplied by a certain factor. The smaller Member States could receive their current number of votes multiplied by a somewhat smaller factor. This would preserve the balance between the large and small Member States after enlargement.

---

[70] CONFER 4722/00, 7 March 2000.
[71] CONFER 4720/00.

The Netherlands favours extending QMV, except for provisions on constitutional matters or which are intergovernmental in character, processes requiring national ratification and provisions allowing exceptions to the *acquis* or the internal market. A Council Decision on the Community's Own Resources, for example, which requires ratification by all the Member States, should remain subject to unanimity, as should decisions still made under the intergovernmental second and third pillars. The Note adds that "in the debate on majority decision-making the Government will pay close attention to its potential financial and economic consequences. When decisions have serious financial consequences, unanimity would still be required".

The Note also considers a range of other possible reforms, including more authority for the EP in relation to the Commission, an increase in the number of judges at the ECJ and CFI, a revision of the Amsterdam procedures for closer cooperation to provide more flexibility, and a revised Treaty structure in which one part would not require unanimous approval for amendments to be adopted.

The Benelux countries submitted a joint memorandum on 7 March 2000.[72] They too suggest a wider agenda than the Amsterdam 'left-overs' to include many of the institutional concerns shared by the Danish and Dutch governments and many of the proposals in the Dehaene Report (see above).

They support the principle of one Commissioner for every Member State and are prepared to discuss either of the two main options for weighted votes in the Council as long as the balance between the larger and smaller states is guaranteed. QMV should be extended "to the largest possible extent", except ("for the time being") for "basic regulations regarding ... the aims, principles, general policy lines and the Union's institutional framework, as well as the citizen's rights".

Italy

The Italian government submitted a position paper on 3 March 2000.[73] It accepts "as a compromise" the principle of one Commissioner per Member State, provided that it is accompanied by internal structural reorganisation of the Commission "so that it suffers no loss of effectiveness, independence and efficiency, even with more than 20 members". Italy also prefers a straightforward reweighting of votes in the Council. QMV should be the rule, with certain exceptions, and with co-decision used for all new QMV areas.

The paper also proposes that the closer cooperation provisions of Amsterdam need to be reviewed, in particular the ability to veto authorisation to proceed with a project. The threshold for the minimum number of Member States wishing to cooperate should be lowered and flexibility needs to be extended to security and defence matters. The Charter of Fundamental Rights should be included in the Treaties as an annexed protocol.

---

[72] CONFER 4721/00.
[73] CONFER 4717/00.

Greece

The Greek government submitted a Memorandum to the IGC on 3 March 2000.[74] Greece too would include other items on the agenda, such as reform of other EU institutions, aspects of the ESDP and the incorporation of the Charter of Fundamental Rights. It is against a revision of the as yet untried Amsterdam provisions on closer cooperation. It supports the principle of one Commissioner per Member State, but is against the reweighting of votes in Council, which it considers unnecessary. If the system were to change, the Greek government would support a dual majority system with a qualified majority requiring 60% of Member States, representing at least 60% of the EU's total population. Greece also believes that "a host of vital issues must continue to be subject to the rule of unanimity" (e.g. constitutional and institutional issues, association agreements and the accession of new states, matters requiring national ratification and intergovernmental matters). It is prepared to consider extending QMV on an individual basis, as long as it is accompanied by the co-decision procedure.

The Greek paper also approves more powers for the EP, reform of the ECJ and the granting of legal personality to the EU. Enhanced cooperation should involve at least the majority of Member States and should include a solidarity clause to provide for the support of those States wishing to, but unable to, participate immediately in enhanced cooperation schemes. The IGC should also tackle the institutional and legal matters relating to the ESDP.

Germany

The German government submitted a policy document to the preparatory group on 21 March 2000.[75]

The document proposes IGC action beyond the Amsterdam requirements, including the question of the individual responsibility of Commissioners, the composition and working methods of the ECJ, institutional issues relating to the ESDP and increased cooperation.

On the two main options for the Commission, the German document favoured a fixed upper limit of around twenty, adding that the issue of a second Commissioner would depend "on a satisfactory outcome in other areas, particularly as regards the weighting of votes". On the weighting of votes Germany is prepared to consider either of the two main options, stating only that its aim is to "attain a model that is a truer reflection of the demographic differences between Member States". Germany favours the "broadest possible application" of the extension of QMV as the "decisive starting-point for ensuring that an enlarged Union can act effectively". The document continues:

---

74 CONFER 4719/00.

75 CONFER 4733/00, 30 March 2000.

> In order to go beyond the achievements of the Amsterdam Treaty, the Federal Republic has chosen a new approach whereby all provisions requiring unanimous voting should in principle be a qualified majority voting. Exceptions to this rule should be determined on the basis of a concrete catalogue of criteria ("exceptions to the rule" approach).

The exceptions criteria might include decisions requiring Member State ratification, constitutional decisions outside the scope of Treaty amendments (e.g. institutional issues or decisions conferring competence under Article 308 of the Treaty), decisions where QMV would hinder integration or the *acquis communautaire*, and military or defence-related decisions.

On the subject of closer cooperation, the German document states that it:

> … must be forward-looking, should not jeopardise the *acquis* or lead to distortions of competition on the internal market. It must be directed at promoting the objectives of the Union and respect the principles laid down in the Treaties as well as the uniform institutional framework.

Germany favours greater increased cooperation with enlargement, with the possibility of initiating closer cooperation by QMV. The document proposes that the IGC should 'rectify' the right of veto "by means of genuine majority decisions". Flexibility should also be explored in the area of the CFSP.

B. Applicant States

Some of the applicant states have made proposals to the preparatory group on institutional and other issues.

Turkey

Turkey supported the one Commissioner per Member State scenario, while recognising that enlargement may require flexibility and sacrifices on the part of the Member States.[76] The Turkish government approves of the current QMV weighting system and qualified majority threshold. On the extension of QMV the Turkish view is that it is a "useful device that should be extended as far as possible", especially in the second and third pillar areas.[77]

---

[76] *Agence Europe*, 9 March 2000.
[77] *Ibid*.

Malta

In a contribution on 4 April 2000 the Maltese Minister for Foreign Affairs, Joe Borg, stated that Malta favoured a narrow agenda comprising the Amsterdam left-overs. Malta, not surprisingly, favours one Commissioner per Member State, supports the extension of QMV with certain well-defined exceptions, and "would be ready to support the reweighting of votes in the Council in a way which better reflects Member States' population, as long as the principle of equality of all Member States is maintained, and the interests of small states are safeguarded". [78]

A report in *Agence Europe* summarises some of the views of other applicant states as follows:

Slovakia, Latvia, Lithuania, Romania

The IGC should result in arrangements enabling the EU to enlarge to all applicant countries "without recourse to additional institutional reforms in the near future".[79]

Bulgaria

Flexibility provisions should be strengthened and could be a mechanism to facilitate an acceleration of the enlargement process.

Poland

Warsaw agrees with an overall EP ceiling of 700.

Cyprus

The concept of flexibility and similar arrangements should be approached with "great caution" due to the risk of diluting EU policies.[80] The Cypriot government also proposed that levels of decision-making at EU and national level needed to be clarified, in accordance with subsidiarity.

XI Conclusions

The three main issues under discussion proved too contentious for the last IGC to resolve. There are as yet no clear signs of agreement on these issues at the present IGC, although there are still several months of negotiations ahead. The Portuguese Presidency has

---

78 CONFER/VAR 3965/00, 4 April 2000.
79 *Agence Europe*, 29 February 2000.
80 *Agence Europe*, 29 February 2000.

expressed some frustration at the slow progress and the failure of Member States to set out their positions on the key areas for reform. This would appear to be directed against the larger Member States such as Britain and France, since several of the smaller States, and recently Germany, have already submitted their views.

The basis for agreement on the size of the Commission is fairly solid. The large Member States have generally accepted the compromise of more votes in the Council in compensation for losing a Commissioner, and there appears to be no opposition to this from the smaller States. One commentator has suggested that the extension of QMV, on the other hand, will be particularly difficult to resolve because the room for negotiation and trade-offs is limited. Robin Cook has summed up the potential consequences of failure to resolve the main issues:

> If we do not achieve the increase in weighting in the Council, there will be no change to the Commission. If there is no change in the size of the Commission and no change in weighting in the Council of Ministers, it is impossible for the European Union to proceed.[81]

The Portuguese Foreign Minister, Francisco Seixas da Costa, said after a ministerial meeting in March that "the same fault-lines that appeared with the Treaty of Amsterdam have not disappeared", but that "the margin for trade-offs is very much reduced given the limited number of points on the table".[82] He regretted the fact that some Member States had made clear that they would not agree to extending QMV to tax and social security matters.[83] The QMV issue would appear to be the most intractable, given the entrenched views in the two camps. There is a danger that this issue alone could delay the conclusion of the IGC beyond the desired December 2000 deadline, unless compromises are agreed.

The timing of the IGC is crucial for enlargement of the Union. If the IGC is concluded and a treaty signed at the end of the French Presidency in December 2000, it could take another 12-18 months for the completion of ratification procedures in all fifteen Member States. Only then could the new Treaty come into force. It could therefore be mid-2002 before the reforms are in place, although a more optimistic view envisages the end of 2001. The Commission President, Romano Prodi has said that by the end of 2002 "negotiations can be concluded with those countries meeting the criteria for accession"[84], with the first of the new members joining on 1 January 2003. Günther Verheugen, the Commissioner responsible for enlargement, has said that entry in 2003 is "extremely ambitious, but still possible".[85] The date of entry will depend on progress made in the accession negotiations and also on the speed of ratification in all the present and the

---

81 HC Deb, 15 February 2000, c 782.
82 *European Voice*, 16-22 March 2000.
83 *Ibid*.
84 Speech to EP, 13 October 1999.
85 *Agence Europe*, 29 March 2000.

applicant countries. Clearly it is desirable, if not essential, for the reforms to be in place before the first applicant states are ready to join the EU.

Appendix 1 Flexibility/Closer Cooperation[86]

The subject of flexibility is not firmly on the IGC agenda, although several Member States are keen to amend the current provisions in the Treaty of Amsterdam..

Flexibility was one of the buzzwords of the 1996-97 IGC, just as subsidiarity was for the 1991 IGC. Known more formally as "closer cooperation",[87] it refers to a range of mechanisms which might allow a sub-group of EU Member States to integrate or cooperate more closely than is provided for by the rules which apply to all Member States. The whole idea arose from Franco-German discussions when the French and German governments were significantly more enthusiastic about rapid integration than the British and some other governments, and felt that the only way forward lay through agreements which could bypass national vetoes or blocking minorities.

In the past there have been some sub-group arrangements specifically sanctioned by the Treaties, such as the Benelux agreement, the Social Protocol and the EMU provisions and others, such as the Schengen agreements, completely outside the treaties.[88] Arrangements of this kind raise a number of questions and concerns: do they effectively pre-empt the future even for the Member States which have not participated? should they be allowed to make use of the common institutions? how can these institutions be adapted to deal with sub-groups? how far can the process be allowed to go without threatening the integrity of the whole structure? These concerns have not really been addressed because the provisions for closer cooperation have not yet been used.

The general principles were designed to ensure that closer cooperation projects would be consistent with the objectives of the EU and its achievements. They should arise only as a last resort, if the objectives could not be attained otherwise under the Treaties and if a majority of Member States wish to participate. They must not fragment the EU institutions or affect the rights and interests of non-participating Member States; nor must they exclude any Member State which decides to join in later. The non-participants should not impede such cooperation in any way. All Member States have the right to take part in deliberations on closer cooperation, but only those which have decided to participate in the implementation have voting rights. Any administrative costs are carried by the institutions in the normal way, but other expenditure is borne only by the participating states unless the Council decides otherwise by unanimity.

---

86 Based on Research Paper 97/112, *The European Communities (Amendment) Bill: Implementing the Amsterdam Treaty*, 5 November 1997.

87 "Enhanced cooperation" in earlier drafts.

88 The Maastricht Treaty introduced article K.7 which refers to the possibility of closer cooperation in justice and home affairs between two or more Member States, thus giving a shadowy treaty base for the Schengen arrangements.

The Treaty also contains a new article (11) specific to the TEC which creates even tighter conditions for any "closer cooperation" projects falling within the Community sphere. Such cooperation is possible only in areas not subject to exclusive Community competence (e.g. external trade). It cannot concern citizenship or discriminate between nationals of different Member States and must not distort competition in the internal market. Proposals meeting these conditions are screened by the Commission which has the power to veto them. If passed by the Commission the proposal to proceed in principle with a project will be decided by the whole Council. It acts by QMV, but if any Member State cites important reasons of national policy why this should not proceed, then either no vote will be taken and the matter will rest unresolved, or the Council will decide by QMV to refer the issue to the ultimate arbiter, the European Council, where a decision is taken by unanimity. An ultimate national veto is thereby retained, provided that there is a willingness to state reasons and take the matter to the summit.

A new TEU Article 40 applies the "closer cooperation" idea to the third pillar, which now deals only with police and judicial cooperation in criminal matters (the other Justice and Home Affairs issues having been switched to the TEC). Here the proposal is allowed only if it furthers the aim of "*enabling the Union to develop more rapidly into an area of freedom, security and justice*". In this case, reflecting the continuing intergovernmental nature of the third pillar, the Commission has a right to comment on, but not veto, a suggestion. Authorisation is by the Council using the same formula as for the TEC, with the European Council as the ultimate arbiter.

The British Government will keep an open mind on Treaty reform in this area, as the Foreign Secretary said in the debate on the IGC White Paper:

> We are not entirely convinced that that [enhanced cooperation] needs to be a priority for this intergovernmental conference, given that the procedures were instituted only three years ago. However, we shall listen to the debate and consider whether it will be practical to make such changes.[89]

In the same debate Mr Cook said that “It is hard to understand why a provision that has not been used already needs amendment”.[90] The Conservatives have called for “flexibility in both directions”.[91] The then Opposition foreign affairs spokesman, John Maples, said in the debate on the Helsinki summit in December 1999: “We must not just allow deeper integration on the part of some countries; we must allow others to integrate at a slower pace”.[92] The then Opposition spokesman for Europe, Archie Norman, described the Conservative Party’s approach to flexibility as “modest and focused only on future legislation outside the core areas”.[93]

---

89 HC Deb, 15 February 2000, c 776.
90 HC Deb, 15 February 2000, c 780.
91 HC Deb, 1 December 1999, c 335.
92 *Ibid*.
93 *Ibid*, c 396.

Flexibility, like subsidiarity, means different things to different people. Stephen Weatherill has commented on flexibility, compared with subsidiarity:

> The meaning of closer co-operation is tied to the relevant Treaty provisions, and although … there is room for debate about their meaning, the result is that the technical legal debate about closer co-operation has become only one aspect of a broader political debate about flexibility. So, for example, flexibility as a general notion, unlike subsidiarity and unlike Union citizenship, has not been offered to the Court as part of EU legal currency. … The provisions on closer co-operation are merely the lawyer's tip of the iceberg of flexibility, laden with an anxiety that drift away from common rules towards differentiation may ultimately fatally undermine the core constitutional features of the system.[94]

[94] From chapter on "The Provisions on Closer Co-operation", *Legal Issues of the Amsterdam Treaty*, edited by David O'Keefe and Patrick Twomey, 1999.

Appendix 2 Keith Vaz: Wilton Park Speech

The Minister for Europe, Keith Vaz, considered many aspects of the IGC in a speech at Wilton Park on 1 November 1999. On the subject of institutional reform he said:

> We have already said that we will give up our second Commissioner provided that there is a re-weighting of votes in the Council. This is not a light step to take. But we think it would be right and fair. But we should go further, perhaps setting a cap of 20 or 25. This would in time be fewer than the Member States. There are some attractions in this: the Commission is an independent body, so does there need to be a formal link with Member States? Setting a limit would solve the problem of size for all time. There would need to be an agreed rotation, but this should not be impossible to negotiate.
>
> But there are also arguments against. Having a national Commissioner in Brussels offers reassurance to Member States that their own particular traditions and history will be represented at the top of the Commission. The British Government has some 90 Ministers, so is 25/30 Commissioners really too many?
>
> We are considering our position on this issue. In the short term, the answer may lie in the structure of the Commission. Perhaps we should look at clusters of Commissioners dealing with certain policy areas - to some extent this is already happening; or give the President of the Commission the right to appoint a certain number of Vice Presidents. These are areas which we shall be looking at in the IGC.
>
> The Council is the EU's most important institution, setting the political agenda. Some decisions are still made on the basis of unanimity. But in the first pillar most are already subject to qualified majority voting. Voting weights in the Council have always been a compromise between one vote per Member State and votes in proportion to population. In the original EU of 6 Member States, the QMV threshold was 71 per cent of votes in the Council and roughly the same percentage of population. Through successive enlargements since then, the threshold in the Council has remained at 71 per cent, but the percentage of the EU's population required to secure a majority has dropped to 58 per cent. In an EU of 27, it could drop below 50 per cent. This is not democratically sustainable. So some reweighting in favour of the larger Member States is undoubtedly required.
>
> Two options were put forward at Amsterdam and will no doubt be so again next year: a simple re-weighting of votes and a double majority system, under which a population threshold is set to enable legislation to be passed. On balance, we would prefer a simple re-weighting of votes in favour of the larger Member States. Voting arrangements in the EU are complicated enough for outsiders to understand. Introducing a double majority system risks adding a further layer of complexity.

> But even a simple re-weighting will be replete with difficulty. Should differentiation between Member States' voting weights be increased, or reduced? Can we agree a formula that is sustainable through future enlargements? We do not anticipate a large shift in the balance between large and small member states. But there is a real issue to be addressed and this time we have to find a solution.
>
> The third big issue is the possible extension of qualified majority voting. QMV has been good for the transaction of EU business. It has made business more efficient and quicker. Of course there have been times when we have not got what we want. So has every Member State. But overall, QMV has been good for Britain and for the EU.
>
> There is an argument, therefore, that QMV should be extended to other areas of European business. The argument is especially strong when facing enlargement. The more members the EU has, the greater the likelihood that unanimity can lead to stalemate. That is not in our, or the EU's, interest.
>
> The UK will therefore support the extension of QMV in areas where it is of benefit to the UK and to Europe. Areas such as transport policy, appointments and rules of procedure of the European Court. In some areas, we can be more positive than some of our European partners: languages for instance, or seats of the institutions. But in some areas, we have made clear that key national interests are at stake and that unanimity should remain the rule - areas such as Treaty change, defence, border controls and taxation.
>
> Negotiations will be on an article by article basis. They will no doubt be difficult. But we should not exaggerate their significance. There are only 73 articles left in the Treaties subject to unanimity and most are in constitutional areas where no Member State is contemplating QMV. My guess is that we shall end up with a modest extension in a number of areas, rather than a sea change such as occurred in the Single European Act or at Maastricht.

Mr Vaz also commented on other possible reforms that the IGC might tackle:

- if we extend QMV in legislative areas, we should also look at the extension of co-decision by the European Parliament;
- reform of the European Court of Justice might be examined;
- likewise the rules on sacking underperforming Commissioners, where we would tend to think it is the powers of the President, not the EP, that need examining;
- defence. Discussions on defence will take place outside the IGC, but if those discussions result in the need for Treaty amendment, that Treaty amendment might be included in the conclusion of the IGC; and
- the size of the European Parliament post enlargement. [95]

---

[95] "The EU after 2000" Conference, Wilton Park, 1 November 1999.

Appendix 3 The Extension of QMV in Treaty Amendments

Treaty of Rome

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

(i) Qualified Majority on a proposal from the Commission

7	rules to prevent discrimination on the grounds of nationality
28	autonomous alteration or suspension of common customs tariff duties etc not exceeding 20 per cent of the rate.
42	application of competition rules to agriculture
43(2)	implementing the common agricultural policy
43(3)	establishment of common agricultural market organisations
54(2)	freedom of establishment
55	exclusion of certain activities from freedom of establishment
56(2)	co-ordination of certain national provisions concerning special treatment of foreign nationals
57(1)	mutual recognition of diplomas and so on
57(2)	taking up and pursuit of activities by certain self-employed persons
63(2)	liberalisation of services
69	free movement of capital
70(2)	amendment of national measures restricting free movement of capital
75(1)	inland transport policy
79(3)	elimination of discrimination between carriers
87(1)	competition rules
92(3)(d)	additional categories of state aids considered compatible with the common market
94	state aid rules
98	special authorisation of export refunds or countervailing charges on imports
101	directives to remove distortions or competition caused by differences between national laws
103	directives to implement conjunctural policy measures adopted under article 103(2)
112(1)	harmonisation of export aids
113	common commercial policy
116	common action in international organisations of an economic character
127	European social fund

(ii) Qualified Majority not on the basis of Commission proposals

73(1)	revocation of Commission authorisation of a member state's protective measures in field of capital movements
108(2)	grant of mutual assistance to meet balance of payments difficulties
108(3)	revocation or amendment of Commission authorisation of a member state's protective measures to meet balance of payments difficulties
109	amendment of a member state's protective measures to meet a sudden balance of payments crisis
114	conclusion of certain commercial agreements with third countries

126(a)	stopping certain social fund assistance
154	salaries of EC staff (now found in article 6 of merger treaty)
203(3)	establishment of a draft budget
203(5)	decisions on budget amendments and modifications proposed by European Parliament
203(9)	altering maximum rate of increase in budget (with agreement of EP)
204	authorising expenditure in excess of provisional twelfths at beginning of financial year
206(9)	conditions of employment of members of the Court of Auditors
206(b)	recommendation to Parliament that Commission be given discharge in respect of implementation of the budget.[96]

Single European Act

The SEA extended the scope of QMV mainly to cover Single Market measures, including several areas which had previously been subject to unanimity. The same parliamentary answer listed (a) areas of unanimity, marking that had changed to QMV under the SEA with an asterisk, and (b) new areas subject to QMV (in Treaty of Rome, not in ECSC and Euratom Treaties):

(a)	*Unanimity and areas of change*
28*	alteration of duties etc in the common customs tariff by more than 20 per cent
51	social security for migrant workers
56(2)	co-ordination of national legislation concerning special treatment for foreign nationals
57(2)*	taking up and pursuit of activities by certain self-employed persons (as amended by the SEA)
59(2)*	extension of free movement of services to national of a third country
70(1)*	capital movements between member states and third countries
75(3)	common transport policy provisions liable to have a serious effect on standards of living and so on
76	safeguard against new discrimination between carriers
84(2)*	sea and air transport (as amended by the SEA)
93(2)	derogations from state aids rules
99	indirect tax approximation
100*	approximation of provisions affecting functioning of common market (supplemented by article 18 and 19 of SEA)
103(2)	conjunctural policy measures
121	delegation to the Commission of implementation of common social measures
126(b)	new tasks for European social fund
138(3)	direct elections to the European Parliament
149	amendments to Commission proposals (amended by SEA to introduce procedure for co-operation with EP)
157	size of Commission (now article 10, merger treaty)
159	replacement of members of Commission (now article 12, merger treaty)
165	increasing the number of judges on the ECJ
166	increasing the number of advocates-general at the ECJ
194	appointment of members of Economic and Social Committee
196	approval of rules of procedure of the Economic and Social Committee
201	own resources
206(4)	appointment of members of the Court of Auditors

[96] HC Deb, 12 March 1986, cc.511-512W.

209	adoption of financial regulations and so on
217	languages of Community institutions
223(3)	amendments to list of war materials etc
231	co-operation with OECD
235	action in absence of specific powers in the Treaty
237	new accessions
238	conclusion of association agreements

(b) *New areas of QMV introduced by the SEA:*

8B	guidelines and so on for balanced progress on internal market
118A	adoption of minimum requirements for health and safety of workers
130E	implementing decisions relating to European regional development fund
130Q(2)	adoption of certain provisions implementing the framework programme on research and technological development
130S	decisions on matters relating to the environment in respect of which the Council decides by unanimity that decisions are to be taken by QMV

(HC Deb, 12 March 1986, cc 512-513W)

Treaty on European Union

The Treaty on European Union did not extend QMV to the extent that the SEA had done. The TEU did not in fact replace any areas of unanimous voting with QMV. It extended QMV to areas in which the Community had already been involved and in areas which were included in Article 3 of the TEU on the activities of the Community. QMV was also introduced in certain aspects of the largely intergovernmental second and third pillars of the TEU, the CFSP and JHA. In both these pillars, the decision to act is by unanimity, but the Council can also decide by unanimity that implementing measures in "joint actions" may be decided by QMV. The additional QMV areas are set out in the following written parliamentary answer:

The following articles on economic policy: 73c(2), 73f, 73g(1), 73g(2), 75, 103(2), 103(4), 103(5), 103a(2), 104a(2), 104b(2), 104c(6), 104c(14)

The following articles on monetary policy: 105a(2), 106(5), 106(6), 109(1), 109(2), 109(3), 109(4)

The following articles on Economic and Monetary Union (EMU): 109c(3), 109f(6), 109h(2), 109h(3), 109I(3), 109j(2), 109j(3)

100c(2) & (3)	common visa list, from 1996, common format visa, emergency measures
126	education
127	vocational training, currently simple majority under article 128
129	public health
129a	consumer protection
129d	trans-European networks
130i(4)	research and development specific programmes
130s	most aspects of the environment, currently unanimity unless all member states agree to use QMV
130w	development
138e	Ombudsman’s terms of reference
194	allowances for members of the Economic and Social Committee
228(1) & (2)	conclusion of international agreements on subjects where internal decision-making is by QMV, codifies existing practice
228a	sanctions

Decisions taken under article 104c, (7), (8), (9), (11) and (12) will be taken by two thirds of weighted votes. These changes are paralleled where appropriate in the revisions to the ECSC and Euratom treaties-titles III and IV of the Union Treaty. There are no cases where a requirement for common accord has been replaced by one for qualified majority.[97]

Treaty of Amsterdam

In the Amsterdam Treaty some articles requiring unanimity in the Council were repealed because they no longer applied. These included articles on the early stages of EMU, old Article 100c on the first stage of establishing a common visa list and the first stage of old Article 112 on the harmonisation of aid to third countries. The Amsterdam Treaty extended QMV to a number of areas that had been decided by unanimity. These were:

46(2)	Co-ordination of provisions laid down by law, regulation or administrative action for special treatment for foreign nationals (right of establishment).
166(1)	Adoption of the research framework programme.
166(2)	Adapting or supplementing the research framework programme.
172	Setting up of joint undertakings in R&T development.

The extension of the scope of Article 133 of the TEC (common commercial policy)[98] also involved an extension of the scope of QMV, as did the new provisions proposed in the Common Foreign and Security Policy (CFSP) for the decision making process. The flexibility provisions in Article 11 of the TEC and Article 40 of the TEU are also subject to QMV, but with a "similar national veto mechanism". Britain is not obliged to participate in the co-operation under the new chapter on free movement of persons, asylum and immigration, where there are some QMV provisions on Articles 62(2)(b) (i) and (iii).[99]

A number of new Treaty provisions subject to QMV were introduced. These were:

Article	
128	Employment guidelines.
129	Incentive measure
135	Customs cooperation.
137(2)	Social exclusion.
141(3)	Equality of opportunity and treatment of men and women.
152(4)	Public Health.
255	Transparency.
280	Countering fraud.
285	Statistics.
286	Protection of individuals with regard to the processing and free movement of personal data.
299(2)	Outermost regions.

97 HC Deb, 20 May 1992, c 169W.
98 TEC p.31 and p.178
99 TEC p.26 and p.153

Appendix 4 EC Treaty Articles subject to Unanimity[100]

Article 18	rights of citizens of the Union.
Article 42	social security for migrant workers.
Article 46	coordination of national legislation concerning special treatment for foreign nationals.
Article 47	provisions for self-employed persons.
Article 71 (2)	common transport policy provisions liable to have a serious effect on standards of living and so on.
Article 72	safeguard against new discrimination between carriers.
Article 88	derogations from state aids rules.
Article 93	indirect tax approximation.
Article 94	approximation of provisions establishing the common market (NB: this does not apply to Article 100A on approximation of provisions for the completion of the internal market)
Article 100	difficulties in economic and monetary policy.
Article 104(14)	provisions for excessive deficit procedure.
Article 105	supervision of credit institutions.
Article 111	agreements on ERM , the tasks of the EMI, third stage of EMU.
Article 144	delegation to the Commission of implementation of common social measures.
Article 151	culture.
Article 159	action on economic and social cohesion.
Article 175(2)	certain provisions for action on the environment.
Article 190(4)	direct elections to the European Parliament.
Article 213	size of Commission.
Article 214	nomination of Commission.
Article 215	replacement of members of the Commission.
Article 221	increasing the number of judges on the ECJ.
Article 222	increasing the number of advocates-general at the ECJ.
Article 225	rules of procedure of Court of First Instance.
Article 247(3)	appointment of members of the Court of Auditors.
Article 250	amendments to Commission proposals.
Article 251(3)	amendments which the Commission has rejected
Article 252 (c)	action following EP rejection of Council's common position; adoption of Commission amendments rejected by the EP; amendments to Commission's re-examined proposals.
Article 258	appointment of members of the Economic and Social Committee.
Article 263	appointment of members of the Committee of the Regions.
Article 269	own resources.
Article 279	adoption of financial regulations and so on.
Article 290	languages of Community institutions.
Article 296(2)	lists of war materials and amendments to this list.
Article 300	certain agreements between the EC and third states.
Article 304	cooperation with OECD.
Article 308	action in absence of specific powers in the Treaty.
Article 310	conclusion of association agreements.
Article 49 (TEU)	new accessions

[100] Excluding ECSC and Euratom Articles.