Daniel Vignes, How to calculate qualified-majority voting: a real headache for 1996 (November 1994)

Caption: In November 1994, in advance of the Intergovernmental Conference of 1996, Daniel Vignes, Editor-in-Chief of the Revue du Marché commun et de l'Union européenne, takes a critical look at the Ioannina Compromise which, in his opinion disrupts the balance of the decision-making process designed by Paul-Henri Spaak and reduces the influence of the Franco-German partnership.

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How to calculate qualified-majority voting: a real headache for 1996

By Daniel Vignes

When, at its informal meeting in March 1994 in Ioannina, the Council of the European Union deliberated about the number of votes to be allocated to the latest four countries acceding to the Union (Austria, Finland, Sweden and Norway) for the calculation of the qualified majority, the entire system was put to the test. It is common knowledge that the weighting of those votes, as laid down in Article 148(2) of the Treaty of Rome, must be recalculated on each enlargement and that it favours the 'small' Member States (originally Belgium, Luxembourg and the Netherlands) to the detriment of the 'large' Member States (originally France, Germany (FRG) and Italy, followed by the United Kingdom in 1973). Paul-Henri Spaak, a discerning character and a figurehead at that time for the Benelux countries, had worked his magic in having that provision included in the Treaty of Rome. Unfortunately, in subsequent years, the 'small' countries joining the EEC outnumbered the larger countries; in fact, of those countries, the United Kingdom alone can be described as 'large', because Spain, a country with fewer than 40 million inhabitants, failed to acquire full status as a 'large' Member State. Admittedly, it has two Commissioners, but it has only eight votes as compared with the ten allocated to France, Germany, Italy and the United Kingdom. In the Union of 16, there are four large and twelve small Member States, that is to say, a quarter of them are large, whereas, back in 1958, there were three large and three small Member States, that is to say, a ratio of 50:50.

The issue raised at Ioannina was debated largely in response to a request from the United Kingdom, and perhaps also to a certain extent from Spain, and even briefly from Italy, each state taking the view, for different reasons, that the new arrangement failed to provide them with sufficient protection: under that arrangement, the taking of decisions by qualified majority voting, which, they feared, would place them at a disadvantage, was made too easy. The malicious spirits — on their own admission — were terrified that the nasty Brits' intention was to have the capability to block with ease any future development of the Community simply by rallying some (as few as possible) sceptical Member States like themselves. Those States suspected of laxness shall remain nameless, but let us just say that they might be located in the north or north-west of the Community …

In the Council's work — bearing in mind that it was that institution which prepared the accession negotiations — the UK effort was based on a concept that was unusual in its presentation, the concept of the 'blocking minority', that is to say, the number of weighted votes necessary to block a decision; according to that theory, that number should, as we have already seen, be as low as possible (with the highest possible qualified majority). The United Kingdom wanted a minority of 23 votes out of 90, whereas the others wanted 27. (All Member States were more or less agreed about the figure of 90, the total number of votes and their allocation among the States; Sweden alone took the view that it should have five rather than four votes, although it was refused this in the end.) Details of the definitive weightings are set out below. [1] If the UK's theory had won out, the following paragraph would have referred to 68 rather than 64 votes.

I shall not go into the complexities of the negotiations. Some Member States were not hostile to the British idea as a matter of principle. A majority was none the less in favour of a blocking minority of 27 out of 90 and a qualified majority of 64 votes. For its part, the European Parliament categorically stated that it would not authorise the conclusion of the accession agreement if the UK had its way. It is easy to understand — albeit only indirectly — that whatever increases the Member States' influence in the taking of decisions by qualified majority places Parliament at a disadvantage.

If *Agence Europe* is to be believed, many compromise solutions were proposed during the negotiations within the Council. It was suggested, for example, that the blocking minority could vary depending on the issue concerned; another proposal was that the blocking minority could differ depending on whether the Member States were large or small; a further idea was that the blocking minority did not have to be the same at first and second reading, that the figure of 23 votes could be accepted to begin with (but any proposal securing fewer votes than that would be ratified immediately), that, for a very short period (whether three months or two years, we just do not know), there

would be negotiations as to whether a more consensual text could be found, so that by the end of that period, the text could be adopted unless at least 27 votes were cast against it, and so the list goes on. But the British would not budge: it was 23 *or nothing*. That caused no end of confusion as the *Agence Europe* regulars, unfamiliar with blocking minorities, failed to understand anything.

Eventually, through the unparalleled persistence of the (Greek) President of the Council of the European Union, Th. Pangalos, a compromise akin to that described above was drawn up; it stated that if, in a given case, the minority secured was between the figure advocated by the UK (23 out of 90) and the figure supported by the others (26 out of 90), in other words, if there was a weak qualified majority (or a strong minority), the decision would be deferred, and a broader basis for agreement would be sought through negotiation. However, there was no mention of how long negotiations would continue before the revision scheduled for 1998. That compromise was introduced in a Council decision, not just in the Council minutes, [(2)] with a commitment to review the whole situation at a later date, so as to avoid the criticism levelled (through sarcastic remarks) by the lawyers against its counterpart and predecessor, the Luxembourg Compromise.

That issue will probably be one of those to blight negotiations in 1996. Although it is not normally one of the issues for which such revision is formally provided in the Maastricht Treaty, its connection with the exercise of the power of decision is without doubt reminiscent of those issues; moreover, that is precisely what the Council decided at Ioannina.

Incidentally — and at the risk of sounding like a closet Brit — we might like to ponder whether, over time, we have not in fact come to distort irreparably the balance of the decision-making process as envisaged by Paul-Henri Spaak. Established for the purpose of protecting the ‘small’ Member States against the ‘large’ Member States, that system, in the wake of four enlargements, clearly reduces the significance of the large Member States to an excessive degree. I do not wish to become embroiled in a battle between ‘small’ and ‘large’ — there is a distinction here that I, of course, reject on objective grounds; I reject all contempt for the ‘small’ countries (to quote Vattel: All states are equal). It would be undesirable to dismiss a majority of the ‘small’ countries in favour of a minority of ‘large’ countries, but … what is referred to as the Franco-German alliance has been really useful for the development of the Community, and planning to do something in the Union when the joined forces of France and Germany are against it seems risky to me; as it is, the risk exists — and has done, with the current system, since 1985 — and it will only worsen with future enlargements if we keep going without a thorough review of the mechanism.

The application of this qualified majority that I am not far from regarding as almost distorted in the wake of four enlargements — I shall go into greater detail about that opinion a little later — might be disastrous in some areas. I am thinking of the adoption of the budget, an area where, since 1975, the European Parliament’s role has been equal to, even greater than, that of the Council. What would be the upshot of having a budget adopted through some form of complicity by the European Parliament and a weak qualified majority of the Council that would not include two of the four large States?

I shall take a few examples to illustrate that point and respectfully request my readers to excuse my recourse to arithmetic, which many of them must have neglected since secondary school and now replace their knowledge of it with the little Japanese calculators beloved of former Commissioner Etienne Davignon. It is all about calculating percentages and thresholds. It should be recalled that the wording of Article 148(2) is its fifth version (at least) since the Treaty of Rome. [(3)]

It will be noted that the percentage for a qualified majority in relation to the total number of weighted votes has remained almost the same since 1958 at 71 % (for the sake of accuracy, since 1958 it has swung between 70.588 % and 71.428 %) and that, by the same token, the percentage for the blocking minority in relation to the total number of weighted votes — subject to the relaxation of the rules agreed at Ioannina — is always in the region of 29 %. [(4)]

Having said that, because of the increase in the number of Member States of the Community, the Franco-German alliance is losing influence: it represented 48 % in 1958, 34 % in the Community of Nine, 32 % in the Community of Ten, 26 % in the Community of Twelve and only 22 % in the European Union as it stands in 1994 (and an astonishing figure of less than 15 % in the Union of 29 to which I shall refer below).

Similarly, in the Community of 1958, the alliance could oppose the adoption of a decision. It can no longer do that in the Community of Twelve, nor *a fortiori* in the Community of Sixteen, where it needs stronger backup if it is to mount an effective opposition.

Now, if we think of a Union of 22 including the six countries of Central and Eastern Europe (Poland, the Czech Republic and the Slovak Republic, Hungary, Romania and Bulgaria), the Union will have gained 75 million new citizens. If we assume that the number of weighted votes allocated will be 8 + 5 + 3 + 5 + 6 (or perhaps 7) + 5 (respectively), the total number of weighted votes will be to the order of 122, and the number of votes needed for a qualified majority will therefore be 86 and, for a blocking minority, 37. Nevertheless, a tactical alliance made up of France, Germany, the United Kingdom and the Netherlands could be placed in the minority (as could an alliance between France, Germany, the Benelux countries and Denmark).

In order to secure a blocking minority, where the four large states (those with ten votes) jointly opposing a decision would be placed in the minority, there would have to be a total of 138 weighted votes, which is unachievable as matters stand because it would require almost all of the following states to join the Union (and their accession would pose problems which, at the moment, seem difficult to overcome): Cyprus (which, based on its population, would have two votes), Malta (2), Estonia (2), Latvia (2), Lithuania (2), Switzerland (4) and Liechtenstein (2). (I have refrained from replacing the failing countries with Iceland (2) or Moldova (3), or even Yugoslavia (6); I have, furthermore, given up hypothesising about the former parts of Yugoslavia, even if I have given two votes each to the potential applicant countries of Croatia and Slovenia, which are perhaps chaperoned a little too much by one Member State but on bad terms with another.)

Of course, people will tell me, in the case referred to two paragraphs earlier of a Community of 22, in which four countries opposing an issue (France, Germany, the United Kingdom or Italy and the Netherlands or Belgium) would be beaten because they represent a mere 210 million inhabitants, [5] whereas, on the other hand, the 18 countries in the voting majority would represent 260 million inhabitants, that such a situation could be considered to be the most democratic, and that this is how democracy works, as Jean-Jacques Rousseau himself said, *if half plus one are against me, then I am in the wrong*, but, in that case, the idea of a *qualified* majority is destroyed because 261 against 211 is a *narrow* majority, which the society of states does not like.

The European Parliament rejected my logic for the reasons outlined above; the ‘small’ Member States should do the same.

The negotiations will be fraught with problems in this regard. This delicate issue might even eclipse the fundamental issue of variable-geometry Europe (and the hard core).

(1) The text of the Act of Accession finally adopted reads as follows (at Article 15 thereof):
‘1. The following is substituted for Article 148(2) of the EC Treaty and Article 118(2) of the Euratom Treaty: “2. Where the Council is required to act by a qualified majority, the votes of its members shall be weighted as follows: Belgium: 5, Denmark: 3, Germany: 10, Greece: 5, Spain: 8, France: 10, Ireland: 3, Italy: 10, Luxembourg: 2, Netherlands: 5, Norway: 3, Austria: 4, Portugal: 5, Finland: 3, Sweden: 4, United Kingdom: 10. For their adoption, acts of the Council shall require at least:
— 64 votes in favour where this Treaty requires them to be adopted on a proposal from the Commission,
— 64 votes in favour, cast by at least 11 members, in other cases.”’
Thus, total number of weighted votes: 90 votes
Qualified majority threshold: 64 votes
Blocking minority: 27 votes
… unless the Ioannina Compromise is applied.
(2) The Ioannina Compromise reads as follows: ‘Council Decision of 29 March 1994 concerning the taking of decision by qualified

majority by the Council. The Council of the European Union,
Decides:
Article 1
If Members of the Council representing a total of 23 to 26 votes indicate their intention to oppose the adoption by the Council of a decision by qualified majority, the Council will do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by the Treaties and by secondary law, such as in Articles 189 B and 189 C of the Treaty establishing the European Community, a satisfactory solution that could be adopted by at least 68 votes. During this period, and always respecting the Rules of Procedure of the Council, the President undertakes, with the assistance of the Commission, any initiative necessary to facilitate a wider basis of agreement in the Council. The Members of the Council lend him their assistance.
Article 2
The present Decision shall be published in the Official Journal of the European Communities.
Done at Brussels, 29 March 1994.
For the Council
The President
Th. PANGALOS'
(3) In order to assist the reader, I am setting out the figures set out in Article 148(2) ever since 1958:
— Treaty of Rome; the votes of the Member States are weighted as follows and the total needed is twelve votes: Belgium: 2, Germany: 4, France: 4, Italy: 4, Luxembourg: 1, Netherlands: 2.
— 1972 text (taking account of Norway's decision not to accede); the votes are weighted as follows and the qualified majority is 41 votes: Belgium: 5, Denmark: 3, Germany: 10, France: 10, Ireland: 3, Italy: 10, Luxembourg: 2, Netherlands: 5, United Kingdom: 10.
— 1979 text (accession of Greece); the votes are weighted as follows and the qualified majority is 45 votes: Belgium: 5, Denmark: 3, Germany: 10, Greece: 5, France: 10, Ireland: 3, Italy: 10, Luxembourg: 2, Netherlands: 5, United Kingdom: 10.
— 1985 text (accession of Spain and Portugal); the votes are weighted as follows and the majority is 54 votes: Belgium: 5, Denmark: 3, Germany: 10, Greece: 5, Spain: 8, France: 10, Ireland: 3, Italy:10, Luxembourg: 2, Netherlands: 5, Portugal: 5, United Kingdom: 10.
— 1994 text (accession of Austria, Finland, Sweden and Norway); see the vote weightings in footnote 1; the majority is 64.
(4) The figure of 27 votes actually brings the blocking minority to 30 %; that rise in the average for a minority is a further achievement for the delegations in favour of qualified majority. Just for the record, the Benelux countries, which have always championed qualified majority voting, would have liked the threshold for a qualified majority during the fourth enlargement to be only 54 votes (not 64); in other words, the blocking minority would have leapt to 40 %! However, that was merely an initial negotiating position and was never really defended (see *Agence Europe* of 3 March 1994).
It will also be noted that the UK's argument in favour of a minority of 23 votes was no more than a reinforcement of the figure accepted in the Community of Twelve (1985 text), which brought the minority to 25.5 %. If truth be told, throughout this argument, everyone had a systematic aim, albeit a reactionary one: the United Kingdom — irrespective of any enlargement — wanted to freeze the blocking minority for ever at 23 votes (1985 figure), without allowing it to grow; the Benelux countries — irrespective of any enlargement — wanted to freeze the qualified majority for ever at its threshold of 54 votes as in 1985. The solution adopted in the text freezes the percentage, which perhaps is not the worst possible solution!
(5) The figures that I have used relate to the population on 1 January 1993; I have also used those figures for the allocation of a number of weighted votes to the six countries of Central and Eastern Europe.