

EU Presidency note on the extension of qualified majority voting (11 February 2000)

Caption: Note from the Presidency of the Council of the European Union, dated 11 February 2000, on the extension of qualified majority voting. In its note, the Presidency sets out the Treaty provisions which provide for the common accord of Member States or for unanimity on the part of the Council and for which a possible change to qualified majority voting should be considered.

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**CONFERENCE
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OF THE MEMBER STATES**

**Brussels, 11 February 2000 (14.02)
(OR. f)**

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REV 1**

LIMITE

PRESIDENCY NOTE

Subject : **IGC 2000: Possible extension of qualified majority voting**
- Articles which could move to qualified majority voting as they stand

INTRODUCTION

This note is based on the approach taken by the Finnish Presidency in its report to the European Council advocating the grouping into categories of the provisions of the Treaties which currently provide for the common accord of Member States or for unanimity on the part of the Council¹ and for which a possible change to qualified majority voting should be considered.

I. Provisions on the functioning of the internal market

Within the area of the internal market – where the general rule is for qualified majority voting – there remain a few provisions which still stipulate unanimity. As these provisions are closely linked with provisions which are subject to qualified majority voting, the question arises of whether it would not be advisable to extend this rule to all provisions concerning the internal market.

¹ Those provisions which require unanimity in the areas of tax (Articles 93 and 94 of the TEC), social policy (Articles 42 and 137 of the TEC), the environment (Article 175(2) of the TEC) and JHA (Articles 34(2)(a), (b) and (c) of the TEU and Article 67 of the TEC) will be covered in separate notes. The problem raised by Article 308 of the TEC is also covered in a separate note. The Articles dealing with the adoption of the Rules of Procedure of the CFI and of the Court of Justice (Articles 225(4) and 245(3) of the TEC) will be examined separately.

The provisions in question are as follows:

1. *The right for citizens of the Union to move and reside freely within the territory of the Member States (Article 18(2) TEC).*
2. *The taking-up and pursuit of activities as self-employed persons: the amendment in one or more Member States of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons (Article 47(2)).*
3. *Derogations from the normal procedure when the application of the principles of the regulatory system for transport would be liable to have a serious effect on the standard of living and on employment in certain areas and on the operation of transport facilities (Article 71(2) and the second subparagraph of Article 80(2) of the TEC, concerning sea and air transport).*
4. *The economic measures to be taken in the case of difficulties in the supply of certain products (Article 100(1) of the TEC).*

II. Provisions related to the budget

This covers provisions of which the principal aim is either to set the rules for drawing up and implementing the budget, or to create a legal basis for the adoption of programmes to be financed by the Community budget to support the actions of Member States; in the latter case, a possible change to qualified majority voting could be justified by a desire for consistency between the procedure applicable to the substance, and the budgetary procedure.

The provisions concerned are as follows:

1. *Measures supporting the actions of Member States in the area of culture (Article 151(5) of the TEC).*
2. *Measures supporting the actions of Member States in the industrial sphere (Article 157(3) of the TEC).*
3. *Specific actions for economic and social cohesion other than through the Structural Funds (third paragraph of Article 159 of the TEC).*
4. *Rules applicable to the Structural Funds and to the Cohesion Funds (Article 161 of the TEC).*
5. *The Financial Regulation (Article 279 of the TEC).*

III. Provisions which might be regarded as institutionally anomalous

This essentially concerns two categories of provision:

- provisions which stipulate unanimity of the Council in the case of a codecision procedure with the European Parliament; in fact the requirement for unanimity can be interpreted as having the effect of depriving the codecision procedure of part of its substance;
- those provisions which allow a Council member to appeal a decision taken at ministerial level by qualified majority voting to the Council, meeting at Heads of State or Government level, which then takes a unanimous decision.

Provisions falling into this category are as follows:

1. *Authorisation for closer cooperation in the JHA field (Article 40 of the TEU).*
2. *Authorisation for closer cooperation (Article 11 of the TEC).*
3. *Provisions facilitating the right of citizens of the Union to move and reside in the territory of Member States (Article 18(2) of the TEC).*
4. *Measures in the area of social security, needed for the free movement of workers (Article 42 of the TEC).*
5. *The taking-up and pursuit of activities as self-employed persons; the amendment in one or more Member States of the existing legislative principles governing the professions (Article 47(2) of the TEC).*
6. *Incentive measures, excluding harmonisation, in the cultural field (Article 151(5) of the TEC).*

IV. Appointments

The unanimity required when appointing members of European Union institutions and bodies could be matter for discussion. Enlargement will increase the risk inherent in unanimity that the Council will be prevented from adopting provisions that are essential for the Union to function properly.

The provisions in question are:

1. *ECB Governing Council (Article 112(2) TEC.)*
2. *Secretary-General and Deputy Secretary-General of the Council (Article 207(2) TEC).*
3. *Appointment and replacement of the President and Members of the Commission (Articles 214(2) and 215 TEC).*
4. *Members of the Court of Justice (Article 223(1) TEC).*
5. *Members of the Court of First Instance (Article 225(3) TEC).*
6. *Members of the Court of Auditors (Article 247(3) TEC).*
7. *Members of the Economic and Social Committee (Article 258 TEC).*
8. *Members of the Committee of the Regions (Article 263 TEC).*

V. External relations

The main argument for a possible extension of qualified-majority voting in the field of external relations is concern to establish parallel procedures for the external and internal treatment of the same subject matter. Such parallelism exists under the TEC where the Council does not act unanimously on international agreements unless unanimity is required for the adoption of internal rules, the exception being association agreements (Article 310 TEC), for which unanimity is always required. The question is whether such parallelism should be extended to:

- Article 24 TEU, in respect of areas for which a joint action has been adopted by a qualified majority (Article 23(2) TEU), with provision that the Council will decide to conclude agreements with third countries in those areas according to the same voting rule;
- to association agreements that cover areas in which a qualified majority is required for the adoption of internal rules.

For some, a move to qualified-majority voting could also be envisaged for Article 296(2) TEC (list of dual-use goods), which also falls under common commercial policy and, again for reasons of parallelism, should like that policy be determined by a qualified majority.

The provisions in question are:

1. *The conclusion of CFSP international agreements in areas in which a joint action has been adopted by a qualified majority (Article 24 TEU).*
2. *Compilation of the list of dual-use goods (Article 296(2) TEC).*
3. *Association agreements (Article 310 TEC) covering areas in which internal rules must be adopted by qualified majority.*
4. *for the record: For certain external relations decisions adopted on the basis of Article 308, see separate note specifically on that Article.*

VI. Other provisions

Despite their political sensitivity, a number of other provisions could also be examined.

These include:

1. *Serious and persistent breach of human rights in a Member State (Article 7 TEU).*
2. *CFSP decisions (principle) (Article 23 TEU).*
3. *Appointment of CFSP special envoys (Article 23 TEU).*
4. *Certain police and judicial cooperation (PJC) decisions (see separate note on this subject) (Article 34 TEU).*
5. *Anti-discrimination measures (Article 13 TEC).*
6. *Right to vote in municipal elections and European Parliament elections (Article 19 TEC).*
7. *Compatibility of State aid with the internal market (Article 88(2) TEC).*

8. *Conferral on the ECB of specific tasks relating to the prudential supervision of credit institutions (Article 105(6) TEC).*
9. *Agreements on the euro exchange-rate system (Article 111(1) and (4)).*
10. *Measures necessary for the rapid introduction of the euro and measures to be taken when the Council decides the introduction of the euro in a Member State (Article 123(4) and (5)).*
11. *Conclusion of international agreements on intellectual property and services (Article 133(5) TEC – in fact this is more a transfer of competence).*
12. *Association of the overseas countries and territories (Article 187 TEC).*
13. *Laying down the statute for members of the European Parliament (Article 190(5) TEC).*
14. *Seat of the institutions (Article 289 TEC).*

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ANNEX**CONSTITUTIONAL, QUASI-CONSTITUTIONAL OR ORGANIC PROVISIONS¹****1. Provisions in respect of which the Treaties provide expressly for the adoption of a decision by the Member States in accordance with their respective constitutional rules:**

- *Common defence (Article 17(1), first subparagraph, TEU)*
- *Integration of the WEU (Article 17(1), second subparagraph, TEU)*
- *Establishment of PJC Conventions (Article 34(2) TEU)*
- *Communitarisation of PJC areas (Article 42 TEU)*
- *Revision of the Treaties (Article 48 TEU)*
- *Accession of a new Member State (Article 49 TEU)*
- *Additional rights of citizenship (Article 22 TEC)*
- *Uniform electoral procedure (Article 190(4) TEC)*
- *Own resources (Article 269 TEC)*

2. Provisions which, in view of the "sui generis" character of the European Union, may be considered "quasi-constitutional":

- *Replacement of the provisions of the Protocol on the excessive deficit procedure Article 104(14) TEC)*
- *Amendment of the Statute of the ESCB without a proposal from the ECB (Article 107(5) TEC)*
- *Committee procedure (Article 202 TEC)*
- *Decision on the order of the Presidency of the Council (Article 203 TEC)*
- *Alteration of the number of Members of the Commission (Article 213(1) TEC)*

¹ The Presidency is not proposing that this list be examined at this stage

- *Number of Judges and Advocates-General (Articles 221(4), 222(3) and 223(1) TEC)*
- *New classes of action before the CFI (Article 225(2) TEC)*
- *Statute of the Court of Justice (Article 245(2) TEC)*
- *Amendment of Commission proposal (Article 250(1) TEC); Second co-decision reading after a negative opinion from the Commission (Article 251(3) TEC); Second reading – cooperation (Article 252(c), (d) and (e) TEC): Commission's prerogatives*
- *Language rules (Article 290 TEC)*

3. Provisions allowing derogations from normal Treaty rules:

- *Not charging CFSP and JHA operational expenditure to the EC budget (Articles 28(3) and 41(3) TEU)*
- *Measures constituting a step back as regards the liberalisation of the movement of capital to or from third countries (Article 57 TEC)*
- *Measures constituting a step back as regards transport (Article 72 TEC)*
- *Financial assistance to a MS (Article 100(2) TEC)*

4. Provisions in respect of which the rule of unanimity ensures consistency between internal and external decisions:

- *Conclusion of international agreements by unanimity in areas which have been the subject of a joint action adopted unanimously (Article 24 TEU)*
- *Conclusion of international agreements by unanimity in areas in which unanimity is required for the adoption of internal rules (Article 300(2) TEC)*