

EU Presidency note on the extension of qualified majority voting (20 April 2000)

Caption: Note from the Presidency of the Council of the European Union, dated 20 April 2000, on the extension of qualified majority voting. In the light of discussions held during the first phase of the Conference's work at representative and ministerial level, the Presidency suggests an overall approach which could constitute a basis for further detailed work on the question of qualified majority voting by the Group of Representatives.

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CONFERENCE
OF THE REPRESENTATIVES OF THE
GOVERNMENTS
OF THE MEMBER STATES

Brussels, 20 April 2000 (27.04)
(OR. fr,en)

CONFER 4737/00

LIMITE

PRESIDENCY NOTE

Subject: IGC 2000
– Possible extension of QMV

1. In the light of discussions during the first phase of the Conference's work at representative and Ministerial level, the Presidency suggests the following overall approach to this issue which could constitute a basis for further detailed work by the Representatives Group.

Potential articles to be considered for a move to QMV in their entirety

2. With regard to articles which can be considered as potential candidates for a move to QMV in their entirety with the prospect of enlargement, the list in Annex I takes account of the range of views expressed during the first phase of work. Following the methodology used by the Presidency, it mainly includes articles covering areas closely related to the functioning of the internal market or of a budgetary nature, as well as provisions similar in nature to others for which QMV is already the rule. For many of these provisions, account should be taken of the need to obviate the risk inherent in unanimity that the Council might in future be prevented from adopting provisions essential for the proper functioning of the Union. The Presidency does not intend to enter into a detailed discussion of this list at this stage; delegations will, however, have an opportunity to make known any major objections of principle on specific points.

Taxation

3. Annex II contains a suggested redraft of Article 93 which endeavours to take account of the political sensitivities in this area by setting out, in the form of detailed Treaty language, an approach which involves:
- maintaining the principle of **unanimity** for both indirect and direct taxation;
 - providing for an **exhaustive** list of **very specific** types of measure, worded in as unambiguous a manner as possible, where QMV could be considered for **logical and practical reasons**; and
 - indicating explicitly that the specific measures to be adopted by QMV cannot directly or indirectly **affect** other aspects of tax policy.

Social provisions

4. Annex III includes suggested amendments to Articles 42 and 137. Given the fact that Article 42 is closely linked to the **internal market** and that measures adopted on the basis of this article require **frequent adjustment**, QMV is suggested as the voting rule. The scope of the article has been clarified by including a reference to self-employed persons who have to date been covered by Article 308. As far as Article 137 is concerned, the Presidency has suggested moving a limited number of very specific measures to QMV (by transferring them from paragraph 3 to paragraph 1). Moreover, the Presidency suggests deleting Article 144.

Environmental provisions

5. As far as Article 175(2) is concerned, the content of the former first indent would fall within the scope of Article 93 (see Annex II). The second indent has been redrafted in order to clarify its scope in a clearer and less ambiguous way (see Annex IV).

Justice and Home Affairs

6. While there appears to be little inclination to consider any change under Title VI of the TEU (cooperation in police and criminal matters), a measure of openness has been expressed in relation extending QMV for certain matters under Title IV of the TEC on visas, asylum and immigration. In the light of this, the Presidency has included in the list in Annex I:
- in point 8 Article 62(2)(b)(ii) and (iv) on the procedures and conditions for issuing visas by Member States and rules on a uniform visa (which would advance the date of application of QMV from May 2004 to the date of entry into force of the new Treaty);
 - in point 9 Article 63 of the TEC on measures on asylum, refugees and displaced persons and immigration policy;
 - In point 10 Article 65 on judicial cooperation on civil matters having cross-border implications;
 - In point 11 Article 66 on administrative cooperation between the relevant departments of the Member States and between those departments and the Commission.

On these items, consideration could also be given to deferring application of QMV for a specified period after the entry into force of the new Treaty.

Questions arising in connection with Article 308

7. Following the examination by the Representatives Group of the possibility of creating new specific provisions in the Treaty for the adoption of certain acts and measures currently covered by Article 308 of the Treaty, the Conference might explore the possibility of including provisions in the Treaty for action by the Community in the following areas:
- the establishment of *decentralised agencies* as a separate legal entity with authority to act in pursuance of one of the objectives set by the Treaty (see Annex V);

- *economic, financial and technical cooperation with third countries.* Given that the Treaty already contains a specific legal basis for cooperation with developing countries, the question is whether a legal basis could be created for autonomous economic, financial and technical cooperation programmes as well as horizontal agreements with non-developing third countries, to be used instead of Article 308, for reasons of logic, coherence and efficiency. Similarly, provision could also be made for the Council to decide on balance of payments assistance to these countries by qualified majority (see draft texts in Annex VI).

The Presidency would stress that, in accordance with the approach outlined to Ministers on 10 April, including such provisions in the Treaty would not imply any extension of Community competence into new policy areas.

External relations

8. A number of specific external relations issues have been raised in the context of discussion on the possible extension of qualified majority voting. The Presidency has invited the Legal Adviser to the Conference to examine these issues.
9. These texts do not, of course, bind any government nor do they prejudge the final outcome of the Conference. They are designed to focus the work of the Representatives Group as the Conference moves into its second and more operational phase of work, in line with the overall approach outlined by the Presidency at the third Ministerial session of the Conference on 10 April.

ANNEX I

LIST OF ARTICLES
WORTH EXAMINING
WITH A VIEW TO A POSSIBLE MOVE TO QUALIFIED MAJORITY VOTING

1. Appointment of CFSP special representatives (**Article 23 TEU**)
2. Conclusion of CFSP international agreements in areas in which a joint action has been adopted by a qualified majority (**Article 24 TEU**)
3. Authorisation for closer cooperation in the JHA field (**Article 40 TEU**)¹
4. Authorisation for closer cooperation under the TEC (**Article 11 TEC**)¹
5. Anti-discrimination measures (**Article 13 TEC**)
6. Provisions facilitating the exercise of the right of citizens of the Union to move and reside within the territory of the Member States (**Article 18(2) TEC**)
7. The taking-up of 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 (**Article 47(2) TEC**)
8. The procedures and conditions for issuing visas by Member States and rules on uniform visa (**Article 62(2)(ii) and (iv) TEC**)²
9. Measures on asylum, refugees and displaced persons, and immigration policy (**Article 63 TEC**)²
10. Measures in the field of judicial cooperation in civil matters having cross-border implications and insofar as necessary for the proper functioning of the internal market (**Article 65 TEC**)²
11. Measures to ensure cooperation between the relevant departments of the administrations of the Member States, and between those departments and the Commission, in the areas covered by Title IV (**Article 66 TEC**)²

¹ These provisions provide for the possibility of opposing a qualified majority vote by referring to the Council meeting in the composition of Heads of State or Government, which then takes a unanimous decision. These Articles are considered in the context of a more general examination of the question of closer cooperation.

² See paragraph 6 of the introductory note.

12. Derogations from the normal procedure when the application of the principles of the regulatory system for transport is liable to have a serious effect on the standard of living and on employment in certain areas and on the operation of transport facilities (**Articles 71(2) and 80(2), second subparagraph, TEC, concerning sea and air transport**)
13. Compatibility of State aid with the internal market (**Article 88(2) TEC**)
14. The economic measures to be taken in the case of difficulties in the supply of certain products (**Article 100(1) TEC**)
15. Incentive measures, excluding harmonisation, in the cultural field (**Article 151(5) TEC**)
16. Measures supporting the actions of Member States in the industrial sphere (**Article 157(3) TEC**)
17. Specific actions for economic and social cohesion other than through the Structural Funds (**Article 159, third paragraph, TEC**)
18. Rules applicable to the Structural Funds and to the Cohesion Funds (**Article 161 TEC**)
19. Association of the overseas countries and territories (**Article 187 TEC**)
20. Laying down the statute for Members of the European Parliament (**Article 190(5) TEC**)
21. The Rules of Procedure of the Court of First Instance (**Article 225(4) TEC**)¹
22. The Rules of Procedure of the Court of Justice (**Article 245(3) TEC**)¹
23. Financial Regulation (**Article 279 TEC**)
24. Compilation of the list of dual-use goods (**Article 296(2) TEC**)
25. Association agreements (**Article 310 TEC**) covering areas in which internal rules must be adopted by qualified majority

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The corresponding provisions of the ECSC and EAEC Treaties would be amended accordingly.

¹ Subject to the transfer of certain sensitive material from the Rules of Procedure to the Staff Regulations. These questions are considered in the context of examination of the amendments to be made to the Treaties concerning the Court and the CFI.

ANNEX II**TAXATION****Article 93¹**

1. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt provisions **concerning the laws and regulations of Member States on direct and** indirect taxation to the extent that such provisions are necessary to ensure the establishment and the functioning of the internal market within the time-limit laid down in Article 14.

2. **By way of derogation from paragraph 1 and without prejudice to paragraph 3, the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt:**
 - **measures concerning value added tax, excise duties and capital duty which modernise or simplify existing Community rules or ensure uniform, simple and transparent application of such existing rules;**

 - **measures concerning indirect taxation for the sole purpose of preventing fraud, evasion or tax avoidance and to prevent circumvention of existing rules;**

 - **measures which have protection of the environment as their principal objective.**

¹ Existing Treaty text is in normal type. Amendments are in bold.

3. The measures referred to in the first and second indents of paragraph 2 shall not affect:
- in the case of value added tax, rules concerning the localisation of operations, the reallocation of VAT income between Member States, the determination of rates and rules which do not in themselves constitute an obstacle to the functioning of the internal market;
 - in the case of excise duties, rules concerning the place of taxation or the fixing of rates.
4. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt provisions necessary for mutual assistance and co-operation between tax authorities within the Community with a view in particular to combating fraud, tax evasion or avoidance and for the recovery of tax claims.
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ANNEX III**SOCIAL PROVISIONS****Article 42¹**

The Council, acting in accordance with the procedure referred to in Article 251, shall adopt such measures in the field of social security as are necessary to provide freedom of movement for workers **and self-employed persons**; to this end it shall notably make arrangements to secure for migrant workers **and self-employed persons** and their dependants:

- (a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;
- (b) payment of benefits to persons resident in the territories of Member States.

[Text deleted]

¹ Existing Treaty text is in normal type. Amendments are in bold.

Article 137

1. With a view to achieving the objectives of Article 136, the Community shall support and complement the activities of the Member States in the following fields:
 - improvement in particular of the working environment to protect workers' health and safety;
 - working conditions;
 - the information and consultation of workers;
 - **representation and collective defence of the interests of workers and employers;**
 - the integration of persons excluded from the labour market, without prejudice to Article 150;
 - equality between men and women with regard to labour market opportunities and treatment at work;
 - **financial contributions for promotion of employment and job creation, without prejudice to the provisions relating to the Social Fund.**

2. To this end, the Council may adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium sized undertakings.

The Council shall act in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee and the Committee of the Regions.

The Council, acting in accordance with the same procedure, may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences in order to combat social exclusion.

3. However, the Council shall act unanimously on a proposal from the Commission, after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions in the following areas:
- social security and social protection of workers;
 - protection of workers where their employment contract is terminated;
 - **[text deleted] co-determination, subject to paragraph 6;**
 - conditions of employment for third country nationals legally residing in Community territory;
- [Indent deleted]**
4. A Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraphs 2 and 3.

In this case, it shall ensure that, no later than the date on which a directive must be transposed in accordance with Article 249, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive.

5. The provisions adopted pursuant to this Article shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.
6. The provisions of this Article shall not apply to pay, right of association, the right to strike or the right to impose lockouts.

Article 144

[Deleted]

ANNEX IVENVIRONMENT PROVISIONS**Article 175(2)**

2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 95, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt:

*[Indent deleted]*¹

- measures concerning town and country planning, land use with the exception of waste management, and *[text deleted]* management of **the quantitative aspects of** water resources;
- measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

The Council may, under the conditions laid down in the preceding subparagraph, define those matters referred to in this paragraph on which decisions are to be taken by a qualified majority.

¹ cf. Annex II – Article 93(2) 4th indent

ANNEX V**SUGGESTED NEW DRAFT PROVISION**
ON THE ESTABLISHMENT OF DECENTRALISED AGENCIES

Draft new third paragraph to be added to Article 7 TEC

- 3. If it seems to be necessary for carrying out one of the activities provided for in Article 3, the Council, acting in accordance with the procedure laid down in Article 251, shall establish an agency having legal personality and determine the rules applicable thereto.**
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ANNEX VIPROPOSED NEW PROVISION ON ECONOMIC, FINANCIAL AND TECHNICAL
COOPERATION WITH NON-DEVELOPING THIRD COUNTRIES**Draft new title XXI – Relations with third countries****New Article 181 bis**

- 1. Without prejudice to the provisions of Title XX, the Community shall carry out economic, financial et technical cooperation measures with third countries and shall adopt, if necessary, measures to assist the balance of payments.**
- 2. The Council, voting by a qualified majority, acting on a proposal from the Commission and after consultation of the European Parliament, shall adopt the measures required for implementation of paragraph 1.**
- 3. The procedures for the cooperation referred to in paragraph 1 may be the subject of agreements between the Community and the third countries concerned, which shall be negotiated and concluded in accordance with Article 300.**

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