

COMMISSION OF THE EUROPEAN COMMUNITIES

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INSTITUTIONAL IMPLICATIONS OF ENLARGEMENT :
MORE FLEXIBILITY IN DECISION-MAKING

(Communication from the Commission to the Council)

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

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1. Introduction

The Commission made the point in the Fresco that enlargement meant it would be necessary to streamline the functioning of the Community Institutions, in order to compensate for the complication of decision-making by the fact that the new accessions would bring the Member States to double their original number and at the same time lessen the degree of homogeneity.

Accordingly the gist of the Fresco was firstly that there should be decision by qualified majority in certain cases where the Treaties at present require unanimity, and secondly that powers of management and implementation should as a rule be exercised by the Commission.

The Commission put forward the same ideas following the discussions which culminated in the communication to the European Council of 12 November 1982 on enlargement (COM(82)757 fin.).

This communication seeks to flesh out those ideas, making such changes with regard to their scope and conditions of implementation as are suggested by institutional developments and experience since 1978.

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2. Treaty provisions where unanimity would be superseded by qualified majority

In the case of some Treaty provisions insistence on unanimity would not, or would no longer, appear to be justified, either because their implementation is well advanced or because similar Treaty provisions provide for decision by qualified majority, or even straight majority.

The unwarranted complication of proceedings by these anomalies would be really insupportable with the original Community of the Six enlarged to twelve, and the provisions concerned should therefore be adjusted to allow of decision by qualified majority.

(a) The EEC Treaty articles in question are :

- . Article 28 EEC (autonomous alteration or suspension of customs duties). It is illogical to insist on unanimity here when similar agricultural policy (Article 43 EEC) and commercial policy (Article 113 EEC) measures can be adopted by qualified majority;

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- . Article 51 EEC (coordination of social security for migrant workers). The Community is now furnished with a social-security armoury and Community acts in this field are more in the nature of management of an existing policy. Moreover, insistence on unanimity is clearly excessive given that coordination of migrant workers' social security forms part of free movement of workers, which can under Article 49 EEC be effected by straight majority decision;

 - . Article 126(b) EEC (new tasks of the Social Fund). Article 126(a) allows the Fund's tasks to be reduced by qualified majority, so it is illogical to require unanimity to extend them, particularly as they come anyhow within the terms of reference laid down in Article 123 EEC;

 - . Article 209 EEC (financial and accounting regulations). This concerns rules for the implementation of the Treaty and the own resources provisions. Now by the terms of the Treaty the material Budget decisions are taken by qualified majority (Article 203 EEC), and the own resources provisions are anyhow exceedingly specific. In addition, other procedural rules can pursuant to the Treaties be adopted by qualified majority (e.g. Regulations on competition, Articles 87 and 94 EEC).
- (b) The ECSC articles in question are:
- . Article 54(2) ECSC (financing of installations for increasing production, reducing production costs, &c). It is hard to see why unanimity should be required, as similar action can be taken (Articles 54(17), 55(27) and 56(1) ECSC) by the Commission alone or with majority Council assent;

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- . Article 72 ECSC (fixing of minimum and maximum rates of customs duty). Community customs policy is now so far advanced that there seems no justification for retaining a more cumbersome decision-making process on matters of the same nature and parallel content in the limited ECSC field;
 - . Article 78(h) ECSC (financial regulations). Same problem as with Article 209 EEC.

(c) The Euratom provisions in question are:

- . Article 7 Euratom (joint programmes). This provision relates substantively to the management of a common policy: under the EEC Treaty management of common policies is by qualified majority decision;
- . Article 183 Euratom (financial regulations). Same problem as with Article 209 EEC.

3. Provisions where qualified majority decision would be allowed if the act was in line with the Commission's proposal and the Parliament's opinion

These are a few provisions of extreme importance to the attainment of the integration sought by the Treaties, viz. Article 57(2) EEC, Article 99 EEC and Article 100 EEC.

Experience has shown that their implementation is very frequently blocked by insistence on unanimity. At present, a very large number of proposals for directives based on one or other of those three articles are languishing before the Council, where they frequently lie for years. To avoid results reflecting only the lowest common denominator, or else total impasse, it is vital in a Community of Twelve to forgo the unanimity requirement.

The aim of affording the Member States sufficient safeguards can be achieved by having the Parliament—now directly elected and hence vested with full democratic legitimacy—assume the safeguarding functions hitherto performed by the unanimity requirement.

In the fields covered by the three articles the object would thus be to provide that the Council could decide by qualified majority where the decision to be taken was consonant both with the proposal from the Commission and with the opinion of the Parliament given by a majority of its Members.

The procedure would then normally be as follows: the Council discussion having indicated that a qualified majority could be mustered on an amended proposal, the Commission would make the amendment and the Parliament, consulted once more, would by a majority of its Members give an opinion in favour of the proposal so amended. The Parliament's opinion being in line with the Commission's proposal would have the effect of unblocking the proceedings by making possible a Council decision by qualified majority.

As it is a matter of bringing the decision-making procedures into line with the needs of an enlarged Community, by assigning to the Parliament a function rendering unblocking possible, the adjustments to the Treaties could be based on Article 237 EEC, and the corresponding provisions in the other Treaties.

4. Remodelling of Article 235 EEC and the corresponding provisions in the other Treaties

With respect to Articles 235 EEC and 203 Euratom unanimity should in principle be retained: the agreement of all the members of the Council must remain essential for new powers of action to be assigned to the Community.

But as President Thorn said in the recent Commission Programme Address to the Parliament some injection of flexibility into the decision-making process could be envisaged in certain cases. Where the Community has already determined the main thrust of a new policy in a particular sector, such as the environment, the Council should be able to decide, unanimously after consulting the Parliament, that the basic acts to be adopted in that sector will be agreed by qualified majority after consultation of the Parliament.

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Thus having by the normal procedure under Article 235 EEC (or the corresponding provisions in the other Treaties) adopted a "critical mass" of basic acts in a given sector the Council would by the same procedure take a decision doing away with the unanimity requirement in future in that sector. A similar idea underlies Article 8 EEC (transitional period), which in para 5 allows curtailment of stages by unanimous Council decision.

A similar procedure would be applied mutatis mutandis in relation to article 95 para. 1 ECSC.

5. Remodelling of Article 155 4th indent EEC and ^{the} corresponding provision in the Euratom Treaty

Article 155 4th indent EEC and Article 124 4th indent Euratom also need, in view of the overload on the Council, to be remodelled to provide that the Commission shall exercise the powers of implementation unless the Council decides otherwise.

The propriety of this line (which was taken in the Fresco) has never been disputed (see inter alia para 8 of the Summit Communiqué of December 1974 and pp. 46ff. of the Three Wise Men's Report of 1979).

However, it would need to be spelt out that:

- (i) the procedures and conditions for the Commission's exercise of the powers concerned might be determined by the Council case by case;
- (ii) as adumbrated in the Three Wise Men's Report, the Council in determining these procedures and conditions must choose from an exhaustive list of arrangements set out in an annex to the Treaties (e.g. no committee, advisory committee, management/rules committee, safeguard committee), thus avoiding both undue proliferation of different types of committee and the delays necessarily involved in establishing such arrangements;
- (iii) the Council might in specific cases reserve the right to exercise some of the powers concerned direct.

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6. Formulation of the above suggestions into articles for incorporation into the Accession Treaty

The above suggestions might be formulated into Accession Treaty articles on the lines instanced in Annex I.

7. Conclusion

The Commission considers, further to its communication of 12 November 1982, that the following adjustments should be made to the Treaties in consequence of enlargement, pursuant to Articles 237, para. 2, EEC, 98 ECSC and 205, para. 2 EURATOM, on the accession of Spain and Portugal :

- (i) in Articles 28, 51, 126(b) and 209 EEC, and in Articles 52(2), 72 and 78(h) ECSC and 7 and 183 Euratom, the requirement of unanimity to be replaced by the requirement of qualified majority;
- (ii) in the case of acts on the basis of Articles 57(2), 99 and 100 EEC, qualified majority decision to be allowable where the act was in line with the Commission's proposal and the Parliament by a majority of its Members gave an opinion in favour;
- (iii) Articles 235 EEC and ~~203~~ EURATOM to provide that where the main thrust of a new policy had already been determined the Council, acting unanimously after consulting the Parliament, might decide to go over to qualified majority voting, coupled with consultation of the Parliament, for the adoption of future basic acts; a similar procedure to be applied mutatis mutandis in relation to Article 95, para. 1, ECSC;
- (iv) Articles 155 4th indent EEC and 124 4th indent Euratom to provide that as a rule the Commission had power to management and implement the rules laid down by the Council, but that the Council might determine case by case the procedures and conditions for the exercise of that power, selecting from a set number of committee arrangements, and might also in specific cases reserve the right to exercise parts of that power direct.

Provisions for the Adjustment of the Treaties

- (a) "In EEC Articles 28, 51, 126(b) and 209 and ECSC Articles 54, second paragraph, 72 and 78h and EAEC Articles 7, first paragraph and 183, the word 'unanimously' shall be replaced by 'by a qualified majority'."
- (b) "In EEC Article 57(2) the following shall be inserted before the last sentence:
'In these matters the Council shall however act by a qualified majority where the directive corresponds to a Commission proposal and where the Assembly, acting by a majority of the members of which it is composed, has delivered a favourable opinion on such proposal'."
- (c) "In EEC Article 99 a third paragraph shall be added, reading as follows:
'However, the Council shall act by a qualified majority where the measure corresponds to the Commission proposal and where the Assembly, acting by a majority of the members of which it is composed, has delivered a favourable opinion on such proposal'."
- (d) "In EEC Article 100, second paragraph, the following shall be added:
'Such directives shall be adopted by a qualified majority where the measure corresponds to the Commission proposal and where the Assembly, acting by a majority of the members of which it is composed, has delivered a favourable opinion on such proposal'."
- (e) "In EEC Article 235 and EAEC Article 203 a second paragraph shall be added, reading as follows :
'However, the Council shall act by a qualified majority on a proposal from the Commission and after consulting the Assembly in fields determined by it in accordance with the procedure provided for in the preceding paragraph'."
- (f) "In ECSC Article 95, first paragraph, the following sentence shall be added:
'In fields previously determined in accordance with the same procedure the assent of the Council may be given by a qualified majority'."

(g) "EEC Article 155, fourth indent, shall be replaced by the following:

'- exercise implementing powers in respect of the rules laid down by the Council. Subject to the provisions of Article 205, the Council may provide in such rules that decisions are to be taken in accordance with one of the procedures given in Annex V* to this Treaty and may also in specific cases reserve the right to exercise some of the powers directly'."

(h) "EAEC Article 124, fourth indent, shall be replaced by the following:

'- exercise implementing powers in respect of the rules laid down by the Council. Subject to the provisions of Article 179, the Council may provide in such rules that decisions are to be taken in accordance with one of the procedures given in Annex VI* to this Treaty and may also in specific cases reserve the right to exercise some of the powers directly'."

*This Annex is intended to contain standard models for committees.
(See Annex II).

ANNEX V TO THE EEC TREATY
 ANNEX VI TO THE EAEC TREATY

Procedures referred to in the fourth indent of Article 155 EEC
 Procedures referred to in the fourth indent of Article 124 EAEC

1. The "Consultative Committee" procedure

"The Committee set up by the Commission shall discuss matters on which the latter has requested an opinion. The Commission may, when seeking the opinion of the Committee, set a time limit within which such opinion shall be given. No vote shall be taken. However, any member of the Committee may demand that his views be set down in the minutes".

2. The "Management Committee" procedure

"The representative of the Commission shall submit to the Committee set up by the Commission and chaired by a representative of the latter a draft of the measures to be adopted. The Committee shall deliver its Opinion on the draft within a time limit set by the Chairman according to the urgency of the matter. An Opinion shall be delivered by the majority laid down in Article 148 (2) of the EEC Treaty [Article 118 (2) of the EAEC Treaty] in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in those Articles. The Chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the Opinion of the Committee, they shall forthwith be communicated by the Commission to the Council. In that event the Commission may defer application of the measures which it has adopted for not more than [....] from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within [....]."

3. The "Rules Committee" procedure

"The representative of the Commission shall submit to the Committee set up by the Commission and chaired by a representative of the latter a draft of the measures to be adopted. The Committee shall deliver its Opinion on the draft within a time limit set by the Chairman according to the urgency of the matter. An Opinion shall be delivered by the majority laid down in Article 148 (2) of the EEC Treaty [Article 118 (2) of the EAEC Treaty] in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in those Articles. The Chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the Opinion of the Committee.

If the measures envisaged are not in accordance with the Opinion of the Committee, or if no Opinion is delivered, the Commission shall without delay submit to the Council a proposal with regard to the measures to be adopted. The Council shall act by a qualified majority.

If, within [....] of the proposal being submitted to it, the Council has not acted, the proposed measures shall be adopted by the Commission".

4. The "Safeguard Committee" procedure

"The representative of the Commission shall, not later than [....], submit to the Committee set up by the Commission and chaired by a representative of the latter a draft of the measures to be adopted. Discussion within the Committee shall take place within a time limit set up by the Chairman according to the urgency of the matter.

No vote shall be taken. However, any member of the Committee may demand that his views be set down in the minutes. Within a period of [....] following discussions in the Committee, the Commission shall adopt a measure which it shall communicate to the Member States and which shall apply after a period of [....] if during this period no Member State has referred the matter to the Council.

The Council may, at the request of a Member State and acting by a qualified majority, revise the Commission's decision.

The Commission's decision shall apply after a period of [.....] calculated from the day on which the matter was referred to the Council, if the latter has not given a ruling within this period".