

THE IDEA OF 'SPLIT-VOTE' IN THE COUNCIL: THE CASE OF A REGIONAL SPLIT-VOTE

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INTRODUCTION

In the 80's and 90's regionalism and European integration largely coincided, adding political spaces below and above the state. European integration and regionalism interacted in a fascinating way. Regional governments, especially the 'strong' ones, became aware that European integration implied a loss of power. This gave rise to different forms of 'sub-national mobilization' and subsequently in new rules concerning EU decision-making, both at EU and member state level. The Treaty of Maastricht introduced, among other things, the possibility for a member state to be represented by a regional minister in the Council of Ministers. In the federal and regionalized member states of the Union, regions enlarged their participation and co-decision in the development of the national standpoint.

The Convention on the Future of Europe and the IGC 2004 once again offers the regions a window of opportunity for inserting their demands into the debates. Some demands are a merely a reiteration of the ones already formulated in the past, like the strengthening of the Committee of the Regions and the right for regions to bring actions directly in the European Court of Justice. A more recent idea is 'shared-vote' or 'split-vote'. It is included in the coalition agreement of the Flemish Government and especially supported by the Flemish liberals. By introducing split-vote a member state would be allowed to distribute its weighted vote in the Council of Ministers among its regions with legislative competences. Those regions would then be allowed to negotiate and vote in the Council instead of the member state.

This paper examines the idea of giving regional governments a right to vote in the Council. The first section describes the different forms of subnational mobilization in the 90's. Next, we look at the current situation: how did the idea of split-vote emerge and how is this related to the debates in the Convention? In the next section, the legitimacy of a regional right to vote in the Council is examined. In the following two sections we examine two different ways of granting regional governments a right to vote in the Council. First, we look at the consequences of a regional 'full-vote' (treating regions as if they were member states). Second, we look at the consequences of a regional split-vote.

THE CONTEXT

The transfer of powers from the member state level to the European level obviously affects the European regions, especially the 'strong' ones –those with legislative competences- such as the German and Austrian *Länder*, the Belgian *Gemeenschappen/Communautés* and *Gewesten/Régions*, the Spanish *Comunidades Autónomas* and Scotland and Wales. It is striking that the regional competences are often part of the same policy packages that were at least partially transferred to the European level by subsequent treaty changes (Single European Act, the Maastricht and the Amsterdam Treaties). On the one hand, regions became responsible for the transposition and implementation of important EU legislation. On the other hand, Treaty provisions ruled out the possibility for regions to negotiate at the EU level. In this respect, Europeanization weakened the powers of the regions. This loss of power gave rise to different kinds of 'sub-national mobilization' [Jeffery 2000]. In general, regions pursued a dual strategy for changing the rules of the game: seeking for direct and unmediated access to European institutions and seeking for indirect access via the national government.

The first 'direct access' strategy peaked at the Maastricht IGC and resulted among other things in the creation of the Committee of the Regions and regional ministerial access to the Council of Ministers (art. 203 EC). The latter was an idea forwarded by the Belgian government and subsequently supported by the German *Länder*. However, due to opposition by some member states (especially France) art. 203 EC became a heavily weakened compromise text. Art. 203 EC states that the Council consists of a representative of each member state at ministerial level, authorised to commit the government of that member state. A regional minister is thus allowed to chair the delegation of a member state, but only on the condition that she/he can bind her/his member state as a whole and not her/his region. Art. 203 does not provide regions the right to express their views in the Council, not to mention the right to negotiate or to vote. Additionally, whether a member state makes use or not of the possibility to be represented by a regional minister, is an internal matter of that member state. In short, art. 203 does provide for a symbolic rather than a substantial representation of the 'third level' in the Council. In practice, only Belgian regional ministers systematically represent Belgium in some Council formations, conduct negotiations and vote on behalf of Belgium. In the Fisheries Council the UK is usually represented by a Scottish minister. In contrast, Germany and Austria are always represented by a federal minister. Participation of regional representatives at the working group level of the Council and in the Commission

advisory bodies is by now quite common in the Belgian, Scottish, German and Austrian case [Engel 2001].

The second compensation strategy for the loss of regional power as a consequence of Europeanization, was directed against the state itself. In general EU decision-making was a competence of the state, as it was traditionally seen as a part of foreign policy. As the influence of European integration on the internal competences of the regions grew with the completion of the single market, regions in several member states sought to break up the monopoly over European integration policy held by the state. In Germany, Austria and Belgium this resulted in new formal rules (agreed upon over the 1992-1994 period) enhancing the involvement of regional governments in intra-state EU decision-making. Via this 'national route', regional governments could mobilize through rather than beyond the state [Vos, Boucké, Devos 2002]. These intra-state channels are generally seen as the most important channels of influence [Jeffery 2000, 3; Keating & Hooghe 2001, 43]. According to Jeffery, Europe has become domesticated for the regional governments, rather more than they have become internationalized [Jeffery 2000, 2].

Looking back at recent developments, it seems that direct regional involvement in EU decision-making, the so called 'third level strategy' (the EU as the 'first' level, the member states as the 'second' level and the regions as the 'third' level), has perhaps nearly reached its limits of the politically feasible. One is inclined to see the Maastricht IGC as the momentum where the window of opportunity for direct regional participation was at its openest. First, there was the political situation in Germany [Bulmer et al. 2000]. At that time the Länder were very unified in their grievances against the federal government. The Länder threatened to veto the ratification of the Maastricht Treaty if not some of their demands were incorporated in it and if the federal government was not willing to amend the Basic Law in order to grant the Länder co-decision rights in German EU policy making. Eventually three of the four main demands regarding the role of the regional level were, although in a weakened form, incorporated into the Maastricht Treaty (subsidiarity, access to the Council of Ministers, Committee of the Regions) and shortly after the conclusion of the Maastricht IGC, the Basic Law was amended. In the post-Maastricht period the Länder became dissatisfied with the role and functioning of the Committee of the Regions. Internally the capacity for disunity among the Länder increased significantly in the 1990s [Bulmer et al. 2000, 82]. Second, the widened opportunities for intra-state regional influence seem to work quite well and a substantial

number of regional governments seem on the whole satisfied. Börzel suggests that the recalibration of the relation between the central and regional governments, not only in Germany but also in other federal or regionalized states, contributes to a more co-operative style of federalism [Börzel 2002]. Thus, the chance of united front of German Länder governments and regional governments from other member states pressing for more 'third level' influence are rather slim. Thirdly, due to a very uneven degree of regionalisation, many of the current member states have no strong incentive for pushing the regional case. Some member states may even fear sub-national mobilization within their borders, if regions would be given a more prominent place in EU decision-making.

Nevertheless, some regional governments remain frustrated by their current limited direct access to the European decision-making and strive for a widening of their co-decision rights [Vos, Boucké, Devos 2002].

THE SITUATION TODAY

Although the role of the regions is not explicitly touched upon by the Laeken Declaration, the Convention on the Future of Europe and the next IGC 2004 once again offers regions and regionalists an opportunity for inserting their demands into the debates. Since the preparatory stages of the Nice IGC, the Flemish regional government aspires a lead role in creating a common platform with other 'strong' regions like Bavaria, Catalonia, North Rhine-Westphalia, Salzburg, Scotland and Wallonia. In a common political declaration, these seven regions define themselves as 'constitutional regions' [Dewael 2001]. Together with these seven frontrunners, a group of some 40 other regions declare themselves as 'regions with legislative power' [Regleg 2001, Regleg 2002]. The group of regions with legislative power emerged in 1999 as a result of debates within the Council of Europe's Congress of Local and Regional Authorities of Europe.

The demands of the constitutional regions and regions with legislative power are similar. First, they ask for the recognition of a 'special status' in the treaty. Regional authorities with the special status would enjoy certain rights: consultation by the Commission when it develops proposals, participation in the ex-ante monitoring of the principle of subsidiarity, equal rights for national and regional parliaments in their EU involvement and the possibility

of bringing actions directly in the European Court of Justice. The regions with legislative power want a guaranteed representation in the Committee of the Regions (where not all regions with legislative power sit at the moment) and a strengthening of its role. The latter could mean a recognition as a fully-fledged EU institution, political powers going beyond a purely consultative role and direct access to the European Court of Justice.

The idea of granting the regions with legislative power a special status was picked up in a draft report of the Committee on Constitutional Affairs from the European Parliament ('Lamassoure report'). The draft Lamassoure report proposed the creation of: "... a 'partner regions of the Union' status which would apply to regional authorities designated by each of the member states, giving them certain certain rights linked to their involvement in Community policies: right to be consulted by the Commission, representation in the Committee of the regions, possibility of bringing actions directly in the Court of Justice on any competence disputes with the Union" [European Parliament 2002a, 9]. However, this idea disappeared in the final report and was not mentioned in a later report on the role of regional and local authorities ('Napolitano Report') [European Parliament 2002b].

As mentioned earlier, the government of Flanders aspires a lead role in regional mobilisation. It fully supports the idea of a special status for regions with legislative powers and the rights attached to that status. The government of Flanders wants to go an important step further: it aspires full participation right for regions in the Council of Ministers, including a right to vote. The 1999 Flemish government coalition agreement reads as follows: "Flanders wants to give the federated states, with respect to their responsibilities, a direct representation in the institutions of the European Union by introducing shared voting in the Council of Ministers for exclusive community or regional matters" [Government of Flanders 1999]. Already in 1996 the Flemish Parliament adopted a resolution where a regional vote in the Council was mentioned as possibility [Vlaams Parlement 1996]. Especially the Flemish Liberal Party (VLD) seems to support this idea. Both Karel De Gucht, leader of the VLD and representative of the Belgian Parliament in the Convention and Patrick Dewael, Minister-President of the Flemish government and observer in the Committee of the Regions delegation in the Convention, spoke themselves out in favour of what they call 'split-vote' [De Gucht et al. 1996; Dewael 2002, 54-55].

It is not a surprise that the idea of 'shared vote' or 'split vote' emerges in the Belgian context. One can characterise the Belgian political situation of the past 20 years as an ongoing process of centrifugal federalization, hollowing out the competences of the central state. The civil society, the media and the party system are strongly divided along regional lines, which implies a high level of regional competition and conflict. Currently the regions have a considerable level of autonomy and are competent in many important areas. There are not much shared powers between the federation and the regions: in most cases either the regions or the federation are competent. The regions and the federation are on equal footing: the federation cannot overrule the regions. Lastly, when a region is internally competent for a policy domain, it is also competent for the external relations.

As far as we know, the formal support for the idea of 'shared vote' or 'split-vote' is small: We are only aware of one contribution to the Convention that mentions this idea. Neil McCormick, MEP (Scottish National Party and Greens/ Free Alliance) and Substitute Member of the Convention, incorporated the idea in a personal contribution to the Convention: "The treaties should be clarified concerning rights of participation in the legislative deliberations of the Council. There must be clear provision whereby the states can in appropriate cases be represented by ministers from that level of government which has, within any particular state, legislative responsibility for the subject of proposed Union legislation. A state's vote in qualified majority voting need not always be cast in a single block vote, but could be split if internal territories decide to pursue different lines on a particular topic" [McCormick 2002, 5].

As we have argued in the previous section, we do not expect big support for the proposal either, let alone that it would be incorporated in the Treaty/Constitution. Nevertheless, the idea deserves fuller examination. After all, isn't it a legitimate demand that perhaps helps to moderate the Union's democratic deficit? How could we operationalize the idea and what would be the effects of its application? These questions are the subject of the next sections.

A REGIONAL VOTING RIGHT: LEGITIMATE?

It is not unthinkable that two regions within the same member state have strong opposing views on a Commission proposal. Art. 203 does not allow both regional ministers to express their views, negotiate or vote in the Council, even if the issue at stake touches upon the

exclusive legislative competences of those regions. The position of the member state in the Council will then depend upon the internal mechanisms of co-ordination. In practice, there are three possible outcomes. First, the minister representing the member state will abstain as a consequence of a lack of internal agreement (but abstention is not 'neutral'. It is the same as a 'yes' in the case of unanimity or a 'no' in the case of qualified majority voting). Second, the federal minister will express the position of the federal government. Third, the representative of the member state will express a (compromise) position which is supported by a majority of the regions. In any case the different views within a member state cannot be fully expressed in the Council. Nevertheless, each regional parliament and government will be responsible for the transposition and implementation of the legislative outcome. One can argue that from an input democratic point of view, direct regional regional participation (expressing views, negotiating, voting) in the Council is legitimate.

Some regions are superior in terms of demographic and economic importance to some member states or candidate member states. For instance, the region North Rhine-Westphalia has 18 million habitants, while Luxemburg has nearly half a million inhabitants. The enlargement of the Union with many small states will only enlarge this discrepancy.

In the rest of this paper we will suppose that regions could be granted a 'special status' or a 'partner region of the Union status' (cf. supra). In the Treaty or in a protocol to the Treaty, minimum criteria could be formulated for this special status, such as exclusive legislative competence, an elected regional parliament and an accountable government. The Treaty or the protocol could also list the Treaty articles that could apply to the partner regions. Next, it is up to each member state to determine whether it grants its regions this status and if so, for which articles of the list summed up in the Treaty or in the protocol. Next, the Council (and perhaps the European Parliament) has to approve each member state proposal. Let's also suppose that art. 203 EC would be amended, so that a member state can authorize its regions granted with the special status to negotiate and vote in the Council instead of the member state itself.

In a nutshell, if a member state decides so and all the necessary conditions in the Treaty or in the protocol are fulfilled and additionally the other member states agree with the member state proposal, its regions could be granted a special status and a right to negotiate and vote in the Council. By using this formula, the institutional diversity of the member states could be better reflected in the Union, without interference in the internal institutional structure by the

Union itself and with some form of warranty against possible improper use. In the following sections we examine how a regional voting right can be put into practice.

A REGIONAL FULL-VOTE

A first question now arises: should regions be granted a right to vote on issues requiring unanimity? If, say Germany grants its Länder the special status and a voting right in the Council, should the 16 Länder governments have a veto right? One could argue that this would strengthen the input legitimacy of a Council decision. After all, small member states, which are in some cases smaller in terms of population than some of the German Länder, also have a veto right. On the other hand, output legitimacy would be weakened since, due to the growth of the number of veto-players, the decision-making capacity of the Council would decrease. Besides this, it is very unlikely that non or weak regionalised member states would easily agree on giving a vote to regions in case of unanimity. Probably, from a pro-integration perspective it would be better to restrict the regional right to vote to matters falling under the qualified majority voting (QMV). From a regional perspective this would still be better than the status quo, since a lot of matters that are of regional importance fall within the 'first pillar' and a lot of these matters are dealt with by QMV.

In case of QMV, how should one weigh the regional votes? From a perspective of fairness, one could argue to treat regions as if they are member states. In this case a region would be granted a weighted vote equal to a member state with a roughly equal population figure, which we can label as 'full-vote'. This would resemble very much the situation of the current enlargement of the Union with small and medium sized regions instead of member states. If, say the three Belgian regions (3 gewesten/régions: Flanders, Wallonia, Brussels) would be assigned a weighted vote in function of its population, Flanders and Wallonia would both have a weighted vote of 7 and Brussels a weighted vote of 4. Together they would have 18 votes, which is 6 more than the weighted vote assigned to Belgium (see table 2, column 3). Of course, this difference is a consequence of the fact that the votes of the member states are weighed in favour of the smaller member states [see Bobay 2001, Hosli 2000, Leech 2002, Soetendorp & Hosli 2001]. If we make the same exercise for Germany, the weighted votes of the 16 Länder add up to 107, which is 78 more than the weighted vote of 29 assigned to Germany (see table 1, column 3).

It is clear that the balance of power between the member states would be influenced by assigning weighted votes in function of the number of inhabitants of regions. A simple analysis presented in tables 1 and 2, illustrates this point. In the third column of table 1 and 2, we assigned votes to the German and Belgian regions based on the distribution of weighted votes in the declaration on the enlargement of the European Union attached to the Nice Treaty. Each region was treated as if it was a member state and was assigned a weighted vote equal to the member with the most similar population figure.

Next we assumed three situations: (1) a situation where only the German regions make use of the regional vote in the Council (14 member states and 16 German regions), (2) a situation where only the Belgian regions made use of the regional vote (14 member states and 3 Belgian regions) and (3) a situation where both the German and the Belgian regions make use of the regional vote. In each case we calculated the Banzhaf index (NBZ), a commonly used index of a priori voting power¹. We used the 'triple majority' requirement mentioned in the declaration on the enlargement of the European Union. (1) A threshold for a qualified majority voting. For this simulation we used the threshold for the EU-15: 71, 31%. In the German case: 225 of the 315 votes, in the Belgian case: 173 of the 243 votes, in both the German and Belgian case: 229 of the 321 votes. (2) A majority of member states. In the German case: 16, in the Belgian case: 9, in both the German and Belgian case: 17. (3) At least 62% of the total population of the Union. In the three cases: 232 700 000 on 375 300 000. Tables 1 and 2 summarize the results.

As expected, the sum of the relative voting power of the German and Belgian regions is higher than the relative voting power of Germany (12,11%) and Belgium (5,16%) in the EU-15 without split-vote. The sum of the relative voting power of the German regions is 35,80% (full-vote only in Germany) and 35,18% (full-vote in Germany and Belgium). The sum of the relative voting power of the 3 Belgian regions is 7,80% (full-vote only in Belgium) and 5,96% (full-vote in Germany and Belgium).

¹ The Banzhaf index measures a states' capacity to generate winning coalitions. It catches the relative capacity of member states to transform losing coalitions into winning coalitions. For each state one calculates the total Banzhaf power by counting the different coalition constellations in which the state contributes decisive votes to a quorum majority. To do this one considers all possible coalitions and tests whether they have a number of votes sufficient for the quorum with the support of the considered country while without the country they would lose the majority. Each such coalition gives the considered state a Banzhaf power "point". The Banzhaf index of a

Table 3 shows the relative voting power for the other member states and the sum of the relative voting power for the German and Belgian regions. It illustrates that in the three cases, all the other member states lose relative voting power. For instance, the relative voting power of the United Kingdom, France and Italy decreases from 11,99% to 8,09% in case of a combined German-Belgian full-vote. In case of a Belgian full-vote only, the loss of relative voting power is the smallest, but still every member state loses relative voting power. Therefore, it is unlikely that those member states that do not make use of a regional vote will accept a regional voting right just like that. The only way to solve this problem would be a renegotiation of the voting weights, and perhaps the QMV decision criteria. Given the political sensitivity of this issue (see the protracted negotiations in Nice) this option seems not realistic.

In addition, this way of working would require more than one set of QMV rules. Indeed, suppose Belgium and Germany, both make use of the regional voting right. One could easily imagine that in some cases both the Belgian regions and the German Länder have a right to vote, while in other cases only the Belgian regions or the German Länder have a right to vote. After all, the division of regional competences is not equal in each member state. This situation already necessitates three additional QMV arrangements. Theoretically, the total number of QMV arrangements would be 2^x (with x representing the number of member states making use of the regional voting right).

A REGIONAL SPLIT-VOTE

Another way of assigning votes to regions is split-vote (cf. supra). In this case, the weighted vote of a member state is distributed among its regions. For instance, Germany could divide its 29 votes among its 16 Länder, Austria its 10 votes among its 9 Länder and Belgium its 12 votes among its 3 regions. A member state that wants to grant its regions a special status and a vote in the Council, would be obliged to include the distribution of votes in its proposal which then has to be agreed upon by the Council (cf. supra). One advantage of such an approach would be a constant total number of weighted votes. However, this approach has several implications as well.

state is its relative Banzhaf power, i.e. the ratio of its own total Banzhaf power and the total number of Banzhaf power "points" which have been given to any state.

A difficult internal agreement

A split-votes necessitates an internal agreement on the distribution of votes within each member state that wants to make use of the regional split-vote in the Council. The internal agreement would then be a product of internal political bargaining. This would be a difficult exercise. A distribution of split-votes in function of the regional population figures would probably serve as some sort of starting point for the negotiations. This is illustrated in table 4 for Germany, Austria and Belgium. How would Austria divide 10 votes among 9 Länder? If one is only allowed to use integers and assumes that each region should at least have one vote, it becomes impossible to distribute the weighted vote assigned to Austria in Nice, in a straightforwardly manner. For instance, Niederösterreich, Oberösterreich and Steiermark should have a rounded number of 2 split-votes, but since the weighted vote of Austria is only 10, this becomes impossible (see table 4, columns 4 and 5). If decimals were allowed, it would be easier to differentiate. However, this is not included in the Nice agreement on QMV and it would imply a loss of transparency in a voting procedure which is already complicated. Additionally, if one allows decimals for the distribution of regional votes, there is no reason for not using decimals for the distribution of member state votes. So, political bargaining will be necessary to 'fit' the Austrian split-vote into the weighted vote of 10 assigned to Austria in Nice. The most obvious outcome would be an assignment of 1 vote to Niederösterreich, Oberösterreich and Steiermark instead of 2 votes (see table 4, column 5). In Germany also, similar corrections were to be made. In Belgium a distribution of split-votes based on regional population figures seems doable. Perhaps this is another reason why the idea of split-vote emerged in Belgium.

In federal states, however, votes are mostly not distributed in a straightforwardly way, based on regional population figures only. Just as in the Council, votes are usually weighed in favour of the smaller regions and a parity principle is sometimes used for grouping some regions. This is for instance the case in the German Bundesrat, where the four large Länder have each the same number of votes, despite a significant gap between their populations. In table 5 the weighted vote for Germany (29) in the Council is distributed among the 16 Länder in function of the weighted vote these Länder have in the Bundesrat. The table illustrates, that a straightforward transposition of the internal distribution of votes into split-votes, maintaining the internal balance and parity in the Bundesrat, is not possible (columns 6 and

7). Again political bargaining would be necessary to fit the split-votes into the weighted vote assigned to Germany in Nice. In this respect, column 7 is just one possible outcome.

In sum, an internal agreement on the distribution of split-votes would not be an easy task.

Small voting power

As mentioned above, the votes in the Council are weighed in favour of the smaller member states. As a consequence, regions will have a smaller split-vote than the weighted vote of a member state with an equal population figure. The difference between a regional full-vote and a regional split-vote is illustrated in the last columns of tables 4 and 5. The larger the member state in terms of population and the more regions it contains, the greater the discrepancy between the split-votes of its regions and the weighted vote of member states with comparable population figures. The German case is extreme in this respect, with 16 regions and the highest population figure of the Union. For instance, if we assume a split-vote of 3 for Nordrhein-Westfalen (like in table 5), it would be on equal footing with Malta, the smallest candidate member state of the Union. Malta has 377 thousand inhabitants, while Nordrhein-Westfalen has 18 million inhabitants, which is about 48 times more! Thus, in general regional governments will only have a small split-vote in the Council and their influence on the outcome of decisions will be small. Therefore, it is likely that internal co-ordination mechanisms offer more possibilities for safeguarding regional interests than a small regional split-vote in the Council. Via internal co-ordination mechanisms a region can influence the whole 'block' of the weighted vote of the member state. Sometimes, a region will loose and its standpoint will not be reflected in the national standpoint. In other cases, however, the standpoint of the region will be reflected in the national standpoint. In this case the relative voting power of the whole 'block' of the weighted vote of the member state in the Council, will be greater than the relative voting power of a region's split-vote.

Changes in the Council's balance of power

A regional split-vote has consequences for the balance of power in the Council. To see the consequences of a regional split-vote in more detail, we made 6 simulations of a split-vote applied to the EU-15. We examined the consequences for the power balance in the Council when a regional split-vote is applied by (1) Germany only, (2) Belgium only and (3) both

Germany and Belgium. Each simulation is done twice. First, by using the three decision criteria, which we label 'triple majority': threshold = 169 of the 237 votes, majority of members and population $\geq 62\%$. Second by using only a threshold of 169 of the 237 votes, which we label 'single majority'. We assigned split-votes to the German and Belgian regions based on population figures, assuming that each region has at least one vote (see table 4, column 5). Since we do not know how either Germany or Belgium would distribute its split-votes among its regions, this choice is an assumption and only one possible outcome of an internal political agreement. As a measure of a priori relative voting power we use the NBZ. As a measure of decision-making capacity, we use Coleman's decision probability². The results are summarized in tables 6 and 7 and 8.

Table 6 summarizes the relative voting power of the regions in the 6 simulations. As mentioned before, the relative voting power of most regions is quite small, but the relative voting power of the regions is higher in case of a tripple majority than in case of a single majority. When a tripple majority is used, the sum of the relative voting power of the German regions is significantly higher than the weighted vote of Germany in the EU-15 (12,11%): 18,71% (German split-vote) and 18,58% (combined German and Belgian split-vote). The sum of the relative voting power of the Belgian regions is also higher than the relative voting power of Belgium in the EU-15 (5,16%). In case of a Belgian split-vote the sum is 5,45% and in case of a combined German and Belgian split-vote the sum is 5,91%. It is clear that this has an influence on the relative voting power of the other member states. When just a single majority is used, the differences between the sum of the voting power of the regions and the weighted vote of the member state in the EU-15 becomes much less pronounced.

Tables 7 illustrates, for the 3 simulations under the tripple majority rule, the influence of a regional split-vote on the relative voting power of the other member states in the Council. It shows that the influence of split-vote on the relative voting power of the other member states is significant. For instance, in all cases, large member states loose relative voting power. The changes in the relative voting power for the member states are the most outspoken when Germany makes use of the split-vote. For instance, the relative voting power of the United Kingdom, France and Italy decreases from 11,99% to 10,42%, the relative voting power of Spain decreases from 11,11% to 9,85%, etc.

² This is the number of all winning coalitions divided by the number of all possible coalitions.

Table 8 illustrates the influence on the relative voting power of the other members of the Council under a single majority rule (threshold is 169). Again we notice changes in the relative voting power of the member states. However, the changes are less pronounced compared to the simulations with a tripple majority. For instance, in case of a Belgian split-vote, the relative voting power of the four largest member states does not differ with their voting power in a system of qualified majority voting in the EU-15 with a single majority requirement (see column 4). However, there are still five member states left that loose relative voting power.

We can conclude that in all 6 cases the power balance in the Council is affected by split-vote. Split-vote is thus not 'power neutral'. Especially under the Nice decision criteria for qualified majority voting (the tripple majority) the influence of split-vote on the relative voting power of member states is significant. For instance, in all 3 cases (German split-vote, Belgian split-vote and a combined German-Belgian split-vote) the large member states loose relative voting power. This contradicts the logic of Nice, where the votes were reweighed in favour of the larger member states [Bobay 2001]. When only a single majority is applied, the changes of the relative voting power of the member states are smaller. In sum, approving a proposal for a regional split-vote, would not be in the self-interest of many member states.

Changes in the Council's decision-making capacity and complication of EU-decision-making

A split-vote influences the decision-making capacity of the Council. Although the number of winning coalitions increases significantly by introducing split-vote, the Coleman's decision probability decreases (see table 7 and 8, last row). Split-vote thus influences the Council's decision-making capacity in a negative way.

Split-vote would also complicate the decision-making by an increase in the number of negotiators in the Council, at least when one assumes the right for regions to participate in the Council negotiations at ministerial, Coreper and working group level. When the number of participants increases, it becomes more difficult to find agreement. In this respect, the current two-staged system (first negotiations within the regionalized member states and next negotiations between the member states) is less complicated than a split-vote.

One could counter this argument by saying that each region does not necessarily has to be represented in the Council. One representative of a member state could negotiate on behalf of

the regional governments and cast the split-votes. However, this way of working requires permanent feedback from the member state representative to the regional authorities, which are not involved in the the decision-making process and are not fully aware of the negotiation dynamics.

In sum, an application of split-vote would seriously affect the effectivity, transparency and predictability of the Council negotiations in a negative way.

CONCLUSION

Member states are not monoliths. The national standpoints taken in the Council of Ministers are a product of an internal decision-making process between actors with different views. In federal and regionalized states, regional governments are involved in some way or another in this process. Differing views of regional governments within one member states cannot always be reflected in the standpoint or the voting behaviour of a member state via internal mechanisms of co-ordination and co-decision. So, why not grant regional governments a right to negotiate and vote in the Council when the Council decides on issues falling within their exclusive competence? Wouldn't it be legitimate if regional governments could participate directly in the Council's decision-making? After all, the regional parliaments and governments are responsible for the transposition and implementation of European legislation afterwards.

In this working paper we explored the opportunities and constraints of a regional vote in the Council. We examined two ways by which regions could be granted a right to vote under the current decision rules for qualified majority voting. Firstly, by treating regions in a similar way as member states. In this case, regions are granted a full vote. A simulation for Germany and Belgium illustrated that a regional full-vote significantly affects the relative voting power of other member states in a negative way. Therefore this option is totally unrealistic.

But what about granting the member states the right to split their votes along regional lines (without exceeding their their total number of votes)? Our simulations clearly demonstrate that the relative voting power of other member states is significantly influenced by a German and Belgian split-vote and a combined German-Belgian split-vote. For instance, in all three cases the large member states (United Kingdom, France, Italy and Spain) loose relative voting

power. We concluded that this contradicts the logic of the Nice Treaty, where the votes were reweighed in favour of the larger member states. Obviously, it would not be in the self-interest of these larger member states to allow the application of split-vote. In addition, we argued that, if for instance Germany or Austria wants to use split-vote, the negotiations on the distribution of split-votes among their regions, would not be easy. Next, if an internal agreement could be found on the assignment of split-votes, the relative voting power of regions would be small. Member states with much less inhabitants would have more voting power in the Council than regions. Therefore, besides a lack of support from other member states, we do not expect much regional support for the idea of split-vote either.

An application of split-vote would negatively influence the decision-making capacity of the Council. The decision probability of the Council decreases, although the number of winning coalitions increases. The Council decision-making would also become more complicated and less transparent as the number of negotiators would increase. Thus, a possible increase of input-legitimacy by the application of split-vote, would result in a decreased output legitimacy.

In sum, one could perhaps rightly argue that the idea of a regional split-vote has some legitimacy. However, it severely complicates decision-making in the Council, it significantly affects the relative voting power of member states and the relative voting power of regions would be small. Therefore, split-vote will not rapidly lose its current status of political science fiction. One could even go a step further in political science fiction by applying split-vote on other than regional lines. For instance, ideological differences in a coalition government could be expressed in an ideological split-vote, by giving member states a right to split their weighted vote among coalition partners. However, this Pandora's box will not be opened in this paper.

TABLES

Table 1: 'Full-votes' for the German regions and NBZ for the German regions in case of a German regional full-vote in the Council and in case of both a German and Belgian regional vote in the Council

16 German Länder	Population (x100000)	Full-vote	NBZ German regional full-vote	NBZ German and Belgian regional full-vote
Nordrhein-Westfalen	180	13	4,29%	4,21%
Bayern	121	12	3,97%	3,90%
Baden-Württemberg	105	12	3,97%	3,90%
Niedersachsen	79	10	3,33%	3,27%
Hessen	60	7	2,35%	2,31%
Sachsen	45	7	2,35%	2,31%
Rheinland-Pfalz	40	7	2,35%	2,31%
Berlin	34	7	2,35%	2,31%
Schleswig-Holstein	28	4	1,35%	1,33%
Sachsen-Anhalt	26	4	1,35%	1,33%
Brandenburg	26	4	1,35%	1,33%
Thüringen	24	4	1,35%	1,33%
Mecklenburg- Vorpommern	18	4	1,35%	1,33%
Hamburg	17	4	1,35%	1,33%
Saarland	10	4	1,35%	1,33%
Bremen	7	4	1,35%	1,33%
<i>Sum</i>	820	107	35,80%	35,18%

Calculations of NBZ are made with Bräuninger, T., König, T. (2001)

Table 2: 'Full-votes' for the Belgian regions and NBZ for the Belgian regions in case of a Belgian regional full-vote in the Council

3 Belgian regions	Population (x100000)	Full-vote	NBZ Belgian regional full-vote	NBZ German and Belgian regional full-vote
Vlaanderen	59	7	3,02%	2,31%
Brussel	10	4	1,77%	1,33%
Wallonië	33	7	3,02%	2,31%
<i>Sum</i>	102	18	7,80%	5,96%

Calculations of NBZ are made with Bräuninger, T., König, T. (2001)

Table 3: NBZ for the EU-15, a German regional full-vote; a Belgian regional full-vote and both a German and Belgian regional full-vote

	NBZ EU-15	NBZ EU-14 & German regional full-vote	NBZ EU-14 & Belgian regional full-vote	NBZ EU-13 & Belgian & German regional full-vote
Germany / 16 regions	12,11%	35,80%	11,68%	35,18%
United Kingdom	11,99%	8,32%	11,56%	8,09%
France	11,99%	8,32%	11,56%	8,09%
Italy	11,99%	8,32%	11,56%	8,09%
Spain	11,11%	7,96%	10,80%	7,76%
Netherlands	5,50%	4,29%	5,49%	4,21%
Greece	5,16%	3,97%	5,15%	3,90%
Belgium / 3 regions	5,16%	3,97%	7,80%	5,96%
Portugal	5,16%	3,97%	5,15%	3,90%
Sweden	4,30%	3,33%	4,22%	3,28%
Austria	4,30%	3,33%	4,22%	3,27%
Denmark	3,09%	2,35%	3,02%	2,31%
Finland	3,09%	2,35%	3,02%	2,31%
Ireland	3,09%	2,35%	3,02%	2,31%
Luxembourg	1,96%	1,35%	1,77%	1,33%
<i>Sum</i>	<i>100,00%</i>	<i>99,99%</i>	<i>100,00%</i>	<i>100,00%</i>

Calculations of NBZ are made with Bräuninger, T., König, T. (2001)

Table 4: Possible assignment of split-votes based on regional population figures for Germany, Austria and Belgium and a comparison between full-vote and split-vote (rounded numbers given in brackets)

	Population (x1000)	% of population	Split-vote	Split- vote fitted to weighed vote	Full-vote	Full-vote minus split-vote
GERMANY (29 votes)						
Nordrhein-Westfalen	18000	21,91	6,35 (6)	6	13	7
Bayern	12155	14,79	4,29 (4)	4	12	8
Baden-Württemberg	10476	12,75	3,70 (4)	3	12	9
Niedersachsen	7899	9,61	2,79 (3)	2	10	8
Hessen	6052	7,37	2,14 (2)	2	7	5
Sachsen	4460	5,43	1,57 (2)	2	7	5
Rheinland-Pfalz	4031	4,91	1,42 (1)	1	7	6
Berlin	3387	4,12	1,20 (1)	1	7	6
Schleswig-Holstein	2777	3,38	0,98 (1)	1	4	3
Sachsen-Anhalt	2649	3,22	0,93 (1)	1	4	3
Brandenburg	2601	3,17	0,92 (1)	1	4	3
Thüringen	2449	2,98	0,86 (1)	1	4	3
Mecklenburg- Vorpommern	1789	2,18	0,63 (1)	1	4	3
Hamburg	1705	2,08	0,60 (1)	1	4	3
Saarland	1072	1,30	0,38 (1)	1	4	3
Bremen	663	0,81	0,23 (1)	1	4	3
<i>Sum</i>	82163	100	29 (31)	29	107	78
AUSTRIA (10 votes)						
Wien	1616	20,71	2,07 (2)	2	4	2
Niederösterreich	1481	18,98	1,90 (2)	1	4	3
Oberösterreich	1373	17,59	1,76 (2)	1	4	3
Steiermark	1205	15,44	1,54 (2)	1	4	3
Tirol	672	8,61	0,86 (1)	1	4	3
Kärnten	564	7,23	0,72 (1)	1	4	3
Salzburg	519	6,65	0,66 (1)	1	4	3
Vorarlberg	346	4,44	0,44 (1)	1	3	2
Burgenland	279	0,36	0,036 (1)	1	3	2
<i>Sum</i>	8055	100	10 (13)	10	34	24
BELGIUM (12 votes)						
Vlaanderen	5912	58,0	6,96 (7)	7	7	0
Brussel	959	9,4	1,13 (1)	1	4	3
Wallonië	3320	32,6	3,91 (4)	4	7	3
<i>Sum</i>	10191	100	12 (12)	12	18	6

Table 5: Transposition of the distribution of German Länder votes in the Bundesrat into the Council (rounded numbers given in brackets)

	Population (x1000)	% of population	Votes in Bundesrat	% of votes	Split-vote	Split-vote fitted to weighted vote	Full-vote	Full-vote minus split-vote
Nordrhein- Westfalen	18000	21,91	6	8,70	2,52 (3)	3	13	10
Bayern	12155	14,79	6	8,70	2,52 (3)	3	12	9
Baden- Württemberg	10476	12,75	6	8,70	2,52 (3)	3	12	9
Niedersachsen	7899	9,61	6	8,70	2,52 (3)	2	10	7
Hessen	6052	7,37	5	7,25	2,10 (2)	2	7	5
Sachsen	4460	5,43	4	5,80	1,68 (2)	2	7	5
Rheinland- Pfalz	4031	4,91	4	5,80	1,68 (2)	2	7	5
Berlin	3387	4,12	4	5,80	1,68 (2)	2	7	5
Schleswig- Holstein	2777	3,38	4	5,80	1,68 (2)	1	4	2
Sachsen- Anhalt	2649	3,22	4	5,80	1,68 (2)	1	4	3
Brandenburg	2601	3,17	4	5,80	1,68 (2)	1	4	3
Thüringen	2449	2,98	4	5,80	1,68 (2)	1	4	3
Mecklenburg- Vorpommern	1789	2,18	3	4,35	1,26 (1)	1	4	3
Hamburg	1705	2,08	3	4,35	1,26 (1)	1	4	3
Saarland	1072	1,30	3	4,35	1,26 (1)	1	4	3
Bremen	663	0,81	3	4,35	1,26 (1)	1	4	3
<i>Sum</i>	<i>82163</i>	<i>100</i>	<i>69</i>	<i>100</i>	<i>29 (32)</i>	<i>29</i>	<i>107</i>	<i>78</i>

Table 6: Relative voting power for the regions in case of split-vote

	Decision rule: (1) Treshold = 169, (2) Majority of members, (3) Population \geq 62%			Decision rule: Treshold = 169		
	NBZ German split-vote	NBZ Belgian split-vote	NBZ German & Belgian split-vote	NBZ German split-vote	NBZ Belgian split-vote	NBZ German & Belgian split-vote
GERMANY						
Nordrhein-Westfalen	2,74%		2,71%	2,64%		2,64%
Bayern	2,00%		1,98%	1,77%		1,77%
Baden-Württemberg	1,62%		1,61%	1,32%		1,33%
Niedersachsen	1,24%		1,23%	0,88%		0,88%
Hessen	1,24%		1,23%	0,88%		0,88%
Sachsen	1,24%		1,23%	0,88%		0,88%
Rheinland-Pfalz	0,86%		0,86%	0,44%		0,44%
Berlin	0,86%		0,86%	0,44%		0,44%
Schleswig-Holstein	0,86%		0,86%	0,44%		0,44%
Sachsen-Anhalt	0,86%		0,86%	0,44%		0,44%
Brandenburg	0,86%		0,86%	0,44%		0,44%
Thüringen	0,86%		0,86%	0,44%		0,44%
Mecklenburg- Vorpommern	0,86%		0,86%	0,44%		0,44%
Hamburg	0,86%		0,86%	0,44%		0,44%
Saarland	0,86%		0,86%	0,44%		0,44%
Bremen	0,86%		0,86%	0,44%		0,44%
<i>Sum or German weighed vote</i>	<i>18,71%</i>	<i>11,91%</i>	<i>18,58%</i>	<i>12,80%</i>	<i>11,92%</i>	<i>12,81%</i>
BELGIUM						
Vlaanderen		3,11%	3,08%		3,06%	3,08%
Brussel		0,49%	0,86%		0,37%	0,44%
Wallonië		1,85%	1,98%		1,76%	1,77%
<i>Sum or Belgian weighed vote</i>	<i>4,92%</i>	<i>5,45%</i>	<i>5,91%</i>	<i>5,22%</i>	<i>5,19%</i>	<i>5,29%</i>

Calculations are made with Bräuninger, T., König, T. (2001)

Table 7: Relative voting power and decision probability with a tripple majority

	Decision rule: (1) Threshold = 169, (2) Majority of members, (3) Population \geq 62%			
	NBZ EU-15	NBZ German split-vote	NBZ Belgian split-vote	NBZ German & Belgian split-vote
Germany / sum 16 regions	12,11%	18,71%	11,91% (-0,20)	18,58%
United Kingdom	11,99%	10,53% (-1,46)	11,82% (-0,16)	10,42% (-1,57)
France	11,99%	10,53% (-1,46)	11,82% (-0,16)	10,42% (-1,57)
Italy	11,99%	10,53% (-1,16)	11,82% (-0,16)	10,42% (-1,57)
Spain	11,11%	9,94% (-1,16)	10,94% (-0,17)	9,85% (-1,26)
Netherlands	5,50%	5,26% (-0,24)	5,67% (+0,17)	5,18% (-0,32)
Greece	5,16%	4,92% (-0,24)	5,32% (+0,16)	4,85% (-0,31)
Belgium / sum 3 regions	5,16%	4,92% (-0,24)	5,45%	5,91%
Portugal	5,16%	4,92% (-0,24)	5,32% (+0,16)	4,85% (-0,31)
Sweden	4,30%	4,21% (-0,10)	4,39% (+0,09)	4,16% (-0,15)
Austria	4,30%	4,21% (-0,10)	4,39% (+0,09)	4,16% (-0,15)
Denmark	3,09%	3,11% (+0,02)	3,11% (+0,02)	3,08% (-0,01)
Finland	3,09%	3,11% (+0,02)	3,11% (+0,02)	3,08% (-0,01)
Ireland	3,09%	3,11% (+0,02)	3,11% (+0,02)	3,08% (-0,01)
Luxembourg	1,96%	2,00% (+0,02)	1,83% (-0,13)	1,98% (+0,02)
<i>Sum</i>	<i>100,00%</i>	<i>100,00%</i>	<i>100,00%</i>	<i>100,00%</i>
<i>Winning coalitions</i>	<i>2692</i>	<i>64737105</i>	<i>10464</i>	<i>64737105</i>
<i>Decision probability</i>	<i>8,22%</i>	<i>6,03%</i>	<i>7,98%</i>	<i>6,03%</i>

Calculations are made with Bräuninger, T., König, T. (2001)

Table 8: Relative voting power and decision probability with a single majority

	Decision rule: Threshold = 169			
	NBZ EU-15	NBZ German split-vote	NBZ Belgian split-vote	NBZ German & Belgian split-vote
Germany / sum 16 regions	11,92%	12,80%	11,92% (0,00)	12,81%
United Kingdom	11,92%	11,69% (-0,23)	11,92% (0,00)	11,68% (-0,24)
France	11,92%	11,69% (-0,23)	11,92% (0,00)	11,68% (-0,24)
Italy	11,92%	11,69% (-0,23)	11,92% (0,00)	11,68% (-0,24)
Spain	11,11%	11,08% (-0,03)	11,08% (-0,02)	11,08% (-0,03)
Netherlands	5,54%	5,64% (+0,09)	5,68% (+0,14)	5,61% (+0,07)
Greece	5,21%	5,22% (+0,01)	5,33% (+0,12)	5,21% (0,00)
Belgium / sum 3 regions	5,21%	5,22% (+0,01)	5,19%	5,29%
Portugal	5,21%	5,22% (+0,01)	5,33% (+0,12)	5,21% (0,00)
Sweden	4,32%	4,38% (+0,06)	4,38% (+0,06)	4,37% (+0,05)
Austria	4,32%	4,38% (+0,06)	4,38% (+0,06)	4,37% (+0,05)
Denmark	3,12%	3,08% (-0,04)	3,06% (-0,06)	3,08% (-0,04)
Finland	3,12%	3,08% (-0,04)	3,06% (-0,06)	3,08% (-0,04)
Ireland	3,12%	3,08% (-0,04)	3,06% (-0,06)	3,08% (-0,04)
Luxembourg	2,03%	1,77% (-0,27)	1,76% (-0,27)	1,77% (-0,26)
<i>Sum</i>	<i>100,00%</i>	<i>100,00%</i>	<i>100,00%</i>	<i>100,00%</i>
<i>Winning coalitions</i>	<i>2707</i>	<i>70139235</i>	<i>10594</i>	<i>272532118</i>
<i>Decision probability</i>	<i>8,26%</i>	<i>6,53%</i>	<i>8,08%</i>	<i>6,35%</i>

Calculations are made with Bräuninger, T., König, T. (2001)

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