

VOTING PROCEDURES IN AN ENLARGED COMMUNITY

BY DUSAN SIDJANSKI

UNDER the Rome Treaty, decisions of approximately 150 kinds must be taken. The Commission can act independently only in some 35, in which it has executive powers. In the remaining cases the final power of decision belongs to the Council, which generally acts in collaboration with the Commission.

Their collaboration can be formal or informal. Formal collaboration demands that the Commission present a proposal to the Council and the Council take a decision on the basis of this formal proposal. In order to give added importance to the Commission's proposal, the Treaty requires a unanimous vote of the Council for any modifications to the Commission's proposal. (This is the paradoxical case in which the requirement for a unanimous vote of national Ministers works in favour of the policies of a supranational body.)

Informal collaboration, on the other hand, imposes only a consulting obligation on the Council. The Council can act without any formal proposal in the case of some administrative decisions (such as the remuneration of the members of the Commission and of the Court); some budgetary decisions; some important substantive questions such as the conclusion of commercial agreements and the granting of mutual assistance to counter balance-of-payments difficulties; and some political decisions such as the passage from the first to the second stage of the Treaty's implementation. But in the majority of cases, except for administrative decisions, the Council takes a decision on the recommendation, advice, or preliminary *project issued* by the Commission. In all, there are about 40 cases in which the Council does not act on a formal proposal of the Commission; in the remaining 75, the Council can proceed only on a proposal of the Commission.

This is the key mechanism in the Common Market, and it raises the essential question: what is the decision-making process in the Council, which has to decide in some 115 types of case? The Council decides by *unanimous* vote in about 55 cases,¹ 5 of which have already been transformed into a qualified majority by the passage to the second stage; by *simple majority* in 10 cases;² and by *qualified majority* in 55 cases after the passage to the second stage. These statistics highlight the role of the qualified majority in the decision-making process of the

central body. In addition, *special majorities* are laid down for the Social Fund and the Development Fund.

In order to define the problem of voting which will arise as a result of the admission of new members, let us eliminate those rules which should not be affected by increased membership. The *unanimous* procedure, which offers the highest guarantees for national interests and the minimum for the common European interest and the functioning of the institutions, does not seem to present any problem for the negotiators. Nevertheless, one may wonder if this rule should not in the future be superseded by some more workable procedure; for unanimity, difficult to achieve among the Six, would be much more difficult to obtain in an enlarged Community.

The *simple majority*, scarcely used in the Common Market system, requires no adaptation.

For the adoption of the budget of the European Social Fund (Art. 203, para. 5), France and Germany have 32 votes each, Italy 20, Belgium 8, the Netherlands 7 and Luxembourg 1, and a majority of at least 67 votes is required. In the Convention associating the overseas countries and territories to the Common Market, the special majority for financial decisions is also 67 votes, but the distribution of votes is somewhat different: France and Germany have 33 votes each, Belgium, Italy and the Netherlands 11 each, and Luxembourg 1. These two systems are based essentially on the financial contributions and responsibilities of the Member States. In the enlarged Community they could be amended on the same principle, so that this question can, in practice, be settled only after the negotiators have determined the respective contributions of the new members.

Last but not least there remains the crucial question of adapting the qualified majority rules.

In most cases the Council takes its decision with a qualified majority of 12 votes out of 17. As a result of the balance established by the Treaty, the big States (France, Germany and Italy) dispose of 4 votes each, Belgium and the Netherlands of 2 each and Luxembourg has 1 vote. Article 148 foresees two alternative majority requirements. The first and most frequent is when the Council takes a decision on a proposal of the Commission. The authors of the Treaty considered that the Commission, as an autonomous institution, can then safeguard the common European interest, and so the smaller members agreed that, under these conditions, unanimity between the three big Members can carry a decision: 12 votes are all that is required. This is not the case in the second alternative, where the Council does not act on a proposal of the Commission. In order to preserve the smaller Members from a coalition of the big States in the absence of a Commission

proposal, the Treaty requires that the 12 votes must then include the votes of at least *four* States. In other words, if the Council makes a decision alone, the three big Members cannot impose their will unless they are able to obtain the support of one at least of the three Benelux countries.

This cleverly-balanced system has worked well in practice. In point of fact, nearly all decisions have been taken by unanimous agreement. Real feelings of solidarity together with the able work of the Commission have, to a great extent, helped achieve these agreements, unexpected as they sometimes were, despite pressing national interests.

Now what could be the system in the enlarged Community? To simplify matters let us consider only two extreme cases. First let us suppose that the United Kingdom were to join the Community alone. Secondly, we will work on the hypothesis that all four countries which have asked to join do so: the United Kingdom, Denmark, Eire and Norway.

The different procedures prescribed by the Treaty of Rome will on the whole require only a few modifications. Thus for example, two important rules will have to remain in their present form: the rule which provides that an abstention is no obstacle to decisions requiring a unanimous vote, and the rule by which the Council cannot modify the Commission's proposal except unanimously.

I. ONLY THE UNITED KINGDOM JOINS

On our first hypothesis, the new member must carry the same weight as the three other big States: 4 votes. There would then be 21 votes in all.

(a) *The Council acting on a proposal of the Commission.*

The qualified majority slightly above two-thirds would be one of 15 votes. Under these conditions, decisions could be taken by four big States or by three big States in agreement with two smaller ones, of which one could be Luxembourg. On the other hand the concert of two big and three smaller Members would not be sufficient to reach a decision. From the negative point of view it will be noted that two major powers can paralyze the decision-making mechanism; one big State can exercise the veto only with the support of two smaller ones. As in the present system, the Benelux countries are not given the necessary voting strength to veto a unanimous agreement between the four big Members. This new-found equilibrium appears to offer good guarantees for the future application of the Treaty. It avoids the danger of a tandem being formed by one big State and one of the smaller Members which might hold a sword of Damocles over any of the Community's decisions. Thus any alliance between, e.g., the

United Kingdom and Holland or between France and Belgium (the latter, though difficult to imagine in the present political constellation, could become a reality in the future) would have to seek the support of at least one more smaller state to veto a decision.

(b) *When the Council acts alone.*

The situation is somewhat different when the Council acts alone. In this case the problem arises whether, on the present lines of the Treaty, a majority of 15 votes representing at least *five* Members should be required. If this rule is adopted, decisions can be reached on the same conditions as those described above. On the other hand, as in the present system, the three Benelux countries would have the power of veto. However, given the presence of another big State one might ask whether to follow the Treaty of Rome to the letter here would really be in conformity with its spirit. Of course the purpose of the present system is to guarantee the Benelux countries against a group of three big States when the Commission is not the originator of a decision. At first sight two reasons argue in favour of a certain relaxation of this rule: the proportion of 5 out of 7 is not the same as the old one of 4 out of 6, so that this minor change means that the smooth working of the Council becomes more vulnerable. On the other hand, agreement between the four big States, so difficult to imagine, is surely a sufficient guarantee against their arbitrary domination of the rest? The question is open to debate. But of course our first hypothesis is really less likely than the second, which remains to be examined.

2. THE UNITED KINGDOM, DENMARK, EIRE AND NORWAY JOIN TOGETHER

Our second hypothesis presents a different picture: we then have four big States together with two medium States (Belgium and Holland), three small States (Denmark, Eire and Norway) and one smaller still (Luxembourg). Can the original voting weights be applied despite the new balance of political and economic weight between the members? Would it be fair to give the three small newcomers (Denmark, Norway and Eire) the same voting power as Belgium and Holland, or should they have the same as Luxembourg? Does not their place rightly fall between the two? Their intermediate position seems evident. Thus, for example, the most populous of the newcomers—Denmark, with 4.5 million inhabitants—does not contain half the population of Belgium. A similar ratio can be seen in their political and economic importance—from the point of view of gross national product and their position in world trade. Taking this view as a starting point, one might suggest multiplying the existing votes by

two, allocating 8 votes to Great Britain and 3 to each of the other new members. The advantage of this solution appears to be the following: it preserves the same relative voting strengths for the Six present member countries of the Community; the real differences existing between the present and the new members are taken into account; it is in conformity with the spirit and with the principles in which the Treaty of Rome was drawn up, and at the same time gives more votes to the Benelux Union (10) than to the three smaller new members together (9). There will then be 51 votes in all.

The second problem to be considered is that of the qualified majority, which if the two-thirds ratio is to be maintained should be 34 or even 35. It has already been noted that according to common sense and mathematical probability the chances of reaching a decision diminish if, for an increased number of members, the same ratio is strictly adhered to. To obtain the same efficiency the requirements of the qualified majority must therefore be reduced. In maintaining the ratio of 34 or 35, one would cause a distortion which would change the quantitative conditions required by the existing qualified majority: the agreement of the four big States would then not be sufficient for the adoption of a Council decision, which would require in addition the vote of one of the smaller members. This situation would not be analogous to the existing one where the three big States in agreement can adopt a decision, the more so since it is more difficult for four major powers to reach an agreement than for three. Again, if a majority of 35 were required, the agreement of all six members of the present Community would not be enough to carry a decision. At the same time to impose this majority would weaken the decision-making process which has already been strained by the influx of new Members: the agreement of the small Members can paralyse the machine and, what is worse still, is that the opposition of two big Members who have managed to gain the support of one small Member can have the same effect. For these reasons and after examining the different possibilities it would be better if a qualified majority of 32 votes out of 51 were adopted.

What are the consequences of this distribution of votes and this qualified majority requirement?

(a) *The Council acting on a Proposal on the Commission.*

When the Commission proposes and the Council disposes, we have the following possibilities: the agreement of the big Members is sufficient to carry a decision. Such a supreme effort on their part deserves this reward, which is, moreover, provided for in the existing mechanism. To achieve the same result, three big States (the three big

Members of the present Community or two of them with the United Kingdom) must be in agreement either with Belgium and Holland, or with two other small powers together with Luxembourg, or alternatively with all three other smaller new members (Denmark, Eire and Norway). These combinations allow the policy of the founder members of the Common Market to prevail provided they are all in agreement; but at the same time they offer sufficient guarantees against the formation of a permanent bloc as a result of the membership of such countries as Germany or Italy, Belgium or Holland whose interests are more or less linked to those of Great Britain. In consequence, the United Kingdom is assured against isolation within the Common Market; moreover, the future does not preclude a Franco-British 'rapprochement'. However, the essential factor seems to be a feeling of solidarity between all Members. Finally, two big States (Germany and France, or the United Kingdom and Italy for example) can, in agreement with the Benelux countries and two small countries, or with Belgium, Holland and the three newcomers, force a decision in the Council. Such are the minimum requirements of this qualified majority. Less demanding than the mathematical two-thirds majority, it increases the chances of efficient working while still echoing the present balance among the Six.

This mechanism features still further safeguards against paralysis. Since 20 votes are required for a veto, three big States can veto a decision in similar conditions to those applicable at present. Two big States can only do so with the agreement of Belgium or Holland, or of two small members. Here is one of the significant differences introduced by our proposal of a majority of 32, which faithfully follows the conditions laid down by the Treaty; whereas, if a majority of 34 were to be required, the support of one small Member for two of the big States would be sufficient to paralyse the whole mechanism. On the other hand, to achieve a veto, one big State must obtain the support of four smaller powers, except that the combination represented by Luxembourg and the three newcomers would still be inadequate; in fact, to veto a decision, there must be 12 votes additional to the 8 votes of a big State.

(b) *When the Council acts alone.*

To maintain the protection of the small Members now provided within the Six, an autonomous decision of the Council must be approved by at least six Members: four big States and two small, or three big States and at least the Benelux countries; this last combination allows the six founder-members to safeguard the working and the spirit of the Community. The other possible combinations are the same

as when the Council acts on the Commission's proposal. The supplementary conditions that the votes of six countries are required increases the chances of a veto: five small Members or four together with one big State can put a spoke in the wheels. This is the guarantee which meets the desire to protect the small Members against the hegemony of the big States in the Council when no Commission proposal is involved.

In conclusion, we should perhaps remind ourselves that while this important question of qualified majorities may seem to have played only a very small role in actual practice and almost all decisions have been reached by a unanimous vote, the question of bargaining power preliminary to a decision looks quite different according as a unanimous or a qualified majority vote is required in the end.

But it is still more essential to remember that accession to the Community requires more than simple agreement on the adjustments to the Treaty: it demands a deep and conscious sense of solidarity. Within the Six, this sense of community prevails despite all the warnings of many Cassandras, as witness their decision to pass on to the second stage. In spite of all the difficulties, not a single country dared take the risk of blocking the whole machine: one refusal would have had profound effects in the other sectors, such as anti-trust regulations and agricultural policy; and what is worse, it would have affected the mutual confidence which is the best guarantee of the Common Market's success. In this dynamic, irreversible system any halt in the progress could be a serious threat to the whole enterprise. If the new Members—as is to be hoped—are determined to play the game, they will, together with the Six, be 'condemned' to advance and to succeed.

¹ Most of the general regulations, modifications or complements to the Treaty, and political decisions, e.g. anti-trust laws, adoption of the agricultural policy, freedom of establishment, harmonization of national legislation, conclusion of commercial agreements during the first two stages of the Common Market, etc.

² E.g. free movement of workers, professional training, rules of the Council, etc.

³ Most of the executive functions, e.g. implementation of agricultural policy, free movement of services after the first stage, prohibition of discrimination, etc.

COMMUNITY LAW AND ENGLISH LAW

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By English Constitutional Law, it did not require any authorization from Parliament for Britain to make her application to join E.E.C.: competence to do so falls within the Royal Prerogative. Similarly, the agreement to become a member of E.E.C. can, in law, like any other treaty, be concluded without the prior consent of Parliament. The effect of concluding the membership agreement, however, will be solely in international law, where it will grant rights and impose duties upon Britain *vis-à-vis* the other parties to the agreement. The membership agreement by itself will be no part of English municipal law and will not in any way affect it. This is a position which, it may be noted, differs radically from that in the present six member States of the Economic Community, whose conclusion of the Rome Treaty immediately granted rights and imposed duties within the municipal laws of those States.

For English law to be affected after Britain has joined the Economic Community, the Treaty establishing that Community and the membership agreement will have to be incorporated into English law by an Act of Parliament. This will probably be done by setting out the text of the Treaty and the membership agreement as a schedule to an incorporating Act. This was the procedure adopted recently in the Carriage by Air Act, 1961, which incorporated the Warsaw Convention into English law. There, the Convention, in both French and English versions, was set out in a schedule and the French version was expressly made to be the authoritative one in the event of conflict between the two versions.

However, such straightforward incorporation will not, in the case of the E.E.C. Treaty, be sufficient to bring this country fully into line with the other members of the Community, because that Treaty imposes many duties upon member States, such as those to free trade and to facilitate the free movement of persons and capital. To fulfil these duties will require the enactment of specific statutes, or at any rate the making of specific Statutory Instruments.

Apart from this, however, the incorporation of the E.E.C. Treaty will be far more complicated than the incorporation of any previous Treaty because under that Treaty the Council of Ministers possesses