

A new balance of power in the Council? Yes, but not yet...

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The assignment of voting weights to the member states in the Council has always been an extremely contentious issue. In the past, each treaty reform (and on occasion the accession treaties themselves) had to reallocate the votes assigned to each country and establish a new threshold for the qualified majority in the Council, in order to account for the arrival of new members and significant changes in the population of member states. As such, they were also the subject of protracted negotiations in the European Convention in 2002-03. The establishment of a new voting system based on a double majority of the member states and the population even threatened the conclusion of the constitutional treaty, which was eventually concluded but failed in the ratification process. During the negotiations of the subsequent Lisbon treaty, confrontation around the double majority system was still palpable. Procuring the agreement of the reluctant member states was only possible after the thresholds were increased and the application of the new rules was delayed to November 2014 on paper, and to April 2017 in practice.

The new QMV system will do away with the protracted negotiations to reallocate voting weights among member states and to redefine the new thresholds accordingly. But whether it will substantially improve democratic legitimacy and efficiency in the Council as intended is a more controversial issue.

According to Article 16 TEU, the Council acts as a general rule by qualified majority voting (QMV), except where the treaties provide otherwise.¹ As from 1 November 2014, the qualified majority is reached with the support of at least 55% of the member states (16 at the EU's present size) accounting for 65% of the total EU population.² A blocking minority can be formed by at

¹ The Lisbon treaty extended the use of the QMV to most policy areas and unanimity is now mainly confined to the CFSP, combatting discrimination, social security and social protection, own resources, the multiannual financial framework, taxation, fiscal provisions in environment and energy, and a few issues within the domain of Justice and Home Affairs. The latter consist primarily of measures concerning passports, identity cards and residence permits, family law, the identification of areas of crime for judicial cooperation, operational policy cooperation and cross-border operations.

² The population figures and the percentages they represent as a share of the total, which are currently used to calculate QMV, are laid down in Annex III of the Council's Rules of Procedure (see Council Decision 2014/692/EU). A Council decision taken in January of every year will update these figures on

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least four member states representing at least 35% of the EU's population or by 13 member states.

The new rules benefit the five larger member states, and, in particular, Germany, France, the UK and Italy. These four countries account for around 53% of the EU population (or 82% of the sufficient majority), whereas under the Nice rules they accounted for 33% of the total votes (around 45% of the threshold of 260 votes).³ In particular, Germany has almost doubled its weight. With the exception of Spain, which also improves slightly, the other member states are all worse off. Their share of EU population is lower now than their share of the total votes in the old system. For most of them, it will become more difficult to form either winning majorities or blocking minorities based on the population threshold. The total number of member states required to form a winning coalition has increased from 50% to 55%, that is, from 15 to 16 member states in the EU-28, which lowers the blocking minority threshold from 14 to 13 member states. But this only offers a tiny compensation for small member states.

Assigning a stronger weight to population is meant to enhance democratic legitimacy by making the decisions taken more representative. The grounds for the argument are weakened, however, if one looks upon the Council as an upper chamber or a Senate that represents EU member states – in contrast to the European Parliament, which is intended to embody the principle of one man, one vote. But the new voting system in the Council further reinforces the weight of the larger member states, thereby increasing the divergences in the representation of member states. It is true that the Council is not a usual second legislative chamber and it also exercises many executive powers. And nor is the allocation of seats in the EP proportional to member states' populations, with small member states being largely overrepresented. Nevertheless, all these considerations and nuances should be taken into account when assessing the contribution of the new voting system to democratic legitimacy in the EU.

The contribution of the new system to efficient decision-making in the Council is also uncertain. The double majority is supposed to improve the capacity to form winning minorities, which should speed up the process and reduce the amount of trade-offs necessary to draw in supporters. But the number of states required to form a blocking minority has been reduced. The impact on the negotiations might be marginal as well because it is in the long-term interest of the representatives of the member states to accommodate the others' demands, even when the formal rules do not compel such an accommodation. Even after reaching a sufficient majority, it is not unusual for the presidency to continue its efforts to widen the agreement and that those in minority will try to secure some concessions rather than vote against.

Therefore, it is uncertain whether the new system will have any substantial impact on the time required and the number of decisions taken or in the amount of concessions and trade-offs made. This is even more the case since the Lisbon Treaty preserved the so-called 'Ioannina compromise'.⁴ The Council decision approved in Declaration 7 attached to the treaty provides that, from 1 November 2014 to 31 March 2017, if members of the Council, representing a) at least three-quarters of the population or b) at least three-quarters of the number of member

the basis of the data available to the Statistical Office of the European Union on September 30th of the preceding year.

³ When Croatia joined the EU, the accession treaty gave the new member state seven votes and increased the QMV threshold from 255 to 260.

⁴ The Ioannina compromise, named after an informal meeting of foreign ministers in the Greek city of Ioannina on 29 March 1994, laid down the principles to apply the QMV after the accession of the EFTA countries.

states necessary to constitute a blocking minority, indicate their opposition to the Council adopting an act by a qualified majority, the Council should continue discussing the issue and the President of the Council in cooperation with the Commission should do all in its power to reach a satisfactory solution to address the existing concerns and obtain a wider basis of agreement.⁵

Be that as it may, the moment when the presidency gets a sufficient majority in the Council represents a turning point in the negotiations. Up until then, the presidency focuses on getting the necessary support to adopt the measures. The stronger the weight of a member state, the more it counts and the more leverage it can exert to influence the outcome. The presidency and the national delegations themselves constantly keep track of how the majorities are moving, especially in the meetings of COREPER I and the related Council configurations mostly dealing with EU internal policies.⁶ The process is slightly more informal at the level of working party, but most co-decision dossiers reach the COREPER level for negotiations with the European Parliament. Therefore, voting rules matter and their change may affect the balance of power in the Council.

All in all, Article 3 of the Protocol (No. 36) on transitional provisions established that until 31 March 2017, any member of the Council may request the application of Nice rules when voting an act by QMV. In practice, this provision will oblige the Presidency of the Council – and the national delegations – to keep its counting according to both systems.

During the recent negotiations to amend the Council's rules of procedure to include the double majority system and the reference population figures, a number of member states adamantly insisted that the amendment should also mention the possibility to vote under the previous system.⁷ This anecdote testifies to the intention on the part of some member states to keep Nice alive, as already demonstrated in the Council on Employment and Social Policy. In recent deliberations on the general approach to the Proposal for a Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures, Hungary requested the application of the old rules – although it eventually failed to forge a blocking minority.

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⁵ After 31 March 2017, this will require at least 55% of the population or 55% of the number of member states necessary to constitute a blocking minority. See Council Decision 2009/857/EC relating to the implementation of Article 16.4 TEU and Article 238.2 TFEU.

⁶ COREPER is the Council's main preparatory body composed of the 'permanent representatives' from each member state. COREPER I prepares the work of six Council configurations: Agriculture and fisheries (only in part); Competitiveness; Education, youth, culture and sport; Employment, social policy, health and consumer affairs; Environment; and Transport, telecommunications and energy. COREPER II prepares the work of the Council meetings on Economic and financial affairs; Foreign affairs; General affairs; and Justice and home affairs.

⁷ Council Decision of 29 September of 2014 amending the Council's Rules of Procedure.