

## Report by the EP's Committee on Institutional Affairs on the decision-making process in the Council in an enlarged Europe (28 January 1999)

**Caption:** On 28 January 1999, on behalf of the Committee on Institutional Affairs for which he is the rapporteur, Jean-Louis Bourlanges submits a report to the European Parliament on the decision-making process in the Council in an enlarged Europe. Given the extension of the Union's monetary and political powers and in anticipation of the forthcoming enlargement, the report considers the nature of the 'role of the Council' and the reform of the structures and procedures that enable it to exercise this role.

**Source:** Report of the EP Committee on Institutional Affairs on the decision-making process in the Council in an enlarged Europe. Rapporteur: Jean-Louis Bourlanges, A4-0049/99, PE 229.066/déf. [s.l.]: European Parliament, 28.01.1999, 41 p.

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# REPORT

on the decision-making process in the Council in an enlarged Europe

Committee on Institutional Affairs

Rapporteur: Jean-Louis Bourlanges

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PE 229.066/fin.

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## PROCEDURAL PAGE

Following the request from the Conference of Committee Chairmen, at the sitting of 19 June 1998 the President of Parliament announced that the Committee on Institutional Affairs had been authorised to draw up a report on the decision-making process in the Council in an enlarged Europe.

At its meeting of 25 May 1998 the Committee on Institutional Affairs had appointed Mr Bourlanges rapporteur.

It considered the draft report at its meetings of 23 November and 1 December 1998 and 4 and 20 January 1999.

At the last meeting it adopted the motion for a resolution by 15 votes to 4, with 3 abstentions.

The following took part in the vote: de Giovanni, chairman; Bourlanges, vice-chairman and rapporteur; Corbett and Berthu, vice-chairmen; Barton, Bonde, Cederschiöld (for Perry), Delcroix, Dell'Alba (for Saint-Pierre), Frischenschlager, Gutiérrez Diaz (for Sjöstedt), Izquierdo Rojo, Lambraki (for Moran, pursuant to Rule 138(2)), Löow (for Manzella), Lulling (for Brok, pursuant to Rule 138(2)), Maij-Weggen, Méndez de Vigo, Schäfer, Salafranca, Spaak, Spiers and Tsatsos.

The report was tabled on 28 January 1999.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

**A**  
**MOTION FOR A RESOLUTION**

Resolution on the decision-making process in the Council in an enlarged Europe

The European Parliament,

- having regard to Rule 148 of the Rules of Procedure,
  - having regard to the report of its Committee on Institutional Affairs (A4-0048/99),
- A. whereas the European Parliament has a duty to carry out a critical analysis, accompanied by proposals, of the functioning of the major Union institutions, an analysis and proposals which take account of all the legal and statutory provisions, the formal or informal decision-making procedures and the administrative or political practices which, over and above the provisions of the Treaties, govern an institution and determine its effectiveness,
- B. having regard to the central role played by the European Council and the Council of Ministers in the Union decision-making system and the increasing paralysis of that system,
- C. whereas, in view of the extension of the Union's Monetary and political powers and of the run-up to the forthcoming enlargement, and prior to any further accession, there is a vital need to conduct an overall review of the role of the Council within the European Union and to carry out, by means of both Treaty amendments and major political and administrative changes:
- a thoroughgoing reorganisation of the structure of and the roles entrusted to the various political and administrative bodies which participate in the Council's work - European Council, Council of Ministers, Coreper and the specialist committees - with a view to guaranteeing the coherence and consistency of that work;
  - the rationalisation and consolidation of procedures with a view to giving the Council and its work a suitable degree of effectiveness and transparency and reducing the weight of bureaucracy,
- D. whereas progress towards greater democratisation entails the implementation of principles which can be recognised by European citizens: the principle of majority voting, the political accountability of the authorities, scrutiny by parliamentary institutions, transparency of decision-making procedures,
- E. regarding as desirable progress towards a simple general model for the Union based on its dual nature as a union between Member States and a union between peoples in which the Commission will develop into a genuine European executive, with the European Parliament representing the people and the Council representing the Member States with a view to promoting a Union capable of acting as an integrated, united and coherent body, thereby increasing its international influence,

- F. whereas, during the preparations for a revision of the Treaties, democratic dialogue among the institutions is required, in accordance with the resolution of 19 November 1997<sup>(1)</sup>,

## **I. THE ROLE OF THE COUNCIL**

1. Calls, for the sake of transparency and rationalisation, for a revision of Article 145, which determines the powers of the Council of Ministers of the European Union, so as to draw a clearer distinction between the two main aspects of its role:
  - the legislative and budgetary role it carries out jointly with Parliament on the basis of Commission proposals;
  - its role of coordinating the position of national governments in areas of their responsibility;
2. Expresses concern, in this connection, at the current trend which seeks to make the Council, in certain areas of responsibility, particularly those under the second pillar, an institution which, in addition to decision-making, carries out the tasks of proposing and implementing legislation to which it is ill suited, a trend which undermines the logical division of roles between the Commission and the Council;

## **II. STRUCTURES**

### **The European Council**

3. Emphasises the vital, irreplaceable role of laying down general guidelines and providing political impetus for the European Union which the European Council of Heads of State or Government plays and must continue to play;
4. Takes the view that, in order to avoid the risk of drift and if it is to exercise more effectively its role of providing impetus and guidelines in an ever larger European Union, the European Council must lay down for itself clear operating rules with the aim, in particular, of:
  - avoiding over frequent meetings which might deprive its conclusions of the authority they gain from being exceptional, formal statements and limiting the number of informal meetings which do not lead to the adoption of conclusions;
  - ensuring that each European Council meeting is of sufficient duration so as to allow time for in-depth exchanges of views among the members of the European Council and encourage them to conclude substantive agreements;
  - maintaining, despite the increase in the number of participants following the enlargements, the interactive nature of exchanges of views among the members of the European Council by making frequent use of meetings of the European Council restricted to the Heads of State or Government and the President of the Commission,

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<sup>(1)</sup> A4-0347/97, OJ C 371, 8.12.1997, p. 99.

- an approach which requires the amendment of Article D of the Treaty, and by banning *tours de table*;
- ensuring that the European Council is supplied with high-quality analyses, studies and proposals, primarily by the Commission, which calls for suitable preparation of European Council meetings based on a high level of cooperation between the Presidency, the General Affairs Council and the Commission;
  - banning, in the preparation of European Council meetings, any move to bypass the General Affairs Council by means of discussions involving a network of special advisers ('topnet'), the establishment of which could only serve to disrupt the normal interplay between the institutions;
  - in a move away from current practice, excluding from the conclusions adopted by the European Council all matters which have not been the subject of decisions taken by that body and which would inevitably water down the political message sent by the European Council to the peoples and institutions of the Union;
5. Points out that, where they exercise decision-making power conferred on them by the Treaty, the Heads of State or Government should systematically meet not as the European Council but as the Council meeting at the level of the Heads of State or Government, which implies:
- in terms of structures, that the President of the Commission should not be a member and that the ministers assisting the Heads of State or Government should be members of the specialist Council of Ministers competent to deal with the matters on the agenda;
  - in terms of procedures, that the Council meeting at this level should lay down for itself rules based on those employed by the Council, particularly as regards agendas, formal arrangements for the submission of the proposals discussed and decision-making;

### The Council

6. Notes, in that connection, both the fact that the General Affairs Council is increasingly out of step with the work of the other councils of ministers and the highly adverse impact of this state of affairs, since one of this Council's main tasks is to ensure the unity of action and the overall consistency of the work of the Council of Ministers;
7. Maintains that restoring the cohesiveness of the Council of Ministers will entail both the rehabilitation and the revamping of the General Affairs Council (GAC);
- a. rehabilitation calls for a clear restatement and strengthening of the powers of the GAC, which implies, in particular, that it should be incumbent on the GAC, rather than on the Presidency, but on a proposal from the latter and after consultation of the Commission, to take decisions concerning:
    - the drafting of the Council's programme of work;
    - the calendar of meetings of the specialist councils, which should make it possible to bring an end to the situation whereby all those councils almost

- automatically meet once every six months, the only practical way of reducing the needlessly high number of specialist councils;
- the allocation of work between itself and the various specialist councils, thereby giving it control over its own area of responsibility and enabling it to retain an overview of horizontal matters;
  - the preparation of European Council meetings;
- b. the revamping implies a change in the make-up of the Council:
- the GAC should comprise the government figures most closely involved, under the authority of their head of government, in the coordination of national policies, rather than, as a matter of principle, the foreign ministers;
  - the GAC should therefore be completely separate, as regards its meetings and also its make-up, from the Council of Foreign Ministers;
  - the distinction drawn between the two councils should make it easier for ministers to be present throughout GAC meetings;
8. Points out that the effectiveness of the General Affairs Council and, more generally, the cohesiveness of the Council can primarily be increased by making the requisite improvements to interministerial coordination in the Member State governments;

### **The Presidency**

9. Notes, that the conditions under which future presidencies will be carried out, in particular the longer rotation cycle, the accession to the Presidency of states with small populations and the greater disparities among the states taking on the role, will have a bearing on the nature of the responsibilities borne by the Presidency;
10. Predicts, therefore, that the Presidency will be forced to concentrate on its conciliation tasks and hand over the tasks of leadership of the Union and the conduct of foreign policy to the President of the Commission and the High Representative for the CFSP, a trend which will require the appointment to these two posts of eminent persons with a clear political profile;
11. Takes the view that the changes ordinarily suggested for the Presidency - longer presidencies, sharing of responsibilities among several Member States, ending of the strict rota system - in fact present more drawbacks than the retention of the status quo, but that it would be wise not to entrust the Presidency of the Union to a state which has been a member for less than three years;
12. Takes the view, however, that the number of ministers chairing specialist councils should be substantially reduced, with the same minister chairing several councils, so as to facilitate coordination within the Presidency and reduce the risks of inconsistency among the various councils;

### **High Representative for the CFSP**

13. Reiterates its criticisms of the provisions of the Amsterdam Treaty establishing, within the Council rather than the Commission, the post of High Representative for the CFSP; the placing of that post runs counter to:



- the optimum division of responsibilities between the Council and the Commission;
- the consistency vital to international action by the Union which affects the three pillars simultaneously;

14. Urges that the next Treaty should bring an end to this anomaly and make it possible for the High Representative to be incorporated into the College of Commissioners;

#### **The committees**

15. Regards it as essential that Coreper be given the means to carry out to the full its role of providing administrative coordination for the Council's work;
16. Takes the view that the slow-down in legislative activity in the Council over the last few years, combined with more manageable agendas, should enable Coreper itself to take on some of the administrative tasks conferred by the Treaties on the major specialist committees without it being necessary to establish a Coreper III which might undermine the body's internal cohesiveness;
17. Takes the view, in this connection, that there is an imbalance in the division of tasks between Coreper I and Coreper II and that Coreper II should have its responsibilities substantially increased in the areas of international action and judicial and police affairs given that these various aspects of the Union's activities are covered by pillars which are separate but inextricably linked;
18. Deplores the fact that certain specialist committees, particularly the Political Committee, have taken to submitting their proposals to the Council without first putting them to Coreper, a breach of Article 151 of the EC Treaty, even though compliance with that provision is vital to the coherent functioning of the institution;
19. Acknowledges that, owing to the specific nature of the matters they deal with, the drawbacks involved are too great for the Special Committee on Agriculture and the Monetary Committee to be disbanded and for their role to be taken over directly by Coreper;
20. Argues, however, that the same cannot be said of the Political Committee or the K.4 Committee, which, since they lack both the Community-based philosophy required to provide the Council with genuinely joint proposals and the political authority to conclude proper intergovernmental agreements, should have their responsibilities taken over by Coreper II; notes, further, that this reorganisation would have the advantage not only of restoring the authority of Coreper II, but also of fostering greater consistency between the actions taken under the second and third pillars, actions which are more and more closely linked;
21. Expresses concern at the proposal to establish, within the first pillar, a body symmetrical with the K.4 Committee competent to deal with matters which the Amsterdam Treaty has transferred from the third to the first pillar, since the establishment of such a body would serve to reverse in part the Communitisation of the policies transferred and introduce inappropriate working methods into the first pillar;

### III. PROCEDURES

#### Proposal of legislation

22. Urges, in respect of all decisions submitted to the Council or the European Council, that the Treaty should explicitly provide for a power of initiative which cannot be enjoyed by the Council itself and which should, except in cases where it is shared with the Member States, rest with the Commission
23. Emphasises, in particular, that the exercise of the power of appointment to the most senior posts in the European Union - e.g. the President of the Commission or the European Central Bank - makes it essential, in order to avoid any repetition of past mistakes, that the conditions governing the submission and admissibility of applications, their consideration on the basis of hearings of the candidates and decision-making by a qualified majority are clearly laid down;
24. Deplores the weak, restricted nature of the initiatives taken in the sphere of the CFSP since the implementation of the Maastricht Treaty and emphasises, in that connection, the problems created by the lack of any genuine joint body with specific responsibility for submitting proposals for action in this sphere to the European Council and the Council;
25. Condemns as inconsistent with the spirit of the Treaty the reduction of the planning and early warning unit to a simple juxtaposition of national officials, on the basis of one per Member State, forced to operate as an additional Council working party;
26. Expresses the hope that the High Representative for the CFSP will be quickly appointed and is able to contribute to the revival of international action by the Union, which presupposes:
  - that the High Representative should be a politician, rather than an administrator;
  - that he should establish himself as the leader of what would be a genuine planning and early warning unit consistent with the objective laid down in the Treaty, i.e. a proper joint administration;
  - that he should establish fruitful cooperation with the Commission based on trust, with a view to being integrated into that body;
  - that until he has been integrated into the Commission he should give an account of his work to Parliament;

#### Extension of qualified majority voting

27. Deplores the fact that the Amsterdam Treaty created or retained many instances in which the Council, the European Council or the Member State governments must act unanimously and emphasises that, in a European Union which should shortly have more than 20 Member States, unanimity is an arrangement fundamentally inappropriate to effective decision-making and serves to hamper the sound general functioning of the Union when the decision concerned is horizontal in nature, for example in the institutional sphere, and, indirectly, to render meaningless a Community power laid down by the Treaty when the decision is sectoral in nature;

28. Urges, therefore, that the future Treaty should, subject to the points made below, lay down a general principle of qualified majority voting applicable to all Council decisions, regardless of their nature, with the exception of the revision or accession decisions provided for in Articles N and O of the Treaty on European Union and the constitutional decisions provided for in Articles 138 and 235 of the Treaty;
29. Takes the view, however, that the European Council of Heads of State or Government must be able to retain, when exercising its role as a provider of political guidelines and impetus as laid down in Article D, specific operating arrangements in so far as it merely adopts conclusions on a proposal from the Presidency and does not strictly speaking take decisions;
30. Maintains, *a contrario*, that the Heads of State or Government should employ the qualified majority rule in use in the Council of Ministers, as they did at the Milan European Council, as soon as their deliberations take the form of a meeting of the Council at the level of the Heads of State or Government or the European Council takes a decision for which explicit provision is made in the Treaty: appointments, decisions concerning EMU, the convening of an Intergovernmental Conference, and joint 'strategies' in the sphere of the CFSP;
31. Since the so-called positive abstention procedure represents only a limited advance, leaving open the possibility for any Member State to oppose the adoption of a strategy, an action or a joint position, takes the view, in the sphere of the CFSP, that consideration should be given to the extent to which unanimity could be replaced by qualified majority voting, that provision to be accompanied by a clause specifying the possible non-involvement of the Member States making up the minority, so as to guarantee that no Member State could be compelled to commit its armed forces, and with any expenditure generated still being met from the Community budget;
32. Advocates, pending more substantial changes, a stricter interpretation of the provisions of Article 201 of the EC Treaty on own resources so as to restrict the unanimous signing and ratification requirement to acts dealing with the nature, assessment basis and arrangements for recovery of these resources;
33. Proposes, however, that the own resources ceiling should be determined by means of a more simple procedure specifying, for example, that the codecision procedure should apply and that the Council should act by a qualified majority, provided that, taking the average of the three previous financial years, the Member States making up that majority have accounted for 70% of the VAT- and GNP-based contributions to the Community budget;

#### **Weighting of votes**

34. Takes the view that the Treaty could ultimately replace the current weighting system with a simple double majority system (50% of the Member States and 50% of the Union population);
35. In the meantime, reiterates its commitment to a system for the weighting of votes which combines arrangements to take account of the population differences among the Member

- States with the relative over-representation of the Member States with small and medium-sized populations;
36. Takes the view that any change in the number of votes allocated to Member States must serve not to overturn but rather maintain the current balances;
  37. Regrets the fact that the Amsterdam Treaty contains no provisions on the adjustment of the weighting of votes and that the protocol on the reform of the institutions annexed to the Treaty proposes only vague or unsuitable solutions;
  38. Expresses surprise, in this connection, at the interest apparently being generated by the idea of introducing, with no change to the current weighting system, a provision which would prevent the constitution in the Council of a majority comprising Member States representing only a minority of the Community population, given that the very idea of such a majority is not only politically unrealistic, but quite simply arithmetically impossible in a European Union with fewer than 32 Member States;
  39. Advocates, in connection with future accession treaties, a minor adjustment of the weighting system solely intended to:
    - a. avoid too much levelling-out in the number of votes allocated to the Member States with medium-sized, small or very small populations;
    - b. maintain the current balances by means of the allocation of additional points to Member States particularly disadvantaged by the weighting system as a result of the impact of the enlargements;
  40. Takes the view that the Member States must focus on reaching agreement on a method for the objective assessment of the balances to be maintained and proposes, in that connection, the establishment of a fixed ratio linking two changing percentages: the percentage of votes in the Council held by the most populous Member States and the percentage of the total population of the European Union accounted for by those same Member States; the allocation of additional points to Member States with too few votes by comparison with their population would be determined by the fall in the ratio and would serve merely to restore it to its previous level;

### **Transparency**

41. Reiterates that, if the democratic requirement stipulating that the work of the Council must be transparent is to be met, the vote in connection with every substantive legislative, budgetary or implementing decision reached by the Council must take place in public, along with the accompanying deliberations and explanations of vote, with the exception of decisions in the sphere of the CFSP if the publication thereof would run counter to their effective implementation;
42. Calls on the Council to revise its internal Rules of Procedure accordingly with a view to abolishing the exceptions to the principle of publication set out in Article 7(5);

### **Implementation**

43. Reiterates its view that it should not be incumbent on the Council and its committees, but rather on the Commission, on the one hand, and the Member States, on the other, to implement legislative and budgetary decisions; draws attention, in this connection, to the terms of its resolution on comitology and emphasises in particular the need for symmetry between the rights of Parliament and the Council as regards the scrutiny of measures taken to implement legislative acts;
44. Urges the Member States to establish an effective hierarchy for the implementation of CFSP decisions, which will require:
  - the redistribution and unification within the Commission of responsibility for international action;
  - a greater role for the planning and early warning unit in the coordination of measures to implement CFSP decisions and the development of synergy between it and the Commission's international services;
  - consolidation of the political role of the High Representative, who should eventually become a member of the Commission;
45. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States and the applicant countries.

## B EXPLANATORY STATEMENT

### INTRODUCTION

There has been no proper all-embracing consideration in recent years of the issue of the make-up, structure and modus operandi of the various bodies or institutions - European Council, Council of Ministers, Coreper, and the specialist committees - which are involved in representing the Member States and acting on their behalf within the Union's institutional system. The cohesiveness and efficiency of these bodies has been steadily eroded by the following far-reaching developments:

1. pressure of numbers linked to the implementation of an ongoing enlargement process. This affects both the quality of these bodies' deliberations and their ability to make decisions, and highlights how ill-adapted they are to their executive role;
2. increased responsibilities resulting in the diversification of the Council's tasks, which has encouraged the emergence of specialist, autonomous decision-making networks that threaten the overall cohesiveness of Council action;
3. the emergence of variously-constituted areas of solidarity - Schengen, Monetary Union, defence and security - which involve bodies and decision-making procedures which concern only some of the Union's Member States.

The response of the Member States to these new challenges has been to take an excessively ad hoc approach to the institutional question. As Treaties and interinstitutional arrangements have succeeded one another, this approach has led to the rampant de-institutionalisation of the Union, a process whose salient features are:

- the undermining of the Community's decision-making bodies and channels, even by the Union's own highest authorities;
- a growing confusion of roles between the various bodies, leading for example to conferring Council of Ministers responsibilities on the European Council, Commission tasks on the Council of Ministers, and tasks which should be dealt with by Coreper on the specialist committees (the Political Committee or the K.4 Committee);
- the insidious duplication of the institutions and procedures provided for in the Treaties by informal networks and meetings, thus undermining the system's practical efficiency, legal security and democratic control;

If the European Union is to regain its cohesiveness, efficiency and democratic transparency, both the nature of the Council's role and the reform of the structures and procedures required by that role need to be subjected to scrutiny;

## I. THE ROLE OF THE COUNCIL

Article D of the Treaty lays down fairly clearly the role of the European Council as a driving force and a source of political guidelines. Article 145, on the other hand, is positively elliptical and incoherent as to what the Council does, and Europe's citizens would be hard pushed to deduce from it just what the institution's true nature actually is, or indeed its proper role and purpose, namely:

- to enact European Union legislation and implement the budget, on proposals from the Commission, a role it exercises jointly with the European Parliament; the way in which the roles are shared between Council and Parliament is becoming increasingly balanced as the Union develops;
- to work together with the Commission and the Member States in carrying out the governmental tasks of the European Union.

The governmental tasks of the European Union can be grouped under three headings, which need to be clearly distinguished if the tasks are to be rationally distributed between the three categories of players involved:

- proposals, which, if both their conceptual unity and technical and political coherence are to be guaranteed, can only be entrusted to an institution which operates on the basis of a functional distribution of tasks amongst its members and makes each of them responsible for a specific area of competence;
- decisions, which should be entrusted to a body which enjoys solid legitimacy throughout the territory of the Union, and is equipped with appropriate decision-making procedures;
- implementation, which should be entrusted to one or more bodies which possess the requisite administrative wherewithal.

As the political and institutional equilibrium of the Union currently stands the governmental, decision-making role within the Union therefore appears to fall on the shoulders of the Council - however little the rules governing the way in which the Union operates are appropriate to this state of affairs. But this does not mean that the Council should be seeking to replace the Commission and the Member States as far as the powers of initiative and implementation are concerned, unless it wishes to expose the Union to the threat of serious malfunction.

## II. STRUCTURES

### The European Council

The two quite different roles of the European Council of the Heads of State or of Government have not so far been properly distinguished. They are:

- a general role of providing the Union with 'impetus and guidelines'. This takes the form not of decisions properly speaking, but 'conclusions' adopted by common agreement. It thus constitutes an original *modus operandi* based on seeking consensus by means of deliberations which are both informal in judicial terms, and extremely ritualised from a cultural standpoint;



- a specific decision-making role which applies, de jure or de facto, to important decisions on procedures such as calling Intergovernmental Conferences, making appointments to certain Union posts, implementing Economic and Monetary Union, or, within the framework of the future Amsterdam Treaty, adopting 'joint strategies' in matters of foreign policy; in this role, the European Council is transformed into a kind of Council of Ministers meeting at head of state or of government level. Clearly, when exercising powers of this kind, the European Council cannot operate satisfactorily unless its decisions are submitted to rules of procedure and rules on majority voting analogous to those used in the Council of Ministers.

However, the balance between these roles, like the distribution of tasks between the European Council and the Council of Ministers, is being steadily undermined by the twin factors of the trivialisation and the de-institutionalisation of the European Council. It meets more and more frequently, particularly in informal summits, and it entrusts the real preparation for these meetings to a network of special advisors, a practice which tends to shortcircuit the relevant Council of Ministers. Furthermore, the European Council is more and more systematically dealing with issues which are the responsibility of Council of Ministers. The result is the European Council functioning as the Tour de France broom-wagon of the European Union and interfering with the normal operation of the Community institutions, even though it does not possess the procedural wherewithal nor the rules on decision-making to allow it to discharge the role it has taken upon itself efficiently.

### **The Council**

The ill-defined, piecemeal increase in the powers of the European Council stems directly from the fact that the General Affairs Council cannot play its proper coordinating role within the Council of Ministers, because the latter has fragmented into specialist groupings, in what has been called a spirit of 'sectoral corporatism'. The cohesiveness of the Council's actions is being undermined by the centrifugal effect of new policies, particularly in the field of economic and monetary union and the common foreign and security policy, the ever-closer inter-meshing of European and national policies, the proliferation of specialist Councils and the increasing powers of the Ecofin Council. These developments need to be resolutely combatted.

The reforms called for need to tackle both the make-up and the remit of the General Affairs Council. As regards the first, the General Affairs Council should comprise the government figures most closely involved, under the authority of their head of government, rather than, as a matter of principle, the foreign ministers. Otherwise, there is every likelihood that horizontal coordination will increasingly be the business of the Ecofin Council, and this will have serious negative spin-offs. The General Affairs Council will not recover its leading role as the premier council grouping unless its remit is extended to include certain procedural powers currently exercised by the Presidency: the drafting of the Union's programme of work, establishing the frequency and dates of other Council meetings and allocating work between the various councils. Giving the General Affairs Council 'powers over powers' within the Council will allow it to retain an overview of horizontal matters and rationalise the Council's work, thus ending the bad habit of having all the Councils of Ministers meet every six months.

### **The Presidency**

As further enlargements of the Union take place, they will increasingly affect the nature of the responsibilities of the Presidency of the European Union and the conditions under which it operates. An in-depth review of the institution's future is therefore essential.



The reforms normally suggested for the Presidency, however, seem inappropriate, namely:

- longer Presidencies, which would grotesquely over-extend the rotation cycle and administratively overburden certain states;
- sharing the Presidency between various States, which would undermine the unity of the institution and its ability to negotiate global agreements;
- breaking with (and thus attacking) the essential European Union principle of equality as far as the rotation of the Presidency is concerned.

What needs to be looked at is what tasks will continue to be carried out by the Presidency in the future: chairing the European Council Summits, Council of Ministers' meetings, and the plethora of committees and bodies which meet under the aegis of the latter, drawing up and negotiating certain political commitments and hosting the European Council. Feeding proposals to the European Council and the Council of Ministers, however, like the technical preparation of compromise arrangements and the task of effectively representing the Union abroad, can only be carried out by a body or a person that genuinely represents the common interest, enjoys a certain permanent status and has the appropriate administrative back-up.

For that reason, the respective responsibilities of the Presidency, the Commission and its President and, thirdly, of the High Representative for the common foreign and security policy will need to be more clearly defined in future. This presupposes appropriate reforms which will enable the Commission to recover the cohesiveness and authority eroded by successive enlargements and unwarranted sectoral fragmentation. It also presupposes that the President of the Commission and the High Representative of the common foreign and security policy should be eminent persons with a clear political profile.

### **The High Representative for the CFSP**

However, what the short term has in store is the negative impact of what the Amsterdam Treaty has introduced in the wake of the Maastricht decision on the Community pillars, namely a dichotomy between the Community procedures on the one hand and the common foreign and security policy procedures on the other, and thus, between the President of the Commission and the High Representative for the common foreign and security policy. There can be no doubt that the cohesiveness of the system demands that the High Representative 'return to port' i.e., be part of the Commission, whether as its President or as Vice-President in charge of coordinating international action under a special procedure for his appointment and his answerability to European Council.

### **The committees**

The proliferation of specialist committees set up by the Maastricht Treaty on the model of the Special Agricultural Committee - the Monetary Committee, the Political Committee, the K.4 Committee - is in part an inappropriate response to the way in which common policies have developed, and to the demand for coordination between States. In the last few years, this 'polysynodal' development, which has got out of hand, has made a major contribution to undermine Coreper, an irreplaceable tool for ensuring European Union cohesiveness; Coreper has seen its authority battered, while its power to ensure coordination has been alarmingly eroded.

The role of Coreper needs to be reaffirmed, and this means seriously questioning the roles taken on by the major specialist committees. Such a step merely reflects the provisions of Article 151 which

entrusts Coreper with preparing the work of the Council, a role which excludes - or ought to - any possibility of proposals being submitted to the Council which have not been considered by Coreper.

More essentially, we need to query the value of the two major committees set up by the Maastricht Treaty. The *raison d'être* of the K.4 Committee should largely disappear with the communitarization of a large part of the third pillar; it is in any case a largely superfluous administrative level between the reasonably smoothly functioning 'steering groups' and Coreper. As for the Political Committee, the results have not been convincing. No doubt its fundamentally hybrid nature prevents it from exercising any responsibilities satisfactorily: it lacks both the Community-based philosophy and the decision-making procedures which would enable it to provide the Council with genuinely joint proposals, and the political authority which would allow it to conclude proper intergovernmental agreements. More essentially, perhaps, the splitting up of the preparation of General Affairs Councils between Coreper and the Political Committee has led to a deplorable shrinkage of the Union's international action. The common strategies provided for by the Amsterdam Treaty run the risk - if they were to be prepared by the Political Committee outside Coreper - of being nothing more than merely diplomatic exercises, thanks to their being unable to mobilise the whole weight of the Union's political and budgetary resources.

### III. PROCEDURES

#### Proposal of legislation

The way in which the European Council and the Council of Ministers operate is becoming increasingly cumbersome as the membership of the European Union increases; efficiency requires that these institutions debate technically solid proposals for a decision, and this is not always the case, given the limitations placed on the Commission's monopoly on proposing legislation. The following three features are particularly noteworthy:

1. The way in which the second pillar is organised has prevented the establishment of any genuine power of initiative and proposal in the field of the common foreign and security policy, a situation which reflects the combined effect of the following four factors:
  - the fundamental error committed at Maastricht and renewed at Amsterdam, namely making the Council a body responsible for preparing and implementing its own decisions;
  - the Commission's prudence and the internal fragmentation of its international responsibilities, which have prevented it from taking up the place earmarked for it by the Treaties in the sphere of international action;
  - the splitting of the Union's international action into two self-sufficient pillars which act independently of one another, one covering economic, commercial, humanitarian and competition issues, and based on the sharing of responsibilities and cooperation between the Commission and Council, and the other for the common foreign and security policy, which is over-exclusively organised around the Council and the Member States;
  - the fact that the proposal of legislation is a wholly inappropriate role for the Political Committee and no joint unit for making proposals exists; the planning and early warning unit

currently being set up does not appear to be designed to fill this gap, since it will comprise one member for each State and will be no more than an additional Council working party.

2. The same applies to issues covered by the third pillar, where the Commission has only a shared and limited power of initiative and moreover has been exceedingly timorous in making use of that power.
3. A whole range of European Council or Council decisions, such as appointments to the most senior posts in the Union, are taken without any clearly defined procedural framework. The lack of such a framework has caused major political problems in the past.

The report is in favour of a certain number of reforms designed to make good the system's most glaring shortcomings. Nonetheless, it is quite clear that only by reforming the Commission, consolidating its power of initiative, and restoring the unified nature of its international role, as mentioned earlier, will provide the Union with a rational and efficient system for the proposal of legislation.

### **Qualified majority**

Any system governed by the rule that voting must be unanimous will find itself paralysed by pressure of numbers. Simple arithmetic shows how entropy increases in terms of the number of players involved. Faced with a yes/no option, the arithmetical probability of their achieving a unanimous position is as follows:

- with 12 players, one in 4 097
- with 15, one in 32 769
- with 30, one in 113 741 825.

Of course, the probability of 30 governments arriving at a political agreement is not limited to the combinations which arise from a random distribution of the answers to the question. However, the decision-making mechanism would remain to all intents and purposes blocked as soon as any Member State enjoyed a 'free veto', under the principle which was used in the old Polish Diét.

Moreover, it is positively paradoxical to see certain Member States calling for common policies, in the taxation or environmental spheres, for example, while rejecting the extension of qualified majority voting, an approach which risks transforming the European Community into a free-trade area where harmonisation takes place at the lowest common denominator.

There are two questions to be answered here. Firstly, should the principle of unanimity be abandoned for all decisions to be taken? Secondly, should qualified majority voting replace unanimity every time? The first question calls for a resounding affirmative. It is already intellectually dishonest - and it will only get more so - to seek to entrust the Union with tasks which it is denied the wherewithal to discharge. The answer to the second question needs to be more finely tuned, and calls for specific arrangements for decisions involving the common foreign and security policy and own resources<sup>(1)</sup>.

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(1) This is not the place to go into the issue of the procedure to be followed when revising Treaties.

More generally, your rapporteur believes that a systematic jettisoning of unanimous voting and a large-scale extension of qualified majority voting will force the Member States into doing some - hopefully rigorous - thinking about how to implement the principle of subsidiarity. Communitarising a policy while hamstringing it with a restriction as basic as the unanimity requirement is nothing but a sham, and the disappearance of this sham will oblige the Member States to look very hard at which sectoral policies should be handled at national level, and which at European level. In short, the debate about unanimity and qualified majorities will be replaced by an essentially new debate on the sharing of national and Community powers.

### **Weighting**

This report's attitude to the weighting of votes is thoroughly conservative. Here, nothing needs to be overturned; what is needed is to ensure that the Union of tomorrow and the day after tomorrow continues to uphold, as faithfully as possible, the current balances between two contradictory principles, namely the equality of European citizens and the equality of European states. Only insofar as these balances might be threatened by the purely mechanical transposition of weightings should there be any question of changing the system.

The idea envisaged in Article 1 of the Protocol on the institutions annexed to the Amsterdam Treaty should therefore be rejected, namely the idea of introducing, with no change to the current weighting system, the provision of a safety mechanism to guarantee that any qualified majority would have to comprise Member States representing a majority of the Union's population. The very idea of such a majority is not only politically unrealistic but quite simply arithmetically impossible in a Europe with fewer than 32 members.

What the report has advocated is a rule of thumb so that the system can be 'conservatively adapted' in as objective and unimpeachable a manner as possible by all the States concerned. The rule would consist of allocating additional points to Member States with too few votes by comparison with their population, so that the fall in the ratio would be restored to its present level.

#### **percentage of votes in the Council of the most densely populated States**

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#### **percentage of total Community population which resides in those States**

This ratio provides a reliable guide to the political and demographic balance achieved by the European Union as far as the weighting of votes is concerned. A mechanical transposition of weightings within an enlarged Union would see the relationship deteriorate with each successive enlargement, as shown below:

#### **The % ratio of votes in Council and % population**

	<b>% of votes in Council of the most heavily populated Member States</b>	<b>% of total European population</b>	<b>Vote/population ratio</b>
Europe of 12	63	83.4	0.75
Europe of 15	55	72.2	0.76
Europe of 20	51	76.7	0.66
Europe of 23	47.3	74.5	0.64
Europe of 27	47.3	74.5	0.63
Europe of 30	44.6	72.6	0.61

Too much levelling out in the number of votes allocated to the Member States with medium-sized, small or very small populations should be avoided when allocating votes to new Member States, as observed in the report.

### **Transparency**

Article 7(5) of the Council's internal Rules of Procedure imposes restrictive conditions on the principle of taking votes in Council in public; this seriously infringes the requirement for transparency enshrined in the Maastricht and Amsterdam Treaties. These restrictions should be abolished.

### **Implementation**

The report proposes a certain number of changes intended to guarantee two things with regard to implementation:

- equality between Parliament and Council with regard to committee procedures, pursuant to Parliament's resolution on the modification of the procedures for the exercise of implementing powers conferred on the Commission - 'committee' (Council decision of 13 July 1997)<sup>(1)</sup>.
- the implementation of a genuine structure for the implementation of the common foreign and security policy.

More generally, as has been stated, there is a need to ensure that the Council, the essential decision-making centre of the European Union, refrains from trying to take on the role of preparing and implementing its own decisions, since there is every evidence that it does not possess the wherewithal to do so for reasons which are not accidental, but structural.

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<sup>(1)</sup> B4-0801/98; Minutes of the sitting of 16 September 1998

**Minority opinion**  
**delivered, pursuant to Rule 136(10) of the Rules of Procedure,**  
**by Mr Georges BERTHU (I-EDN),**  
**vice-chairman of the Committee on Institutional Affairs**

The Bourlanges report on improving the decision-making process in the Councils considerably restricts its own scope by adopting a narrow approach: the aim is not so much to strengthen the central position of the Councils among the European institutions, but rather gradually to scale back their role. Recital E shows that the desired result would be a *'general model'* in which *'the Commission will develop into a genuine European executive, with the European Parliament representing the people (in the singular) and the Council representing the Member States'*.

The proposals set out in the report are thus confined to the technical functioning of the Council and, if they are broader in scope, tend to restrict its powers to the benefit of the Commission, as can be seen in the case of the High Representative for the CFSP (paragraphs 13 and 14). By the same token, the Council is refused any right to propose legislation (paragraph 22) and any strengthening of the scrutiny it might exercise over the Commission (our amendments to that effect were rejected). In its approach, therefore, this report supplements that by Mr Brok on the European Commission, a report we also challenged at the time.

For our part, we take the view that the spontaneous expansion in the role of the European Council over the last few years points the way towards a legitimacy which can immediately be recognised by the peoples of Europe. It would be paradoxical if this legitimacy were not used to the benefit of the Union, but instead merely stifled in shadowy structures centred on the Commission. It would also be paradoxical if the European Council's role as a source of impetus were to be acknowledged, whilst at the same time denying the subordinate Councils the right to propose legislation and exercise scrutiny over the Commission.

In our view, the aim should rather be to:

- strengthen the role of the Councils by defining more clearly their hierarchical structure and by giving them the right to propose legislation and exercise scrutiny over the Commission;
- incorporate, officially and without restriction, the Luxembourg compromise into all parts of the Treaty in order to ease the tension surrounding majority voting in those cases where it is permitted and facilitate moves to make the Community institutions more flexible;
- develop further the scrutiny which the national parliaments can exercise over the Councils.