

Institutions and Procedures: The Limited Reforms

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Introduction¹

The Intergovernmental Conference (IGC) which negotiated the Amsterdam Treaty was called under Article N(2) of the Maastricht Treaty. Article B in that Treaty referred to the IGC as a possible forum for considering whether the policies and forms of cooperation, which were introduced by the treaty, should be revised to ensure the effectiveness of the mechanisms and institutions of the Community. More specifically, Article 189B(8) mentioned the scope of co-decision as an item for the agenda of the IGC. The Treaty further mentioned Common Foreign and Security Policy (CFSP) (Art. J 10) and the role of the Western European Union (WEU) (Art. J 4(6)) as agenda items for the IGC. This, of course, included institutional issues, especially the question of whether the role of the Commission in the second pillar should be increased.

The European Council meeting in Brussels 10-11 December 1993 was more specific: the IGC should look at the role of the European Parliament, the number of members of the Commission, the weights of member states' votes in the Council and the efficiency of the institutions (*EC-Bulletin* 12-1993, point I.17). Thus, it was a clear idea from the outset that the role, composition and functions of EU institutions would be central items on the agenda.

The Context

Part of the context of the IGC was the upcoming eastern enlargement of the Union. Soon after the entry into force of the Maastricht Treaty, the EU went

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through its 4th enlargement. The end of the Cold War made it possible for three (formerly?) neutral countries, Austria, Sweden and Finland, to join the EU from 1 January 1995. This enlargement took place on the basis of the Maastricht Treaty. It was, however, agreed that further enlargements should await the next IGC, where the institutions should be adapted to allow for enlargement without weakening the EU institutionally (Laursen, 2001).

Over the years, the EU had been enlarged from the original six to now 15 members without radical change in the institutions. 10 Central and Eastern European Countries (CEECs) had applied for membership. So had Cyprus, Malta and Turkey. This opened the prospect of an EU with nearly twice as many members. How could such a Union be ensured of an adequate capacity to make and implement decisions?

Council Voting and the Presidency

The fourth enlargement, as mentioned, took place on the basis of the Maastricht Treaty. However, at each enlargement it has to be decided how many votes the new Member States get in the Council and what implications this will have for a qualified majority vote (QMV) and, by implication, how many votes will constitute a blocking minority. In this connection, a conflict broke out in the spring of 1994 about the redefinition of the QMV in the enlarged EU. Among the Twelve, a QMV was set at 54 out of a total of 76 votes. This meant that 23 votes constituted a blocking minority. With the existing weighting of votes this meant that two big Member States plus one small Member State (except Luxembourg) could form a blocking minority. During the negotiations with the four applicants (the three mentioned plus Norway which eventually did not join) it was decided to give Sweden and Austria four votes and Finland and Norway three votes each. This would have taken the total of votes to 90. On the basis of an extrapolation, it was suggested to set the new blocking minority at 27. The United Kingdom and Spain went against this. These two countries wanted to maintain the blocking minority of 23.

Eventually a compromise was found at the foreign ministers meeting in Ioannina, Greece, 26-27 March 1994 (*EC-Bulletin* 3-1994, points 1.3.27 and 28). The blocking minority was set at 27 on the condition that the Council would endeavour to reach a satisfactory solution in case there was a minority of between 23 and 26 votes against a proposal.

Since Norway did not join, the current EU has 15 members with a total of 87 votes in the Council. A QMV was defined as 62, implying a blocking minority of 26 votes, i.e. more than two big and one small state (see table 23.1).

Table 23.1: Council Voting.

	Number	Population (millions)	Citizens per vote (million)
Germany	10	81.7	8.2
United Kingdom	10	58.6	5.9
France	10	58.1	5.8
Italy	10	57.7	5.8
Spain	8	39.1	4.9
Netherlands	5	15.5	3.1
Greece	5	10.5	2.1
Belgium	5	10.2	2.0
Portugal	5	9.9	2.0
Sweden	4	8.9	2.2
Austria	4	8.1	2.0
Denmark	3	5.2	1.7
Finland	3	5.1	1.7
Irland	3	3.6	0.9
Luxembourg	2	0.4	0.2
Total	87	371.6	
Qualified majority	62		
Blocking minority	26		

Source: Simon Hix, *The Political System of the European Union*. New York: St. Martin's Press, 1999, p. 70.

The table shows that the existing weighting of votes is far from proportional. The big states are relatively underrepresented, especially Germany. The small states are relatively overrepresented, especially Luxembourg. Future membership of smaller countries like Cyprus, Malta, Slovenia and the Baltic countries would make this situation more visible. Thus, there was a need for changes in the weighting of votes in the Council.

Table 23.2 shows the votes the new members would get if the current system were to be applied. In a Union of 27 members a blocking minority would be 39, a number of votes which could be reached by the 10 Central and Eastern European countries (CEECs).

Another problem in connection with the Council was also discussed prior to the start of the IGC, viz. the Presidency. It was argued that the rotating Presidency caused problems for continuity and in view of the future enlargements, the question was asked whether all future small members would have the capacity to handle the Presidency. Some were less worried,

pointing to the fact that Luxembourg had been able to handle the job quite well. In respect to CFSP, the so-called troika had been created to represent the Union

externally. The order of rotation was further changed at the meeting of the European Council in Brussels in December 1993 to make sure that the troika always includes one of the bigger members, considered especially important for CFSP (*EC-Bulletin* 12-1993).

Table 23.2: Extrapolation of the Current Voting System to a Union of 27 Members.

	<i>Population (in millions)</i>	<i>Votes</i>
Union of 15	371.0	87
members	38.5	8
Poland	22.8	6
Romania	10.3	5
Czech Republic	10.3	5
Hungary	8.5	4
Bulgaria	5.3	3
Slovakia	3.7	3
Lithuania	2.6	2
Latvia	2.0	2
Slovenia	1.5	2
Estonia	0.7	2
Cyprus	0.4	2
Malta		
Union of 27	477.6	131
members		
Qualified majority		93 (70.99%)
Blocking minority		39 (29.77%)

Source: Commission Doc SN 612/96 (C 4)

Composition and Role of Commission

The composition of the Commission was also on the agenda. Already in the 1970s it was argued that the Commission was getting too big for the existing portfolios. After the fourth enlargement in 1995 the Commission had 20 members, two from the big Member States, Germany, France, UK, Italy and Spain, and one from each of the remaining Member States. Should each

future member, even very small ones like Cyprus, Malta and the Baltic states, have a Commissioner? Might the big Member States accept having only one Commissioner? Or was it time to stop thinking in national terms? After all, once appointed the Commissioners are supposed to represent the European interest and not take instructions from their home countries. Could one imagine the European Parliament appointing the Commission from a more political than national perspective? Or could one imagine groups of states sharing a Commissioner? Or should one move towards some kind of rotation?

The question of right of initiative was also discussed prior to the IGC. Could the first pillar's rule of exclusive right of initiative of the Commission be extended to the second and third pillars, where the Commission shared the right of initiative with the Member States? What about the European Parliament, should it also have a right of initiative? After all, such a right is normal in national parliaments.

The European Parliament

In relation to the European Parliament we also have the issue of the relative representation of the Member States (see table 23.2). How big should the Parliament be allowed to become? What is a just division of the seats?

A mini-reform took place in connection with the Brussels summit in December 1993 (*EC Bulletin* 12-1993)). The united Germany got an additional 18 seats, while Italy, United Kingdom, France and the Netherlands got extra six, Spain four, Portugal, Greece and Belgium one each. Ireland, Denmark and Luxembourg did not get additional seats. Maybe the most important development was that the principle of equal representation of the four largest members was broken, a principle so far especially emphasised by France. It was French insistence on the principle that had made a reform impossible at the time of the Maastricht negotiations.

The discrepancy between the representation of the big and small Member States, however, remains large. It takes 66,000 votes to get elected to the European Parliament from Luxembourg, while it takes 805,000 votes in Germany. This does not seem very just, and enlargement with many relatively small states would make this problem more visible.

The 1993 reform increased the total number of members of the European Parliament to 567. The enlargement in 1995 added 22 seats to Sweden, 21 to Austria and 16 to Finland, taking the total to 626 members of the European Parliament (MEPs).

Another question in connection with the European Parliament was the many legislative procedures that involved the Parliament in various ways.

For some questions, the Parliament is only consulted, for other questions, the so-called cooperation procedure applies which involves two readings in the Parliament, but not a real veto for the Parliament. The Maastricht Treaty introduced the so-called co-decision procedure (art. 189b) which gave the Parliament a veto on some legislation. There is also the assent procedure requiring the Parliament to accept certain decisions, especially enlargement and association agreements. For the budget there are separate procedures. It has all become very complicated and wishes for simplification were expressed from various sides.

The whole issue of democracy in the Union affects the role of the European Parliament in various ways. Should for instance the Parliament's influence on the nomination of the Commission be increased?

Table 23.3: European Parliament.

<i>Member state</i>	<i>Number of seats</i>	<i>Population (millions)</i>	<i>Citizens per EP seat</i>
Germany	99	81.7	826,000
France	87	58.1	670,000
Italy	87	57.7	659,000
United Kingdom	87	58.0	675,000
Spain	64	39.1	613,000
Belgium	25	10.2	404,000
Greece	25	10.5	420,000
Netherlands	31	15.5	500,000
Portugal	25	9.9	396,000
Sweden	22	8.9	400,000
Austria	21	8.1	386,000
Finland	16	5.1	319,000
Denmark	16	5.2	331,000
Ireland	15	3.6	240,000
Luxembourg	6	0.4	67,000
Total	626	371.1	

Source: Based on Simon Hix, *The Political System of the European Union*. New York: St. Martin's Press, 1999, p. 77.

The Pillar Structure

Questions relating to the pillar structure of the Union have institutional implications. Within the first pillar the so-called Community method is used. The Commission has an exclusive right of initiative, majority voting is possible in a number of cases and it is binding “legislation” which is adopted (regulations and directives). The European Court of Justice (ECJ) plays the role of a real court that makes binding judgements. Pillar two and three, on the other hand, have remained more traditional intergovernmental cooperation. The Commission plays a less important role. Decisions normally require unanimity. It is not “legislation” that is adopted and the ECJ normally does not get involved.

Those who would like to strengthen CFSP or Cooperation in Justice and Home Affairs (JHA) want to varying degrees to use the Community method for CFSP and/or JHA.

Report of the Reflection Group

According to the Reflection Group, which prepared the IGC, institutional changes should increase the citizens’ confidence in the European institutions. Reform should “improve the efficiency, democracy, and transparency of the Union” (Reflection Group, 1995b, 4).

More concrete proposals were often drafted in very careful language. Concerning the European Parliament “it seems appropriate to fix a maximum number of seats. A majority accept a maximum of 700 in an enlarged Union” (*ibid.*, p. 30). In respect to procedures a large majority was in favour of simplification, reducing them to the following three: consultation, co-decision and assent. It would also be appropriate to simplify the co-decision procedure.

Concerning QMV: “In the case of Community legislation, a large majority in the Group is prepared to consider making qualified majority voting the general rule, on grounds of efficiency, since it will facilitate decision-making” (*ibid.*, p. 33).

Concerning the weighting of votes, the Reflection Group was clearly split: “Several members point to a gradual deterioration in popular representation in the weighting of qualified majority voting as a result of the underrepresentation of the people of the more populous States and the growing number of less populous States in the Union” (*ibid.*, p. 34) “In the view of some the answer is a new weighting of votes that takes greater account of population. On the other hand, a system of double majority of votes and population has been suggested. Other members, however, did not endorse that analysis. They referred to the principle of the sovereign equality of states, suggesting that the population factor was adequately represented in

the representation of the European Parliament. They also found the problem false.” There was no systematic pattern of small-population countries forming coalitions against the large-population countries.

The Reflection Group was in favour of maintaining the Commission’s monopoly of legislative initiative. Concerning the composition of the Commission, the Reflection Group basically mentioned two options: (1) Maintaining a system involving Commissioners from all Member States, which would promote a feeling of belonging on the part of citizens or (2) “fewer than the number of Member States.” The number of really necessary portfolios should determine the size of the Commission. Pros and cons of the two options were presented.

It clearly was not decision time yet!

The IGC Agenda

When the IGC started in connection with the meeting of the European Council in Turin in the spring of 1996, the agenda was grouped in three main points: (1) a Union close to the citizens, (2) institutions in a more democratic and efficient Union, and (3) strengthened capacity for the Union’s external action (*EC Bulletin* 3-1996, point I.5). Questions relating to the Third pillar were included in the first group.

Among institutional issues the following were mentioned:

- Extent of majority voting, weighting of votes, threshold for QMV
- Commission efficiency and composition
- Role of ECJ and Court of Auditors
- Rules to “enable a certain number of Member States to develop a strengthened cooperation.”

The latter point became known as flexibility.

The various institutional issues during the IGC were dominated by four themes:

1. The wish to simplify and make the decision-making process more efficient.
2. The wish to strengthen the democratic basis of the Union. This led to various negotiations concerning the role of the European Parliament as well as national parliaments.
3. The wish of some countries to change the balance between the big and small Member States. Two issues were central: the composition of the Commission and the weighting of votes in the Council.

4. The wish to clarify and limit the role of the European Court of Justice especially pursued by the UK which, however, did not lead to any changes (Isaksen, Toft & Bødtcher-Hansen, 1998: 120).

Actor Positions

As the IGC got started, the Belmont European Centre in Brussels started following the positions of the actors. The results of questions addressed by Belmont to the actors are given in tables 23.3, 23.4 and 23.5.² They illustrate the situation in the spring of 1996. A quick consultation of the tables will show that much convergence of positions was needed before agreement could be reached on the institutional issues.

Table 23.4: Actor Positions Concerning Role of Commission.

Removal of sole right of initiative:

Yes: None

No: A, B, FIN, D, GR, IRL, I, LUX, NL, P, E, S, UK, Commission, EP

Don't know: DK, F

Reduce Commissioners to one per Member State:

Yes: A, F, FIN, D, GR, I, UK, Commission

No: B, DK, IRL, LUX, NL, P, E

Don't know: S

Change nomination of President:

Yes: F, GR, P, EP

No: A, FIN,

Don't know: B, DK, D, IRL, I, LUX, NL, E, S, UK, Commission

Change nomination of Commissioners

Yes: F, GR, Commission, EP

No: A, FIN, UK

Don't know: B, DK, D, IRL, I, LUX, NL, P, E

Change dismissal of Commissioners:

Yes: A, LUX, NL, Commission, EP

No: FIN

Don't know: B, DK, F, D, GR, IRL, I, P, E, S, UK

Reduce powers:

² One has of course to be aware of the limitation of these data. As pointed out by Andrew Moravcsik in a communication to the author: "(1) What is reported in the Challenge data are public positions. These may be strategic. (2) "Don't know" reports that the government has not determined preferences." In the latter case it may be that the government has not consulted civil society and figured out what the preferences are.

Yes: UK

No: A, B, DK, F, FIN, D, GR, IRL, I, Lux, NL, P, E, S, Commission, EP

Don't know: None

Source: Belmont European Policy Centre, *Challenge 96*, Issue 8, May/June 1996.

In respect to the Commission we note that none of the actors except the UK stated that it wanted to reduce its powers. No one wanted to abolish the exclusive right of initiative of the Commission. So on these points change should not be expected. Eight actors wanted to reduce the number of Commissioner to one per Member State, but seven were against. On nomination and dismissal of Commissioners, most actors answered "Don't know."

Table 23.5: Actor Positions concerning the European Parliament.

Increase powers:

Yes: B, D, GR, I, Lux, NL, P

No: None

Don't know: A, DK, F, FIN, IRL, E, S, UK Commission, EP

Decrease powers:

Yes: None

No: A, B, D, GR, IRL, I, LUX, NL, P, EP

Don't know: DK, F, FIN, E, S, UK, Commission

Increase involvement of national parliaments:

Yes: A, B, DK, F, FIN, GR, IRL, I, LUX, NL, P, UK, Commission

No: None

Don't know: D, E, S

Source: Belmont European Policy Centre, *Challenge 96*, Issue 8, May/June 1996.

Although seven actors were in favour of increasing the powers of the European Parliament and none were against there were still ten who answered "Don't know." Overall, however, it was not unlikely that the European Parliament might end up being one of the institutional winners from the IGC. The idea of increasing the involvement of national parliaments was supported by a large majority.

Concerning the Council there was a large majority in favour of increased use of QMV. The linkage to future enlargements probably had an effect here. Ten actors answered "yes" to the question of introducing population-weighted voting, but seven small states answered "no." Since the

question is very general, it might include a reweighting of votes, as well as the possibility of a double majority which would require a majority of the population in the EU as well. The idea of public legislative meetings was supported by 11 actors and opposed by none. All the talk about greater openness seemed to have had its effects, although there may have been more hidden opposition than the answers showed. Nine actors supported change in the Presidency system but their answers do not indicate what kind of changes.

Table 23.6: Actor Positions concerning the Council.

Increase qualified majority voting:

Yes: A, B, DK, F, FIN, D, GR, IRL, I, LUX, NL, P, E, Commission, EP

No: UK

Don't know: S

Introduce super-qualified majority:

Yes: A, P, EP

No: FIN, IRL

Don't know: B, DK, F, D, GR, I, LUX, NL, E, S, UK, Commission

Introduce population-weighted voting:

Yes: B, DK, F, D, I, LUX, NL, E, UK, Commission

No: A, FIN, GR, IRL, P, S

Don't know: EP

Make public legislative meetings:

Yes: B, DK, FIN, GR, IRL, LUX, NL, P, S, Commission, EP

No: None

Don't know: A, F, D, I, E, UK

Change in Presidency system:

Yes: B, DK, F, I, LUX, NL, P, S, UK

No: A, FIN, IRL,

Don't know: D, GR, E, Commission, EP

Source: Belmont European Policy Centre, *Challenge 96*, Issue 8, May/June 1996.

Early agreements

More than 75 official documents submitted to the IGC dealt with institutional issues. Certain institutional issues were solved relatively early during the IGC. This included the idea of an increased use of the co-decision procedure and a reduction in the number of decision procedures by eliminating the co-operation procedure (except for EMU not dealt with by

the IGC). There was also early support for the idea of simplifying the co-decision procedure. Finally, all Member States agreed to limit the number of seats in the European Parliament to 700. These early agreements were reflected in the draft treaty proposal presented by the Irish Presidency in December 1996 (Isaksen, Toft & Bødtscher-Hansen 1998, 120).

The Irish draft also included a draft protocol on the role of national parliaments which, with minor changes, went into the final treaty. It was especially France, the UK and Denmark which had wanted to strengthen the role of national parliaments (Isaksen, Toft & Bødtscher-Hansen 1998, 121.)

Small Versus Big: The Difficult Issues

When the Dutch Presidency took over in January 1997, the more sensitive issues remained and these were the issues which largely confronted the big and the small countries. The last months of the negotiations concentrated on three main issues:

1. The future size and composition of the Commission.
2. Changes in the weights of votes in the Council and threshold of QMV.
3. Expansion of the scope of QMV in the First Pillar (Isaksen, Toft & Bødtscher-Hansen 1998, 121) .

The three issues were linked, and it was thus a question whether a package solution could be found.

In respect to the Commission, a number of big Member States wanted to set a ceiling on the number of Commissioners. Especially France was pressing the issue, suggesting a ceiling as low as 10 Commissioners. This reduction would be combined with a system of rotation. Most small Member States, however, insisted on retaining a Commissioner from their country.

Concerning weighting of votes it was especially the UK, France, Italy and Spain that wanted a reweighting in favour of big states. Germany suggested a system of double majority, where the current system is combined with the requirement that a majority should include a majority of the citizens of the Union. The smaller Member States took a rather sceptical position on changing the voting weights.

On 11 February 1997, the Dutch Presidency presented a Non Paper on Reweighting of votes and the threshold in the Council decision-making process (CONF/3815/97). This document included two tables showing the evolution of the qualified majority and the blocking minority in terms of minimum of population (see tables 23.7 and 23.8).

Table 23.7: The evolution of qualified majority in terms of minimum of population.³

	<i>12 Member States</i>	<i>15 Member States</i>	<i>26 Member States</i>
Total of votes in the Council	76	87	132
Qualified majority expressed in number of votes	54	62	94
Qualified majority expressed in % of the total of votes in the Council	71.05	71.26	71.21
Qualified majority expressed in minimum of population necessary to achieve it (millions of inhabitants)	203.73	216.3	240.308
Minimum coalition of Member States	France, United Kingdom, Belgium, Greece, the Netherlands, Portugal, Spain, Denmark, Ireland	France, Italy, Spain, Belgium, Greece, Portugal, Austria, Sweden, Denmark, Ireland, Finland, Luxembourg	Italy, Poland, Rumania, the Netherlands, Greece, Czech Republic, Belgium, Hungary, Portugal, Sweden, Bulgaria, Austria, Slovakia, Denmark, Finland, Lithuania, Ireland, Latvia, Estonia, Cyprus, Luxembourg
Qualified majority expressed in % of the total population of the Union	63.21	58.3	50.29

³ Maintaining and extrapolating the current weighting system to a twenty-six Member State Union.

Source: CONF/3815/97 of 11 February 1997

Table 23.8: The evolution of blocking minority in terms of population.⁴

	<i>12 Member States</i>	<i>15 Member States</i>	<i>26 Member States</i>
Total of votes in the Council	76	87	132
Blocking minority expressed in votes	23	26	39
Blocking minority expressed in % of the total of votes in the Council	30.26	29.88	29.54
Blocking minority expressed in minimum of population necessary to achieve it (millions of inhabitants)	39.015	45.9	54.888
Minimum coalition of Member States	Belgium, Greece, Portugal, Denmark, Ireland, Luxembourg	Portugal, Sweden, Austria, Ireland, Belgium, Finland, Luxembourg	Portugal, Sweden, Bulgaria, Austria, Finland, Lithuania, Ireland, Latvia, Slovenia, Estonia, Cyprus, Luxembourg
Blocking minority expressed in % of the total population of the Union	<i>12.1</i>	<i>12.28</i>	<i>11.48</i>

Source: CONF/3815/97 of 11 February 1997.

⁴ Maintaining and extrapolating the current weighting system to a twenty-six Member State Union.

The tables show that moving from 12 to 15 member states a QMV declines from 63.21 percent of the total population to 58.3 percent. In a Union of 26 it would fall to 50.29 percent if the current weighting system was extrapolated. Interestingly enough the blocking minority did not change so much. It had represented 12.1 percent in the Union of 12, 12.28 percent in the Union of 15 and would be 11.48 percent in a Union of 26.

The non-paper in January was analytical. Only towards the end of the negotiations did the Dutch Presidency issue a note (CONF/3888/97 of 24 April 1997) which in two annexes included two variants of possible reweighting of votes in a Union of 15 and a Union of 26 respectively (see tables 23.9 and 23.10).

Table 23.9: Variants of a possible reweighting of votes in a 15 Member State Union.

<i>Member States</i>	<i>Variant I EU 15</i>	<i>Variant II EU 15</i>
D	25	12
UK	25	12
FR	25	12
I	25	12
SP	20	9
NL	12	6
GR	10	5
B	10	5
PORT	10	5
SW	8	4
A	8	4
DK	6	3
FIN	6	3
IRL	6	3
LUX	3	2
Total	199	97
QMV	142	69
Block. min.	58	30
QMV % pop.	61%	60%

Source: CONF/3888/97 of 24 April 1997

Table 23.10: Variants of a possible reweighting of votes in a 26 Member State Union based on the linear extrapolation of the figures contained in Table 23.7.

<i>Countries</i>	<i>Population (Million of Inhabitants)⁵</i>	<i>Variant I EU 26</i>	<i>Variant II EU 26</i>
D	81.538	25	12
UK	58.503	25	12
FR	58.020	25	12
I	57.268	25	12
SP	39.177	20	9
PO	38.390	20	9
RO	22.840	12	6
NL	15.424	12	6
GR	10.442	10	5
CZ	10.300	10	5
B	10.130	10	5
H	10.110	10	5
PORT	9.912	10	5
SW	8.816	8	4
BUL	8.770	8	4
A	8.039	8	4
SLK	5.350	6	3
DK	5.215	6	3
FIN	5.098	6	3
LITH	3.700	6	3
IRL	3.579	6	3
LAT	2.560	3	2
SLOV	1.950	3	2
EST	1.530	3	2
CYP	0.742	3	2
LUX	0.406	3	2
Total	477.809	283	140
QMV		201	100

⁵ The population figures for the 15 Member States in this column have been produced by EUROSTAT. The population figures for the prospective new accessions are derived from the most recent, available population census.

Block. min.		83	41
QMV % pop.		56.7%	57.6%

Source: CONF/3888/97 of 24 April 1997.

The suggested reweighting of votes was established by allocating votes to Member States in a decreasing scale subject to size of population. Both variants would result in a minimum level of support of +/- 60% of the total Union population and respect the current level of the threshold for the qualified majority (71.2%).

The proposals were discussed by the foreign ministers on April 29-30 without any agreement (*Agence Europe* 1 May, 1997). The Dutch chief negotiator during the IGC, Michiel Patijn, later told the press that the issue of reweighting had “raised a confrontation between small and large Member States without precedent in the Community’s history” (*Agence Europe* 16 May, 1997).

The question was left to the Amsterdam summit. None of the variants were accepted. The Belgians did not like suddenly having fewer votes than the Dutch. They referred to the equal treatment of Germany and France, which was maintained in the variants. The Belgian prime minister Jean-Luc Dehaene got quite angry with his Dutch counterpart Wim Kok and is said to have threatened to leave the meeting of the European Council (Kerremans, contribution to this volume). There was also the Spanish problem: The Spanish claimed extra compensation for losing a Commissioner since they had accepted fewer votes than the other big Member States in exchange for two Commissioners when they joined (Duff 1997, 133).

According to one account, France and Spain had been the countries pressing most for a reweighting of the votes (Svensson 2000, 165). The solution of double majorities was also discussed in Amsterdam, but France and the UK were against this solution which would have been to Germany’s advantage. President Chirac called the solution “dangerous” (*Agence Europe* 19 June, 1997).⁶

Concerning the extended use of QMV, all states, with the exception of the UK, agreed to the idea, but disagreement on which areas to include remained until the final decision on this in Amsterdam. In the end, the extension was not as large as expected since Germany at the last moment decided in favour of a shorter list.

But the main failure of Amsterdam was the fact that no agreement was reached on the two most central issues of the composition of the

⁶ There is an inconsistency here in comparison with the Belmont data.

Commission and the voting system in the Council. The Treaty included a *protocol on the institutions with the prospect of enlargement of the European Union* which stipulated that “At the date of entry into force of the first enlargement of the Union ... the Commission shall comprise one national of each of the Member States, provided that, by that date, the weighting of the votes in the Council has been modified, whether by reweighting of the votes or by dual majority, in a manner acceptable to all Member States, taking into account all relevant elements, notably compensating those Member States which give up the possibility of nominating a second member of the Commission.” Article 2 of the protocol further stipulated: “At least one year before the membership of the European Union exceeds twenty, a conference of representatives of the governments of Member States shall be convened in order to carry out a comprehensive review of the provisions of the treaties on the composition and functioning of the institutions.”

There was also a declaration relating to this protocol which said: “Until the entry into force of the first enlargement it is agreed that the decision of the Council of 29 March 1994 (“the Ioannina Compromise”) will be extended and, by that date, a solution for the special case of Spain will be found” (quoted from Duff 1997, 129). The reference to the Spanish problem afterwards was to be at the core of the Spanish ratification debate (Basabe Lloréns, contribution to this volume).

The protocol on institutions committed the EU to a new IGC to solve the unsolved institutional issues.

Summary of Institutional Changes

The widened scope of the co-decision procedure makes the European Parliament the big winner of Amsterdam. Most of the areas covered by the cooperation procedure were transferred to co-decision.

The *co-decision procedure* now applied to the following provisions:

New Treaty Provisions

Article (5)	Employment - Incentive measures
Article 119	Social policy - Equal opportunities and treatment
Article 129	Public health (former basis Article 43 - consultation) <ul style="list-style-type: none"> – minimum requirements regarding quality and safety of organs – veterinary and phytosanitary measures with the direct objective of protecting public health
Article 191a	General principles of transparency

Article 209a	Countering fraud affecting the financial interests of the Community
New Article	Customs cooperation
Article 213a	Statistics
Article 213b	Establishment of independent advisory authority on data protection

*Existing Treaty Provisions*⁷

Article 6	Rules to prohibit discrimination on grounds of nationality (cooperation)
Article 8a(2) ⁸	Provisions for facilitating the exercise of citizens' right to move and reside freely within the territory of the Member States (assent)
Article 51(2) ⁹	Internal market (consultation) – rules on social security for Community immigrant workers
Article 56(2) ¹⁰	Coordination of provisions laid down by law, regulation or administrative action for special treatment for foreign nationals (right of establishment)
Article 57(2) ¹¹	Coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons (consultation) Amendment of existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons (consultation)
Article 75(1)	Transport policy (cooperation) – common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States; – the conditions under which non-resident carriers may operate transport services within a Member State;

⁷ The procedure applicable before Amsterdam is indicated between brackets after the content of each Article.

⁸ The Council shall act unanimously.

⁹ The Council shall act unanimously.

¹⁰ As simplified (see CONF/4152/97)

¹¹ The Council shall act unanimously.

- Article 84 – measures to improve transport safety.
Transport policy (cooperation)
- sea and air transport
- Social policy Articles resulting from the transposition into the Treaty of the agreement on social policy (Article 2(2)), except for aspects of that Agreement which are currently subject to unanimity (Article 2(3)) (see Chapter 4 - Social pro-visions)(cooperation)
- Article 125 Implementing decisions relating to the European Social Fund (cooperation)
- Article 127(4) Vocational training (cooperation)
 - Measures to contribute to the achievement of the objectives of Article 127
- Article 129d Other measures (TENs) (cooperation) 3rd subpara.
- Article 130e ERDF implementing decisions (cooperation)
- Article 130o Adoption of measures referred in Articles 130k and l - 2nd subpara. research (cooperation)
- Article 130s(1) Environment (cooperation)
 - action by the Community in order to achieve the objectives of Article 130r
- Article 130w Development cooperation (cooperation).

QMV was extended to the following areas:

New Treaty Provisions

- Article 4 new Title on Employment - Employment guidelines
- Article 5 new Title on Employment - Incentive measures
- Article 118(2) - Social exclusion
- Article 119(3) - Equality of opportunity and treatment of men and women
- Article 129(4) - Public health
- Article 191a - Transparency
- Article 209a - Countering fraud
- Article 213a - Statistics
- Article 213b - Establishment of independent advisory authority on data protection
- Article 227(2) - Outermost regions
- New Article - Customs cooperation

Existing Treaty Provisions

- Article 45(3) - Compensatory aid for imports of raw materials

- Article 56(2) - Coordination of provisions laid down by law, regulation or administrative action for special treatment for foreign nationals (right of establishment)
- Article 130i(1) - Adoption of the research framework programme
- Article 130i(2) - Adapting or supplementing the research framework programme
- Article 130o - Setting up of joint undertakings in R&T development

Andrew Duff commented: “It may be regretted that the modest but respectable extension of the co-decision procedure was not accompanied at Amsterdam by the equivalent wider use of qualified majority voting in the Council. Indeed the mixture of co-decision and unanimity is bizarre ... (Duff 1997, 149).

The co-decision procedure was simplified *inter alia* by abolishing the third reading phase. If the Conciliation Committee fails to agree on a joint text, the proposal is dropped.

Amsterdam did agree on the 700 seats maximum for the European Parliament, one of the proposals that should prepare the EU for enlargement.

Explaining the Limited Results

Andrew Duff wrote:

The biggest surprise at Amsterdam was that Helmut Kohl pulled back from traditional German positions on QMV. Led by Bavaria, the Länder governments, which compose the SPD-led Bundesrat, were anxious to protect their prerogatives over areas of domestic legislation, particularly concerning the environment and immigration (Duff 1997, 155).

He went on to talk about bureaucratic politics in Bonn in the form of “turf battles about European policy, notably between the FDP-led foreign ministry and the CSU-led finance ministry” and continued:

The Chancellor himself was said to be preoccupied with the single currency project and unable to forge either a coherent or progressive German policy on institutional questions.

To that he further added:

Lastly, the shock election of a socialist-communist government in France on 1 June scuppered the usual Franco-German joint formulation of positions before meetings of the European Council (Duff 1997, 155).

According to this interpretation, a combination of domestic politics and lack of leadership explains the failure of Amsterdam in respect to institutions. Franklin Dehousse also mentions the special Belgian-Dutch problem:

... the Dutch presidency presented a reweighting that was favourable for the big Member States, but with some aspects which led to specific problems, amongst others in the Benelux countries (Dehousse 1999, 61).

Another participant observer, Bobby McDonagh, describes the final deadlock in this way:

Most delegations had a preference for the introduction of a dual majority system in the Council (to ensure that a qualified majority of votes in the Council would require also the support of Governments representing a specified percentage of the Union's population). A significant minority, however, preferred an actual reweighting of votes. Some on either side of this particular argument indicated that they were unable to compromise (McDonagh 1998, 193).

McDonagh went on to say that it was the view of some, himself included, that "a settlement there and then on these sensitive institutional questions was not beyond the reach of the Conference." He does not, however, offer an explanation of why it did not happen.

In the end, the most important explanation was probably timing. The issue was simply not sufficiently urgent to be solved quickly Tuesday night in Amsterdam when the heads of state and government finally got to that point on the agenda. Enlargement was still a few years ahead.

Concluding Remarks

Amsterdam thus finished without deciding on the reweighting of votes in the Council or the composition of the Commission, and there were some who felt that the increased use of QMV decided in Amsterdam was too limited. The unsolved issues became known as the Amsterdam "left-overs."

They all were related in various ways to issues of efficiency and legitimacy. The question of more QMV was first of all a question of efficiency. According to Andrew Moravcsik QMV can be seen as a “pooling of sovereignty” to create “credible commitments.” The second aspect of institutional choice to create credible commitment according to Moravcsik, viz. delegation of authority to supranational institutions like the Commission and ECJ, was much less at stake at Amsterdam, although of course the move of important parts of JHA cooperation from the third to the first pillar implies further delegation in those areas. So Amsterdam included both some pooling and some delegation of authority (for the concepts, see especially Moravcsik, 1998).

The question of weighting of votes turned out to be a real battle between the small and big Member States. It was of course a battle for influence. It took on the nature of a zero-sum game, which made it impossible to find a solution in Amsterdam in June 1997. In this connection legitimacy was at stake. For many Member States the underrepresentation of the big Member States would become too great a problem of legitimacy in a future enlarged Union. The issue was postponed, but most actors agreed that it had to be solved prior to or in connection with future enlargements in order for the Union not to lose too much legitimacy.¹²

¹² Eventually the issues were solved at the Nice summit in December 2000.

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