

EDITORIAL COMMENTS

The Vote on the Agricultural Prices: A New Departure?

The adoption of the agricultural prices for 1982 by a qualified majority in the Council was an historical event. It was, of course, by no means the first time a Council decision was taken by majority vote. It was, however, the first time a vote was taken against the wishes of a Member State which had formally invoked the Luxembourg compromise.

In view of the heated discussions sparked off by the vote, it might be useful to examine some of the legal and political aspects of majority voting within the Council.

Lawyers have always recognized the obligation to vote when there is a deadline for a Council decision, for example the adoption of the agricultural prices. It should be noted, however, that there is also an obligation to vote if the interests of the Community require that a decision be taken. The Community must weigh up the different interests involved. It must decide whether there are other interests to be protected which are more vital than those which the Member State invoking the Luxembourg compromise is claiming. It is legally incorrect to consider that the interests of the Member State asking for a postponement of the decision are always more worthy of protection than those of other Member States which require a decision. Examples of where the Community interest (represented perhaps by one Member State) outweighed the interests of the Member State blocking a Community decision may be seen in the case of the fisheries agreement with Canada or in the case of the distillation of wine to settle the French-Italian Wine War (both blocked for some time by the United Kingdom).

Why is it that deadlines and superior Community interests have not led the Council to overrule a Member State invoking the Luxembourg compromise?

The answers would seem to lie, firstly, in the fact that Member States are reluctant to ask for a vote in such circumstances as they are afraid of finding themselves in the same position of being overruled. Secondly, some Member States may be willing to accept that the Council does not act as they feel they can take the law into their own hands. The massive French aids to agriculture to compensate for the late decision on agricultural prices in 1980 is a case in point.

Whatever the legal arguments in favour of majority voting, the action by the Council was not motivated by legal considerations based on an obligation to vote when there is a deadline (though the deadline for the adoption of agricultural prices did bring pressure to bear on the Member States), nor was it motivated by a desire to put an end to the Luxembourg compromise. The fact was that a sufficient number of Member States (the necessary qualified majority) did not consider the Luxembourg compromise to be applicable in that specific case. The U.K. position of refusing to allow the agricultural prices to be adopted because of problems relating to its contributions to the Community budget was seen by the Member

States, with the exception of Denmark and Greece, as an abuse of the Luxembourg compromise.

It is interesting to note that the French and Italian delegations, in explaining their participation in the vote, declared that they still acknowledged the Luxembourg compromise, but that its objective had never been, and indeed could never be, to enable one Member State to paralyse the normal functioning of the Community which would have resulted in a fundamental change in its spirit and rules.

It is still too early to draw any definite conclusions from the experience of the vote on the agricultural prices. It is not clear under which circumstances the Luxembourg compromise may still be invoked. At the moment there is a climate of uncertainty and insecurity. If situations similar to those concerning the agricultural prices arise again, it cannot be ruled out that the Council might act once again by majority vote. One thing is obvious: there is no longer absolute certainty amongst the Member States that each of them will still be able to block a Council decision.

This uncertainty could be a positive development as regards the functioning of the Community institutions. The Council may well become more active; Member States will more readily be obliged to seek compromise solutions. However, there will probably be no dramatic changes. When a Member State invokes the Luxembourg compromise, voting will be the exception rather than the rule. The Community will, in general, continue to act by consensus.

This is not necessarily a situation to be criticized from the point of view of the functioning of the Community. One must be realistic. In the prevailing political climate, too frequent use of the vote could involve certain risks as it might result in Community decisions not being applied by a Member State which has been overruled.

This risk existed in May 1982. The Council found itself in a great dilemma over the agricultural prices. If it adopted a majority decision there was a risk that the U.K. would not apply it; if the Council failed to take a decision there was a risk that some Member States would adopt unilateral measures.

The Council in this case took the risk that the U.K. would not respect the decision. It was a gamble that paid off.

In conclusion, it may be said that it is unlikely that the Luxembourg compromise is dead; whether it is alive and kicking is uncertain! The exact conditions under which it may be invoked are unclear. The circumstances under which Member States are prepared to vote against another Member State are probably limited. The very possibility of a vote, however, may facilitate the Community decision-making process.

One final point must be made. The vote on agricultural prices stopped the Genscher/Colombo initiative. To assess whether that was a good or a bad thing would require an analysis of the initiative — and another editorial!