

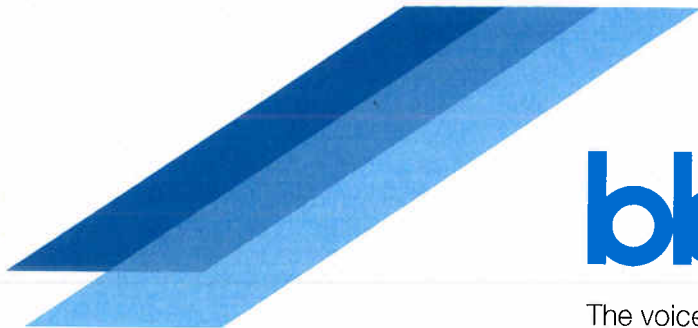
Eurozone Caucusing

A challenge to the European
single financial market?



The impact of the changes
in Eurozone governance on
financial services legislation

June 2014



bba

The voice of banking

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Foreword

The biggest economic challenge facing EU member states following the financial crisis is the implementation of policies that support sustainable growth and job creation. EU, government and industry studies have shown that deepening the Single European Market offers a growth potential that is achievable without further increasing public debt. At the same time there is good evidence that a stable and successful euro should improve the euro area's (Eurozone) economic prospects, a view shared by the UK Government given the interdependency of the UK and Eurozone economies.

Fears have been expressed that integration within the Eurozone might be at odds with the maintenance and development of the European Single Market, and especially the Single Market in Financial Services. The purpose of this note is to examine this potential clash and to suggest ways in which it can be mitigated. The paper's fundamental thesis is that the deepening and further liberalisation of the Single Market will benefit stability and growth in the Eurozone as well as member states outside the Eurozone. Any artificial division of Eurozone interests versus the interests of non-Eurozone countries ignores the powerful trade and financial links within the economy of the European Union. At the same time, the Eurozone will need to develop the necessary working structures to deal with internal Eurozone issues. Yet, it should be recognised that it is in the common interest of all EU Member States that any new working structures should not create divisions in Single Market decision-making.

There are particular risks here for financial service businesses in the UK. The UK provides the EU with a world class wholesale financial market, well placed to allocate capital throughout the EU and globally to support growth, jobs and prosperity. Britain now has one of the strictest financial regulatory regimes in the EU and a sophisticated regulatory and compliance culture. British participation is crucial for a well-functioning internal market in financial services. However, the understandable moves towards stronger Eurozone governance may make it more difficult for the UK financial sector to play a full role. For example, development of Eurozone caucusing, outside the EU-28 format, on matters that impact directly the Single Financial Market could, even unwittingly, damage its integrity.

If new Eurozone institutional structures were to be established, alongside the new voting rules in the Council of the EU, they could heighten the degree of alignment between Eurozone members and incentivise them to coordinate their engagement. This is perfectly reasonable and legitimate. But it would not be in the interests of the efficient functioning of the Single Market if such coordination was done to the detriment of other EU members. There is a risk that caucusing might be used to shape single market rules which fractured the integrity of the Single Market, e.g if they affected the location of activities.

In order to preserve the efficient functioning of the Single Market to the benefit of the EU as a whole, a series of measures are set out below that allow for more cooperation between the Eurozone "ins" and "outs" to complement the development of Banking Union and forthcoming Eurozone enlargement. The proposals are limited to financial services regulation but they may have resonance for the wider EU political and legislative framework.

Executive Summary

- New voting rules in the European Council that come into effect later this year will give the Eurozone countries a clear majority for the first time. Coupled with the potential creation of a new full-time President of the euro group this could create significant institutional and political momentum for greater Eurozone caucusing.
- We believe that the UK Government should resist any plans to move key responsibilities for financial services in the Commission into DG ECFIN.
- Appointing more top British officials into the EU institutions should be seen as an absolute priority for the UK during the negotiations on the new Commission. It is of real concern that compared to the EU population share of the UK (12.73%), the proportion of British AD staff¹ in the Commission is low (under 5%), but it is even lower in key areas such as DG Markt.
- The UK has lost a number of key MEPs from the ECON Committee in the European Parliament – substantially reducing British influence in a key area of national interest. The BBA hopes that all parties will make it a priority to secure membership of this crucial committee.
- We believe the UK Government should oppose discrimination within the single market on the basis of geographic location. It is vital that this principle be maintained and any move towards formal or informal location policy be challenged. The ECB proposal for Euro denominated clearing to take place in the Eurozone is a live example.
- If the UK is to successfully defend the Single Market against any Eurozone competence creep it will require an increasing insistence on the “community method” whenever possible. Intergovernmental agreements should include clear provisions establishing the principle of equal treatment between participating and non-participating Member States. In addition, Inter-Governmental Agreements should be classified as ‘special agreements’ under the provisions of Article 273 TFEU bringing them within the jurisdiction of the Court of Justice and a robust mechanism for settling disagreements.
- Due to the high impact of the implementation of new EU laws it is of the utmost importance that more attention and resources are provided to both the European Banking Authority and European Securities and Markets Authority. We would also suggest looking at amending ESMA voting rules to implement a double majority lock. These agencies are also important allies in maintaining the integrity of the single market.

¹ Administrator level staff, roughly equal to policy staff in the UK civil service.

Detailed Analysis

1. Eurozone crossing QMV threshold in Council

From 1st of November 2014, a so-called “double majority” in decision making among Member States in the Council will kick in under the Lisbon Treaty². Passing a legislative decision in Council will require agreement of at least 55% of the Member States (currently 16 countries), representing at least 65% of the EU population³. A blocking minority thus requires 35% of the EU resident population and at least 4 Member States.⁴

Under Protocol 35 on transitional rules, any Member State may request the return to the current QMV rules until the 31st of March 2017. Legally the request does not require justification of “core national interest” and may be used repeatedly; however constraints on its application in practice remain unknown. Considering the Council rules, it is very unlikely that a Member State could regularly request return to the old voting rules.

Implications for Eurozone Caucusing:

Under the current rules the Eurozone's 18 Member States (19 from 2015) are not able to form a majority among themselves. Under the new rules which come into force in November they will be able to form a clear majority.

During the transitional period, if a vote under the current rules is requested, it will be enough for Poland plus any single CEE country apart from Croatia to vote with the Eurozone to reach a majority. Thus a clear commitment of CEE countries led by Poland to join the Eurozone and Banking Union will create a bullet-proof majority for the Eurozone.

Possible current & future scenarios for Eurozone Caucusing (full table in Annex I)

full table included in Annex I	% of votes in Council until 31st Oct 2014	Number of votes until 31st Oct 2014	Population (EU residents, projection for 1st July 2013)	% of votes from 1st Nov 2014
EU28	100%	352	504,456,000	100.00
Eurozone	61.64%	217	331,724,000	65.75%
Eurozone (with Lithuania)	63.63%	224	334,680,000	66.34%
EZ + Lithuania, Poland & Czech Rep	74.71%	263	383,747,000	76.07%
Qualified Majority	73.86%	260	16 MS (55%) with minimum 327,896,400 population (65%)	65%

² Art 16 of TEU, Art 238 of TFEU and Protocols 9 and 35.

³ These thresholds only apply in case the proposal comes from the Commission or the High Representative – in all other cases QMV requires 72% of Council members, i.e. at least 21 Member States.

⁴ Recent Council regulation clarifies the meaning of population as the number of EU and third country residents living in a Member State, not the number of its citizens. The full impact of this will be reflected for the first time in the next annual Council decision on population.

2. Full time Eurogroup president

A full time Eurogroup President is becoming a likely political outcome after the elections as part of the new distribution of political posts. The job is currently held by the Dutch finance minister Jeroen Dijsselbloem and his appointment expires in July 2015.

Until now, the Eurogroup president has always been a sitting finance minister or even Prime Minister whose domestic tasks consumed most of their management attention. The Eurogroup has a small secretariat in the Commission which has never been well enough staffed to enable it to be an agenda setting force.

A full time president with adequate staff will be able and willing to drive a proactive agenda in the Eurogroup – including close participation in the discussion of legislative files together with the Council Presidency.

There are already signs of the Eurogroup being willing to engage actively in EU legislative negotiations:

- during the Cyprus crisis, the Eurogroup agreed capital controls, a major limitation on the internal market impacting EU citizens generally;
- the Eurogroup pre-agreed its position on a BRRD provision;
- during the last two SRM trilogues, the Eurogroup President joined the Presidency finance minister at the discussions
- the SRM was passed under the Single Market Treaty base (Art 114), creating a precedent with unpredictable consequences.

The Eurozone will cross the QMV threshold on the 1st of November 2014. If it starts discussing legislative files and coordinating its position prior to the Ecofin council meetings, this will significantly weaken EU decision making structures. Beyond the Ecofin Council, further “casualties” down the road may include labour and social affairs (Epsco) and industrial policy (Competitiveness) council formations.

The full-time president will be a significant step and should either be avoided or guarantees put in place for mitigating its impact. The Treaty is clear that the Eurogroup can define its own internal structure, thus non-Eurozone countries cannot stop its creation, but the “outs” should be vigilant and vocal as regards its impact on the Single Market.

3. Eurozone/Banking Union membership and national security considerations

The events in Ukraine moved security considerations back into the spotlight in Central Eastern Europe (CEE). This means that countries historically sensitive to changes in Russian foreign policy are looking at Eurozone membership from a new angle, as a security guarantee, a quasi "economic NATO". They see the sharing of a single currency with Berlin, Paris and other European capitals as a guarantee that would underpin the "correct interpretation" of Article 5 of the North Atlantic Treaty.

Marek Belka, the Polish Central Bank Governor who has previously spoken out against euro membership said in early March that Poland should reconsider its euro membership as an additional protection against instability⁵. The Polish Prime Minister has recently proposed an Energy Union to complement Banking Union⁶ and leading Polish politicians called for a debate next year about when to adopt the Euro.⁷ The new Czech Government decided to join the Fiscal Compact Treaty⁸, leaving the UK (and Croatia) as the only outs. Angela Merkel has repeatedly invited Poland to join the euro⁹ and most other Eurozone Member States have also been supportive of Eurozone enlargement since the crisis. (Though French politicians have been increasingly calling for a reduced "core-EU"¹⁰, it is unlikely that this would translate into action.)

Support for euro membership in Poland and the Czech Republic is still low so these countries are still years away from Eurozone membership, but the security considerations may tilt the balance towards speedier Banking Union membership, as an ante-room for Eurozone membership.

The ECB requires that countries who want to join the Single Supervisory Mechanism give 5 months advance notice. At the moment we do not expect any non-Eurozone Member State to join from the beginning. With the exception of the UK and probably Sweden, most non-Eurozone Member States are following a "wait and see" approach, negotiating with the zeal as if they were to become full members but waiting to see how it will work in practice.

Membership in the SSM will require SRM membership. Eight non-Eurozone Member States signed the Inter-governmental Agreement on the Single Resolution Fund in May. This does not commit them to participate in its arrangements, but it remains to be seen whether they will join in the future.

While actual Eurozone membership can take longer, moving closer to the Eurozone will also mean Banking Union membership in the short term that may eventually lead to the abolition of the 'double majority lock' in the EBA.

⁵ <http://online.wsj.com/news/articles/SB10001424052702304585004579416982256024704>

⁶ <http://www.ft.com/cms/s/0/91508464-c661-11e3-ba0e-00144feabdc0.html>

⁷ <http://www.reuters.com/article/2014/06/04/poland-euro-idUSL6N0OL3SU20140604>

⁸ <http://www.euractiv.com/sections/future-eu/czech-republic-makes-about-turn-joins-eu-fiscal-treaty-301118>

⁹ <http://www.bloomberg.com/news/2013-03-05/merkel-looks-east-for-austerity-allies-in-talks-with-hollande.html>

¹⁰ <http://www.eurointelligence.com/news-details/article/the-resurgence-of-euro scepticism-inside-the-ump.html>

4. New super-commissioner(s)/euro-commissioner

The TFEU defines that the Commission shall act by the majority of its members and that the Commission shall adopt its own rules of procedures. However the internal organisation of the Commission and distribution of portfolios among commissioners is decided by the Commission President alone. This gives a lot of freedom for the President to create and change the internal organisational structures.

At the moment, Commission Vice Presidents don't have significant extra powers compared to other commissioners, but there are plans in the Commission to enhance its efficiency and policy coordination (including bringing some "independent-minded" DGs back into line) by creating clusters of commissioners working on similar issues, possibly overseen by a "lead-commissioner".

There have been rumours of an EMU commissioner focusing in one position all policy coordination that relates to the Euro and EMU.

Depending on how the portfolios are divided between Commissioners there are different options for the future of financial services units currently located mostly in DG MARKT¹¹, with some functions in DG ECFIN¹²:

- the financial services units may be merged into DG ECFIN
- the financial services units from DG MARKT and ECFIN may be merged into a new DG.

Any solution that moves financial services away from the single Market focused DG MARKT may be seen as a move towards more Eurozone focus in their work.

A stable and strong euro area is a key interest for the UK and this understandably involves the necessary working structures to deal with internal Eurozone issues. As the example of Cyprus shows, it is very easy to slip into areas that have a direct impact on the Single Market. Therefore we think it is of utmost importance to structure the relevant Commission services in a way to preserve the Single Market focus and to keep separate Eurozone work streams to a minimum.

¹¹ http://ec.europa.eu/dgs/internal_market/docs/organigramme/organichart_en.pdf

¹² http://ec.europa.eu/dgs/economy_finance/organisation/ecfin_org_chart_en.pdf

5. Supervisory caucusing

Background on the Lamfalussy process

The big financial services files adopted following the crisis contain mostly general provisions, while the detail is elaborated at level 2 either as Commission delegated or implementing acts (where the exercise of the delegation requires policy choices) or as binding technical standards produced by the ESAs (where the matter is strictly technical).

Under the provisions of Articles 290 TFEU and 291 TFEU the Commission must present delegated and implementing acts to the Council and European Parliament which have the power to block or revoke the exercise of the delegation by qualified majority and absolute majority respectively. If no such action is taken then the delegated act enters into force within the timeline set by the level 1 text. There are not yet any examples of the Council or Parliament blocking such a measure (although on EMIR the European Parliament came very close to this on one occasion).

Regulatory Technical Standards and Implementing Technical Standards are specified in the level 1 text and are developed by the appropriate ESA following public consultation. The draft standard must be provided to the Commission for endorsement.

At level 3, the European Supervisory Authorities (ESAs) also have a role in developing guidelines and recommendations on the application of specific aspects of level 1 text. Such guidelines are directed at the relevant competent authorities in Member States and are made on a 'comply or explain' basis. At level 4, the Commission (with support from the ESAs) is responsible for the ensuring transposition of directives by Member States and compliance with legal requirements.

The missing double majority?

As the SSM and the SRM enter into force, the ECB and the Single Resolution Board will provide for uniform interpretation of rules across the Eurozone. In its Financial Integration Report, the ECB has noted that the "SSM represents a significant (indirect) move towards a common supervisory framework in securities markets"¹³. This can create a pre-aligned position of Eurozone supervisors in the ESAs, which raises the question whether an EBA-style double-majority lock should be created in ESMA and EIOPA.

Out of the three ESAs, the European Banking Authority, as a result of the development of banking union, has seen its rules amended in 2013 to insert a double majority lock¹⁴. The European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) are still under the original voting rules, meaning qualified majority of Member States as in the Council. Therefore the new Council voting rules that kick-in in November (see point 3) will trigger a Eurozone majority in ESMA and EIOPA, but not in EBA.

Clarification of the Meroni-rule

The short-selling decision has provided some clarity around the interpretation of the Meroni-rule by the ECJ and the extent to which it is willing to accept transfer of powers to the ESAs.

It is to be seen, to what extent the Commission will consider this judgement in its pending review of ESA reform.

Due to the high impact of level 2 rules, it is of utmost importance that more attention and resources are provided for implementation work. This would mean an increase of staff at EBA and ESMA and the possible future amendment of ESMA voting rules with the implementation of a double majority lock.

¹³ <http://www.ecb.europa.eu/pub/pdf/other/financialintegrationineurope201404en.pdf> (pages 111-112)

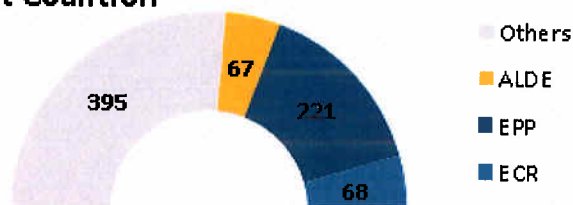
¹⁴ Any decision by QMV requires also a simple majority of Eurozone « ins » and also a simple majority of « outs »

6. Political dynamic in the new European Parliament

The European Parliament has always been the champion of the “community method” that argues for decisions to be taken in an EU-28 format instead of inter-governmental solutions. In theory, this makes the European Parliament a natural ally for Britain in countering Eurozone caucusing. However, the new political dynamic in the new European Parliament may further weaken British influence over financial services legislation. Due to the stronger Eurosceptic fringes, who refuse to engage in policy work, the previously available three options for achieving a majority have been reduced to only one option:

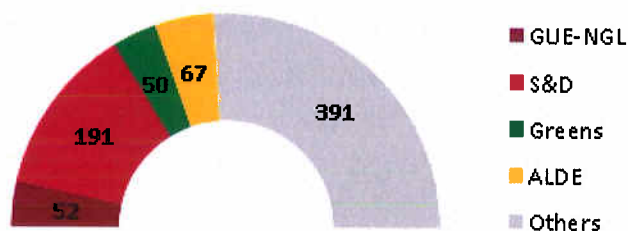
- “Six-Pack Majority”: the majority of the centre-right (EPP + ECR) together with the liberals (ALDE) has disappeared. This was used to outvote the socialist group on the Economic Governance package called Six-Pack.

**Centre-right Coalition
+ALDE**



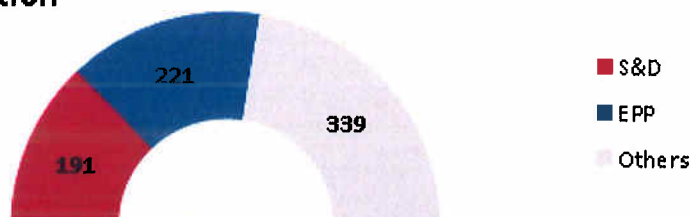
- “Civil Liberties Majority”: the majority of the left (S&D, Greens/EFA, GUE/NGL) together with the liberals, often used in civil liberties issues, has also disappeared. Though this was a fragile majority, as the vote on the Italian press freedom resolution has shown.

**Centre-left Coalition
+ ALDE**



- “Grand Coalition”: the only option left is for the S&D and EPP to join forces and find a majority. This option worked especially well in the past when there was a Grand Coalition in Germany and the group leaders were Germans themselves.

Grand Coalition



There is currently a Grand Coalition in Germany and both the EPP and S&D have German group leaders. The ECON Committee is also likely to see a strong German and Italian presence. While this strengthens German and Italian influence, it significantly weakens British influence: The experienced Labour MEPs who were full members of ECON (Arlene McCarthy and Peter Skinner) have left the European Parliament as has Liberal Democrat MEP Sharon Bowles who chaired the committee. The BBA hopes that all parties will make it a priority to secure membership of this crucial committee.

What can the UK do to maintain institutional balance?

The political decision on the European Commission President will include a legislative programme for the new European Commission. Drafting is currently under way in all three EU institutions.

The conclusions of the European Council meeting of the 26-27 June will also include some important political messages for the Commission.

These drafts provide an immediate vehicle for the UK and other non-Eurozone governments through which to feed in some proposals that underline their commitment to uphold the unity of the EU and to follow the "community method".

Promoting the integrity of the Single Market

- Favouring the Community Method¹⁵ and the Ordinary Legislative Procedure against intergovernmental solutions
The "community method" is sometimes seen as contradicting short-term British political objectives and the inter-governmental method may offer easier solutions. Even so, the strategic aim of defending the Single Market against any Eurozone competence creep will require an increasing insistence on the "community method" whenever possible. Intergovernmental agreements should include clear provisions establishing the principle of equal treatment between participating and non-participating Member States. In addition, IGAs should be classified as 'special agreements' under the provisions of Article 273 TFEU bringing them within the jurisdiction of the Court of Justice and a robust mechanism for settling disagreements.
- The impact of a full-time Eurogroup President
A full-time Eurogroup president would be an important development. If this post is created, the UK may want to argue for guarantees (e.g. political agreement that legislative issues will be discussed in Council formats, not in the Eurogroup) to be put in place to mitigate its impact. The Treaty is clear that the Eurogroup can define its own internal structure, thus non-Eurozone countries cannot stop its creation, but the "outs" should monitor its impact on the efficient functioning of the Single Market. The upcoming European Council conclusions offer an opportunity to highlight any UK concerns about the Eurogroup aligning its positions on legislative files.
- A more rigorous approach to the ESAs
The ESAs are an important and welcome addition to the European financial services landscape and have the potential to operate as champions of the single market. Experience to date shows that the ESAs have been held back by unclear guidance on their remit when European institutions are agreeing new legislation, known as Level 1. There are also issues with inappropriate timetables for developing technical standards, insufficient independence from the European Commission, inadequate resources and a lack of transparency and engagement with stakeholders. There is also a perceived risk that Eurozone integration could result in undue influence over decision making. The ESAs are currently the subject of a statutory review and a number of – UK initiated – challenges at the ECJ. This gives an opportunity to position the ESAs to ensure they support the development of the single market as a whole. This might be achieved by:
 - Bringing greater clarity to the respective remits and roles of the ESAs to ensure there is an appropriate delineation between tasks undertaken by the EBA and those within the remit of ESMA. [e.g. developing a principle that issues such as client money should be dealt with by the EBA]
 - Ensuring the framework for the delegation of competences at Level 1 is precise and detailed, as agreed in the June 2009 ECOFIN conclusions. Note, for example, the powers under MIFIR which introduce temporary product intervention powers for the EBA and the parallel to the short selling powers available to ESMA which were subject to unsuccessful UK challenge before the ECJ.
 - Enhancing the ESAs peer review function and reviewing the circumstances in which binding mediation powers should be exercised
 - Increasing the resources available to the ESAs to permit them to fulfil their mandates
 - Considering whether the EBA double-majority lock should be replicated for the other ESAs

¹⁵ http://europa.eu/legislation_summaries/glossary/community_intergovernmental_methods_en.htm

- No discrimination within the single market on the basis of geographic location
The concept of reliance on the authorisation of providers of financial services in a different member state is fundamental to the single market and is what differentiates it from a customs union or trading bloc. It is vital that this principle be maintained and any move towards formal or informal location policy be challenged. The ECB proposal for Euro denominated clearing to take place in the Eurozone is a live example. The powers under Article 17 of the Bank Recovery and Resolution Directive for resolution authorities to impose changes to bank structure to address concerns relating to resolvability are an example of where this issue might arise in future.

A neutral and balanced Commission

- Geographical balance restored in DG Markt by increasing the number British officials and managers
EU civil servants and Commissioners are not supposed to consider national interests of their country. Still, culture, acquired knowledge and networks frame the understanding of problems and the proposed solutions even in the best managed bureaucracies. Nevertheless, it is of concern that compared to the EU population share of the UK (12.73%), the proportion of British AD staff in the Commission is low (under 5%), but it is even lower in key areas such as DG MARKT. Restoring the geographical balance by appointing more top British officials should be seen as an absolute priority for the UK during the negotiations on the new Commission.
- Opposing any detrimental changes to the DG structure in the Commission
It is of utmost importance to maintain the structure of the relevant Commission services dealing with financial services so that their work is permeated with the priority of preserving the Single Market focus. We suggest that the UK Government should pro-actively defend the unity of DG MARKT and oppose any plan to move financial services units out of it. It would be a mistake to move the work e.g to DG ECFIN, which has quite different priorities.

New dynamics in the European Parliament

- As a result of the European Parliament elections, the political dynamic in the new European Parliament has fundamentally changed compared to the pre-election European Parliament, threatening to weaken even further British influence over financial services legislation. Due to the stronger Eurosceptic fringes, many of whom refuse to engage in policy work, the previously available three options for achieving a majority have been reduced to only one option only, which is the Grand Coalition of EPP and S&D. This option worked especially well in the past when there was a Grand Coalition in Germany and the group leaders were Germans themselves. (This situation seems to be repeating itself –there is currently a Grand Coalition in Germany and both the EPP and S&D have German group leaders.) The experienced Labour MEPs who were full members of ECON (Arlene McCarthy and Peter Skinner) have left the European Parliament as has Liberal Democrat MEP Sharon Bowles who chaired the committee. The BBA hopes that all parties will make it a priority to secure membership of this crucial committee.

¹⁶ Administrator level staff, roughly equal to policy staff in the UK civil service.

Annex I

Change of voting rules in the Council from the 1st of November 2014

Country	% of votes in Council until 31st Oct 2014	Number of votes until 31st Oct 2014	Population (EU residents, projection for 1st July 2013)	% of votes from 1st Nov 2014
Germany	8.2	29	80,640,000	15.99
France	8.2	29	66,616,416	13.21
United Kingdom	8.2	29	64,231,000	12.73
Italy	8.2	29	59,789,000	11.85
Spain	7.7	27	46,958,000	9.31
Poland	7.7	27	38,548,000	7.64
Romania	4.0	14	19,858,000	3.94
Netherlands	3.7	13	16,795,000	3.33
Belgium	3.4	12	11,162,000	2.21
Greece	3.4	12	10,758,000	2.13
Portugal	3.4	12	10,609,000	2.10
Czech Republic	3.4	12	10,519,000	2.09
Hungary	3.4	12	9,894,000	1.96
Sweden	2.8	10	9,595,000	1.90
Austria	2.8	10	8,477,000	1.68
Bulgaria	2.8	10	7,261,000	1.44
Denmark	2.0	7	5,612,000	1.11
Finland	2.0	7	5,436,000	1.08
Slovakia	2.0	7	5,413,000	1.07
Ireland	2.0	7	4,662,000	0.92
Croatia	2.0	7	4,258,000	0.84
Lithuania	2.0	7	2,956,000	0.59
Slovenia	1.1	4	2,062,000	0.41
Latvia	1.1	4	2,011,000	0.40
Estonia	1.1	4	1,283,000	0.25
Cyprus	1.1	4	888,000	0.18
Luxembourg	1.1	4	542,000	0.11
Malta	0.8	3	419,000	0.08
Total	100 (99.6)	352	504,456,000	100.00
Eurozone (18 MS)	61.64%	217	331,724,000	65.75%
Eurozone with Lithuania (19 MS)	63.63%	224	334,680,000	66.34%
Qualified Majority	73.86%	260	16 MS (55%) with minimum 327,896,400	65%