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Federal Trust Policy Commentary

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Asylum, immigration and qualified majority voting

In preparation for the Hague European Council of'Heads of State and Government this November, the British Government has announced that it will support a proposal for the Council of Ministers to adopt future legislation on asylum and immigration matters by qualified majority vote and not, as they have until now, by unanimity. Inevitably the British government has been accused by its opponents of wantonly giving up a crucial veto right and acquiescing in a change that ultimately will harm the British people. Every part of this criticism deserves further examination.

In 1997, during the negotiations on the Treaty of Amsterdam, Germany, under pressure from its *Länder*, insisted that decisions relating to asylum and immigration were to be agreed unanimously in the Council of Ministers. With some exceptions relating to visa rules and from most of which Britain has already 'opted out,' this has remained the position until now. The present proposal to change existing arrangements stems from a hitherto unused provision of the Amsterdam Treaty, the so-called 'passerelle clause' According to this clause, from 2004 the Council can unanimously decide to introduce qualified majority voting into decision-making on proposals relating to immigration and asylum.

The draft multi-annual programme drawn up by the European Commission and proposed to the next European Council asks the Heads of State and Government to instruct their ministerial colleagues in the Justice and Home Affairs Council of Ministers (which is responsible for asylum and immigration issues) now to apply this 'passerelle' provision. The proposal is to move to qualified majority voting in the Council for all matters relating to immigration and asylum as soon as possible and no later than April 2005. Since the European Council only acts on a consensus basis, the British government would be able, if it wished, to block this proposal, at least in the short term. It has decided not to do so for two principal reasons. The first is its existing ability to opt out of any new European legislation it wishes in the field of asylum and immigration matters. The second reason is its desire, far from opting out from all legislation in the fields of asylum and immigration, on the contrary to ensure the new arrangements in this field which it favours are adopted as quickly and effectively as possible.

Even under a regime of extended qualified majority voting, the UK will still decide on a case by case basis whether it wishes to participate in discussions leading to new legislation on immigration and asylum. This decision will then be subject to scrutiny in Westminster. There is no reason at all to believe that an extension of the qualified majority voting procedure to immigration and asylum matters will put Britain's general right of opting out in these fields. The position is clearly set out in the protocol agreed at Amsterdam and reiterated in the European Constitution.

Ironically, given the obsession of much British public and political opinion with preserving national vetoes at all costs, it is in the clear interest of Britain to obtain qualified majority voting at least in some areas of immigration and asylum policy. As one of the largest receiving countries in terms of asylum applications the UK is pressing for better European arrangements on the treatment of asylum applications and on burden sharing between the member states. Under majority voting, small minorities of member states will no longer be able to oppose proposals that the UK would like to see adopted. Switching to qualified majority voting on some asylum and immigration issues is a powerful example of the way in which majority voting can often help the national interest of individual member states. Britain's relatively large population entitles her to substantial voting strength when matters are to be decided by the EU's qualified majority voting system, which attributes more votes to larger than to smaller member states. This advantage is lost when matters are decided by unanimity. When every member state has a veto, Britain's voting strength is equivalent to that of Malta or Luxembourg.

The European Constitution in any case provides for qualified majority voting and the co-decision procedure with the European Parliament on all measures relating to asylum and immigration, with the British opt-out remaining as before. It may well be that this fact has weighed with the British government in its decision now to accept changes which anyway will be brought in by a ratified European Constitution. In reality, Britain has not found it unduly difficult in recent years to work together with its European neighbours on questions of asylum and clandestine immigration. It has chosen to opt in to the great majority of new European legislation in this field.

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