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Anne Victorine Weiler

**Luxembourg in the European Union:  
The Smallest Member State in the Council of Ministers**

Thesis submitted for the acquisition of a  
Master of Arts in European Politics

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## **Abstract**

The present M.A. thesis deals with the status and the distinct role that Luxembourg can carve out for itself in the current, post-Maastricht institutional and decision-making framework of the European Union (EU). Our aim is to understand the way Luxembourg operates in the EU's central decision-making body, the Council of Ministers. We do not analyse the policy output and its effects on Luxembourg but the formal and informal features of the Council of Ministers and Luxembourg's interaction with it. In view of the weaknesses that small-state status confers on Luxembourg, the small state has a persistent interest in finding strategies for managing smallness. Like other small states, the Grand-Duchy of Luxembourg sees its small-state predicament best resolved by cooperating at international level. In this respect the institutional and legal framework of the European Union offers unique benefits. The Council of Ministers is the central decision-making institution of the European Union and the institution via which Luxembourg's negotiating status and behaviour is analysed. The principle of equality of states and federal-type overrepresentation place Luxembourg in a particularly advantageous situation. Not only is the small state overrepresented but it also enjoys a disproportionately high influence under the current Council voting system. Things look different when it comes to exerting political weight. Still, Luxembourg has adopted a behaviour and strategies allowing it to overcome the weaknesses derived from its small size. It will be shown that the small state has important opportunities of action both when it acts in a neutral way and when it needs to defend important national interests.

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## List of Abbreviations

Art.	Article
BLEU	Belgo-Luxembourg Economic Union
CFSP	Common Foreign and Security Policy
Coreper	Committee of Permanent Representatives
EC	European Community
ECJ	European Court of Justice
Ecofin	Council of Economic and Finance Ministers
ECSC	European Coal and Steel Community
EEC	European Economic Community
EFTA	European Free Trade Association
EMU	European Economic Community
EP	European Parliament
EPC	European Political Cooperation
EU	European Union
Euratom	European Atomic Energy Community
GAC	General Affairs Council
GATT	General Agreement on Tariffs and Trade
GDP	Gross domestic product
GNP	Gross national product
IGC	Intergovernmental Conference
JCMS	Journal of Common Market Studies
JHA	Justice and Home Affairs
MEP	Member of European Parliament
NATO	North Atlantic Treaty Organisation
OECD	Organisation for Economic Cooperation and Development
OJ	Official Journal of the European Communities
OOPEC	Office for Official Publications of the European Communities
OSCE	Organisation for Security and Cooperation in Europe
PR	Permanent Representation
PU	Political Union
QMV	Qualified majority voting
SCA	Special Committee on Agriculture
SEA	Single European Act
SGCI	Secrétariat général du Comité inter-ministériel pour les questions de coopération économique européenne
Sq. km	Square kilometres
TEU	Treaty on European Union

*troika*

UK

UN

WEU

Group of three successive Council Presidencies

United Kingdom

United Nations

Western European Union



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Anne Weiler

Luxembourg, January 1999

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*Je ne suis ni optimiste ni pessimiste.  
Je suis déterminé.*

Jean Monnet

To Christian and my family

## Introduction

We are currently experiencing two opposing trends on the European continent: one characterised by integrative, the other one by disintegrative forces. On the one hand a trend towards globalisation as exemplified by the internationalisation of economic, political, defensive as well as environmental problems and the dedicated commitment to an integrated Europe finds its expression in the workings of the European Union (EU) and other transnational organisations. On the other hand the European continent witnesses some disintegrative forces. These became ever more obvious since the 1989 revolution of the international system leading to the breakup of the Soviet Empire and a few years later of Yugoslavia but also in the latent separatist tendencies of certain regions of Europe (e.g. regions in Belgium, France, Italy, Spain, Great Britain). These disintegrative forces have produced a proliferation of smaller states making small-state studies once more politically topical.

Along with the Gulf and the Pacific region Europe has a high number of small states, which has increased ever since 1989. Most of these smaller units are now striving for membership in one or more western international organisations of which military security within NATO and economic and political integration within the European Union are the most attractive forms. In this context, the small state of Luxembourg with a surface area of 2,586 sq. km and a population of 420,000, with a successfully achieved transition from a poor rural-agrarian society to a prosperous and highly efficient services centre, with a long experience within international organisations, could function as a model for other small European democracies. As a founding member of many Western European international organisations Luxembourg exemplifies small-state viability within the international system and the evidence that the answer to the small-state predicament lies in integration into larger units. Hence the smallest EU member state may well serve as a positive example in particular to those small states of Central and Eastern Europe and of the Mediterranean region that are currently applying for membership in the European Union.

Small-state studies are also topical in another respect. The anxiety expressed by leaders from larger EU member states fearing that a proliferation of small partners in an enlarged Union would tip the balance to the latter's favour, resulted in efforts to undermine the representational status of small states in the EU's institutional framework. The present thesis is written less from this perspective even if this aspect could not completely be ignored. By taking Luxembourg as a case study we shall show that European integration provides a strategy - in Luxembourg's case the only possible strategy - for managing smallness when surrounded by larger and more powerful states. The thesis deals more specifically with the distinct role the Grand-Duchy of Luxembourg, the smallest member state of the European Union, can carve out for itself in the current institutional and decision-making framework of the European Union as well as its motives and goals in doing so. The institution via which Luxembourg's

behaviour is analysed is the Council of Ministers of the European Union. The reason being that the Council of Ministers is the EU's most 'powerful' institution and the one in which the national input is most visible. As such it is the chief forum for the representation of national interests in the EU's institutional setup and the institution via which a small state like Luxembourg can most obviously exert any influence in the decision-making process of the European Union. Being the smallest member in the Council of Ministers, the question that interests us most is what behaviour and strategies Luxembourg has adopted in the European Union's central decision-making body to overcome inherent weaknesses derived from its small size. In order to answer this question, the thesis will

- analyse the influence Luxembourg exerts under the current institutional and decision-making framework of the Council of Ministers;
- study the behaviour Luxembourg has adopted and the tools and strategies it applies in the decision-making process of the Council of Ministers;
- explore the communication channels that have been established between the Grand-Duchy and the Council of Ministers;
- examine how Luxembourg reacts to institutional reforms affecting its status quo in the EU's institutional framework in general and in the Council's decision-making framework in particular.

To fulfil this task, Chapter One tries to define the concept of 'small state' for the purpose of this thesis, which cannot be done without resorting to a certain arbitrariness. It recalls some basic motivations for Luxembourg to join international organisations in general and the European Union in particular after having described the predicament that the small state faces in the international system under pre-membership conditions. It is shown that EU membership is an effective means for Luxembourg to manage its smallness. Active participation in the EU's central decision-making body, the Council of Ministers, is undoubtedly of great importance from a national angle for large and small member states alike. But what are the behavioural implications of small-state status in the Council of Ministers?

As the central importance of the Council of Ministers has been shown in Chapter One, Chapter Two goes into greater detail to describe the communication links between the Council and Luxembourg's capital. This is important for the following reason: an efficient co-ordination mechanism between the national and the EU level is crucial to formulate a consistent and coherent bargaining position in the Council of Ministers. By focusing on the main aspects of co-ordination of EU policies at home, and between the capital and the Council, we can assess whether Luxembourg's coordination mechanism is an inherent advantage or disadvantage that would weaken or strengthen Luxembourg's position in the Council decision-making process right from the start.

Chapter Three examines the influence Luxembourg has on Council decision-making and how it determines the country's negotiating status. We need to distinguish between two different sorts of 'influence': (1) the formal influence that the Council's institutional and decision-making framework - as set out in the Treaties - confers on the smallest member state, which seems to be disproportionate with regard to its small size and its pre-membership status; (2) the relative influence that lies in a state's ability to have the desired outcome on policy issues it has an interest in, and which is to be understood as the state's actual political weight.

Having established what negotiating status and influence Luxembourg has in the Council of Ministers, Chapter Four explores the small state's consequent behaviour with regard to two different situations: (1) when the country has no particular interest in a policy field ; (2) when it is determined to defend a vital national interest. The tools and strategies that Luxembourg uses to maintain, justify and strengthen its presence and position in the Council show that the country is not necessarily in a weak position when it interacts with larger states in the Council. It shows that small size can even provide a small member state with important opportunities of action which it consistently tries to exploit.

Chapter Five identifies the six-monthly Presidency of the Council of Ministers as an important task where a small EU member state has a disproportionate amount of influence. During this period of time the small state has a considerable impact on the running of Community business and its presence is most visible on the international stage, thus adding prestige and media attention to the small state. Chapter Four examines in greater detail how Luxembourg fulfilled the important task of running the Council for six months. It will be shown that some inherent weaknesses derived from small size, e.g. a small national administration, put a high pressure on Luxembourg and may constitute a weakness to fulfil the job successfully. Practical experience has, however, proved that what – on the surface - seems to constitute a disadvantage may provide the small actor with important opportunities of action. What were the determinants of the Luxembourg Presidencies' effectiveness in the past? What was the reason for their success? Examples taken from Luxembourg's 1991 and 1997 Council Presidencies will provide a close empirical illustration of how Luxembourg's leaders run the Presidency.

Chapter Six looks beyond today's situation to analyse how the small state's status and influence might be in a Council of Ministers of up to 27 members. An enlarged European Union will involve fundamental institutional changes for the Council of Ministers as well as for other EU institutions. An Intergovernmental Conference, launched in 1996 to meet the challenge of enlargement, was to prepare an institutional reform. We examine how this institutional reform and ensuing measures will affect

Luxembourg's status in the Council of Ministers and how the country's leaders react to any change of status quo in the European Union setup in general and in the Council of Ministers in particular. What institutional principles are of importance for Luxembourg? What solutions would be acceptable in an institutional debate that may well last into the next century?

Our aim is to understand the way Luxembourg operates in the Council of Ministers by way of empirical investigation. Hence the methods used to explore the topic are to a great extent empirical. The problem we are facing is twofold. First of all the Council of Ministers is an institution that has been so little researched although it is a pivotal institution of the EU. This is largely due to the secrecy that surrounds the Council meetings and the lack of 'transparency' for which this institution is infamously known, leaving the researcher too much dependent on the often allusive and incomplete information available from the media and on the scarce references made in the available academic literature. The second problem is of a similar nature but due to different reasons. Literature about Luxembourg and its foreign policy is equally scarce for the very reason that the country has no consistent literary tradition in the field of international relations. Consequently not much has been published on Luxembourg's status in the international system. Another reason being that those primarily interested in the research topic, i.e. small-state researchers, tend to generalise, one state serving as a case study for all. Primary sources such as official (and unofficial) EU documents, media information such as *Agence Europe* information - which provides good inside information and often reprints documents not otherwise available - were used for our research on the Council of Ministers. Primary information on Luxembourg's interaction with the European Union was gained from government speeches, memoranda, press articles, theses, and most importantly from interviews. Interviewees were, inter alia, Jean-Jacques Kasel, the former Luxembourg Permanent Representative with the European Union and Gaston Thorn, former President of the European Commission and former Luxembourg Prime Minister and Minister of Foreign Affairs. These interviews, which lasted between 30 and 100 minutes, provided an important insight into Luxembourg's formal and informal ways of interacting with the Council of Ministers.

It is important to note that the period under consideration in this thesis is the post-Maastricht period, the focus being on the Council as it operates today.<sup>1</sup> Hence we do not consider Luxembourg's status within the Council during the various phases of integration but its present-day status. By the same token, we do not analyse the policy output of the Council and its effects on Luxembourg but the formal and informal roles and functions of the Council of Ministers and Luxembourg's interaction with it, and its

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<sup>1</sup> At time of writing the Amsterdam Treaty had not yet been ratified by all member states and was hence not yet in force.

status within it. It is equally worth mentioning that although small states share common features within the institutional framework of the European Union, it is important to bear in mind the uniqueness of Luxembourg's position even among small states when reading the present thesis. Hence Luxembourg cannot serve as a case study representing all small EU partners. Not only is it much the smallest of the smaller EU member states, but it also has particular geopolitical, economic, socio-political and historical features that place limits on the scope for any generalisations.

# 1 Small States in the European Union

*Where there is no vision  
the people perish.*

Jean Monnet

European small states share structural weaknesses that are common to all of them even though they have a lot of historical, socio-political and economic dissimilarities. These inherent weaknesses conferred on them by their smallness places them in a disadvantageous position in the international system. Luxembourg is no exception as the following chapter will show. Luxembourg's history shows that the country constantly sought ways to overcome its weaknesses and to preserve its sovereignty. Today Luxembourg's leaders see the country's sovereignty best secured by integrating into larger units of which active participation in the European Union (EU)<sup>2</sup> is most important. In this respect representation in the Council of Ministers as the EU's central decision-making institution is crucial for Luxembourg to make its voice heard and to defend its interests. The following chapter describes the small-state predicament in the international system as well as the remedies found.

## 1.1 Does the Category 'Small State' Matter?

When writing from a small-state perspective, some clarification seems to be necessary to explain what the concept of 'small state' actually means.<sup>3</sup> In the 1960s and 1970s when the small-state discussion was at its height, many a student struggled with the question of categorising states leading to long debates about whether there are characteristics typical of small states and whether there is anything like a specific small state behaviour.<sup>4</sup> The core of the problem lies in the difficulty of determining what criteria or indicators should be applied to find in which 'category' a state belongs. Depending on what indicators students apply, they come up with differing definitions.

Quantifiable and objective criteria such as total land area, population, military capacities (defence expenditure) or Gross National Product (GNP) have been predominant in the early research as small state indicators. Similarly, quantifiable and objective criteria might be used for the purpose of this thesis. When approaching the

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<sup>2</sup> The term European Union or EU will be applied throughout this study to refer to the ECSC (European Coal and Steel Community), the EEC (European Economic Community), the EC (European Community), and the EU (European Union) unless specific reference is made to either the ECSC, the EEC or the EC.

<sup>3</sup> Some authors distinguish even further between 'small state', and 'microstate' or 'ministate'. The United Nations, an international organisation with an overload of small states, does not provide a definition for 'small state'. It does, however, define 'microstates' as such territories of less than one million inhabitants, which is the accepted yardstick now used at the United Nations (see S. Harden, (ed) *Small is Dangerous* (New York, 1985) p. 9.

<sup>4</sup> For a critical overview of the research history on small states see W. Christmas-Møller, 'Some Thoughts on the Scientific Applicability of the Small State Concept: A Research History and a Discussion' in O. Höll (ed) *Small States in Europe and Dependence* (Vienna, 1983) pp. 35-53.



small-state problem within the context of the European Union, in particular the Council of Ministers, the weighted votes each country has in the Council may be considered as indicators to categorise EU member states. Attributed roughly in rank order - but not in proportion - of population size, economic and historical weight for votes taken by qualified majority<sup>5</sup>, the weighted votes could be used to indicate - quite arbitrarily though - the category each European Union member state belongs to. Hence one could say that demographic, economic and historical criteria are indicators of a certain 'state category' an EU member state belongs to. Table 1.1 shows that France, Germany, Italy and the United Kingdom, each having 10 votes, plus Spain (8 votes) could be considered as a block of large states with Spain being a medium large member state. A category of medium-sized states would be made up of Belgium, Greece, the Netherlands and Portugal (5 votes each). Within the category of small states Austria and Sweden (4 votes each) would be the largest states, Denmark, Finland and Ireland (3 votes) could be viewed as medium-sized small member states with Luxembourg (2 votes) being the smallest member.

Category	Sub-category	EU member states	Weighted Council votes:(QMV)
Large	Large	D; F; I; UK	10
	Medium	SP	8
Medium		B; GR; NL; P	5
Small	Large	A; SW	4
	Medium	DK;FI;IRE	3
	Smallest	L	2

**Table 1.1 Categorisation of EU member states according to weighted votes**

*Legend:* A=Austria; B=Belgium; D=Germany; DK=Denmark; F=France; FI=Finland; GR=Greece; I=Italy; IRE=Ireland; L=Luxembourg; NL=Netherlands; P=Portugal; UK=United Kingdom; SP=Spain; SW=Sweden, QMV=qualified majority voting

Thus a smaller group of large member states is offset by a larger group of small and medium-sized member states in the EU. This example which - quite arbitrarily though - classifies the European Union member states into different categories shows that the small state discussion is entirely characterised by a certain relativity and arbitrariness.<sup>6</sup> Whatever quantifiable criteria are applied for measuring smallness (weighted Council votes, population, total land area or GNP) 'small' is and will be the epithet attached to Luxembourg in whatever organised grouping of states it is to be

<sup>5</sup> M. O. Hosli 'Admission of European Free Trade Association States to the European Community: Effects on Voting Power in the European Community Council of Ministers' in *International Organization* 47:4 (1993) pp. 633-4.

<sup>6</sup> Whether a state is to be considered as big or small is highly relative indeed as it depends entirely on the classification criteria used. Different authors are considering different criteria, some of which are easily quantified, while others are highly intuitive and qualitative. A state may well be small in demographic or geographical terms and still be influential in many other respects. Furthermore a state is only small in relation to a larger one.

viewed. In this respect, the Grand-Duchy of Luxembourg is indisputably the smallest of all current EU member states.

Instead of considering objective and quantifiable small-state indicators, present-day research has shifted to analysing the relative influence of a state within the international system, i.e. the small state's interaction with other often more 'powerful' actors and neighbours. Hence we consider it more important to identify the problems which typically concern small states and the roles they can or might be able to play in the international system, and focus on the way the nature of smallness might manifest itself in its time and geopolitical context. Thus Keohane defines a small state as "a state whose leaders consider that it can never, acting alone or in a small group, make a significant impact on the system".<sup>7</sup> If we apply this definition to the way Luxembourg views its status in the international system, the following statement by Colette Flesch, a former Luxembourg Foreign Minister, may serve as a self-definition of smallness: "N'ayant guère de poids intrinsèque et n'étant guère à l'origine des controverses agitant les diverses organisations, le Luxembourg joue d'ordinaire un rôle discret qui lui permet d'entretenir des contacts nombreux".<sup>8</sup> Common to both definitions is the fact that the small state lacks weight within the system in which it acts, which forces it to play a discreet role and obliges it to compromise.

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<sup>7</sup>R. O. Keohane, 'Lilliputians Dilemmas: Small States in International Politics' in International Organization 23:2 (1969) p. 296.

<sup>8</sup> Ministère d'Etat du Luxembourg, 'La diplomatie luxembourgeoise: nécessité, réalité et défi' in Bulletin de documentation 3/1983 p. 5.

## 1.2 Small-State Predicament in the International System

The status of a state in the international system can be said to be determined by factors like physical size (in both demographic and geographic terms), geopolitical location, level of economic and social development, political environment within the state, military strength, i.e. factors which have an impact on the state's influence on other members within the international system. Table 1.2 shows quantifiable criteria like total land area, population and GDP of EU member states and places small EU members in relation with their larger partners.

MS	TLA (1,000 km <sup>2</sup> )	Pop. (mio) (+%) in 1995	GDP (bn ECU) in 1994
A	84	8.0 (2.1%)	165.8
B	31	10.1 (2.7%)	192.2
D	357	81.6 (22%)	1724.8
DK	43	5.2 (1.4%)	123.7
F	544	58.0 (15.6%)	1121.9
FI	338	5.1 (1.3%)	82.4
GR	132	10.4 (2.8%)	80.3
I	301	57.2 (15.4%)	863.2
IRE	70	3.6 (0.9%)	44.5
L	3	0.4 (0.1%)	11.6
NL	42	15.4 (4.1%)	278.5
P	92	9.9 (2.6%)	73.9
UK	244	58.3 (15.7%)	856.6
SP	506	39.1 (10.5%)	407.1
SW	450	8.8 (2.3%)	165.7
EU	3,237	371.1	6192.0

**Table 1.2 Total land area, population, GDP figures of EU member states**

*Legend:* A=Austria; B=Belgium; D=Germany; DK=Denmark; F=France; FI=Finland; GR=Greece; I=Italy; IRE=Ireland; L=Luxembourg; NL=Netherlands; P=Portugal; UK=United Kingdom; SP=Spain; SW=Sweden. MS=member state; TLA=total land area; pop.=population; GDP=Gross Domestic Product

With a territory of 2,586 sq. km squeezed between Europe's most powerful states and a population of about 420,000, with a GDP amounting to 11.6 bn ECU and an army the size of a battalion, Luxembourg represents what has tempted Handel to refer to as 'weak state'<sup>9</sup>. Luxembourg is not only dependent on the international system in security but also in economic matters. In defence matters, it has neither the strength nor the financial resources to defend itself against external threats and is therefore highly dependent on external help.

Luxembourg's economic system, like that of other European small states, is characterised by an inherent economic vulnerability which is due to a number of factors. First, although Luxembourg is highly developed economically, its economic system tends to be restrained by a less diversified structure and the smallness of its domestic

<sup>9</sup>M. Handel, *Weak States in the International System* (London, 1981).

market. The country's economy is largely based on the finance and media sectors, and the steel industry. Secondly, Luxembourg trades with a limited number of foreign trading partners which enables the latter to exert a considerable influence on the country. Major trading partners are France and Germany and Luxembourg's two Benelux partners. The EU countries absorb 86% of its total exports of manufactured goods of which 28% go to Germany, 21% to France and 13% to Belgium.<sup>10</sup> Thirdly, it is highly specialised in a narrow range of goods, making its economy highly dependent on just a few sectors and therefore highly vulnerable; and last, its GNP is small in absolute terms. Luxembourg's economic relations are characterised by a strong interdependence which makes it highly dependent on the international economic environment. In this respect, we do agree with David Vital when he affirms that

a small state is more vulnerable to pressure, more likely to give way under stress, more limited in respect of the political options open to it and subject to a tighter connection between domestic and external affairs. In other words the smaller the human and material resources of a state the greater are the difficulties it must surmount if it is to maintain any valid political options at all and, in consequence, the smaller the state the less viable it is as a genuinely independent member of the international community.<sup>11</sup>

With regard to these constraints how does the small state behave in the international system it operates in? What foreign policy options does it adopt to strengthen its position in the international system? Fully aware of its vulnerability and its limitations the small state tries to avoid conflicts, likes to leave room for alternatives and tries to remain as independent in its decisions as possible. Maurice A. East has tried to identify the behaviour small states adopt in foreign policy-making with regard to one or more of the following characteristics: small land area, small total population, small total GNP, and a low level of military capabilities.

- a) Low levels of overall participation in world affairs;
- b) high levels of activity in intergovernmental organisations (IGO's);
- c) high levels of support for international legal norms;
- d) avoidance of the use of force as a technique of statecraft;
- e) avoidance of behaviour and policies which tend to alienate the more powerful states in the system;
- f) a narrow functional and geographic range of concern in foreign policy activities;
- g) frequent utilization of moral and normative positions on international issues.<sup>12</sup>

Small states have indeed a low level of international involvement as their interests are usually limited to neighbouring and regional areas. The active foreign policies they

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<sup>10</sup> These figures refer to 1996 (see Statec, *Annuaire statistique 1997. Luxembourg* (Luxembourg, Statec, 1998).

<sup>11</sup> D. Vital, *The Inequality of States. A Study of the Small Power in International Relations* (Oxford, 1967) p. 1.

<sup>12</sup> M. A. East, 'Size and Foreign Policy Behavior: A Test of Two Models' in *World Politics* 25:4 (July 1973) p. 557.

pursue beyond their own region are usually limited to a small number of issues and are of limited consequences to most of the other members of the international system. Hence they have little or no influence on the nature of the system they operate in. Generally speaking the small state pays more attention to the question of economic development in foreign policy making.<sup>13</sup> Although East's conclusions, based on a wide reading in the general literature of foreign policy, have not been left uncriticised, his work underlines certain characteristic patterns of behaviour of small states: their focus on participation in international organisations and their promotion of international law. Rather than relying on the good will of their more powerful neighbours, they prefer to exchange hidden dependence for an organised one based on law rather than power politics. A statement by Luxembourg's Minister of Foreign Affairs confirms this:

Le rôle d'un petit pays dans les affaires internationales consiste à suivre une ligne de force, dont le point de départ est son existence en tant qu'entité souveraine et l'aboutissement, son intégration - dans le respect de son originalité propre - dans les différentes sphères de solidarité.<sup>14</sup>

Luxembourg sought very early to overcome its inherent weaknesses by joining regional or global international organisations. It tried to surmount its economic vulnerability by joining the 'Zollverein' (German Customs Union) in 1842 and, after that came to an end in 1918, helped setting up the Belgo-Luxembourg Economic Union (BLEU) in 1921. After the disastrous experience of its neutrality policy during the Second World War, Luxembourg became a founding member in many regional and international organisations working at economic, political and military level. It tried to overcome its security problems by forming an alliance with other states within NATO or Western European Union. It gradually increased its international co-operation in technical and administrative matters by joining the United Nations and the Council of Europe to name only the most important ones. Together with Belgium and the Netherlands it paved the way for today's European Union by founding the Benelux organisation in 1944.<sup>15</sup> Aware of its political and economic vulnerability and voicelessness, Luxembourg's leaders<sup>16</sup> worked consistently for European unification and for the reconciliation of France and Germany by contributing their part to the creation of the European Coal and Steel Community (ECSC) in 1951, the European Economic Community (EEC) and Euratom in 1957.

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<sup>13</sup>R. P. Barston, 'The External Relations of Small States' in August, Schou; A. O. Brundtland (eds) Small States in International Relations (Nobel Symposium 17) (Stockholm, 1971) p. 41; M. Handel, Weak States in the International System p. 53.

<sup>14</sup>Ministère d'Etat du Luxembourg, 'La politique étrangère du Gouvernement luxembourgeois' in Bulletin de documentation 1/1987 p. 1

<sup>15</sup>Working as a customs union as of 1 January 1948, Benelux developed into an economic union by 1 November 1960.

<sup>16</sup>In particular long-serving Prime Minister and Foreign Minister Joseph Bech.

### 1.3 Benefits of European Union Membership

The Luxembourg government defines the European Union as a unique construction bringing together sovereign states which have freely transferred certain sovereign powers to be exercised within a single institutional framework in accordance with common rules and procedures.<sup>17</sup> Luxembourg's leaders have a strong conviction that EU membership is not an option but a necessity for their country and that there is no viable alternative to co-operating in an integrated Europe. In 1989 the then Prime Minister Jacques Santer declared during a state visit in Malta:

In some respect, it is correct to conclude that Luxembourg succeeded by this policy [of integration] to strengthen its independence. Integration appeared to be a *sine qua non* for sustained economic growth, itself a necessary condition for the political survival of the country.<sup>18</sup>

This view and the one that the country's interests can be best defended within European institutions are reflected in the high degree of consensus over EU membership and deeper political and economic integration among the population and the major political parties.<sup>19</sup> What are the uncontested advantages of EU membership for a small state?

Among the most obvious advantages is the EU's legal framework, which is based on the principle of equality of states, the principle of supranationality and the *acquis communautaire*. As a result, the European Union as a legal framework provides a strong legal back-up, which is in the interest of the small member and which it tries to maintain.

The principle of equality of states is a principle of international law that implies that the international legal system legitimises political units without regard to size and strength. It ensures that all member states of an international organisation are represented in the decision-making bodies and are equal partners in the organisation's decision-making process. The principle of equality of states is an accepted principle in the European Union. The EU does however not explicitly state it in its Treaties. It rather stresses the solidarity among its member states when it states in Article A of the Treaty on European Union: "[The Union's] task shall be to organize, in a manner demonstrating consistency and solidarity, relations between the Member States and

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<sup>17</sup> Ministère d'Etat du Luxembourg, 'Aide-mémoire du Gouvernement luxembourgeois sur la Conférence Intergouvernementale de 1996' in *Bulletin d'information et de documentation* 2/1995 p. 167.

<sup>18</sup> Ministère d'Etat du Luxembourg, 'The Economic Integration of the Grand Duchy of Luxembourg: Past Experience and Prospects' in *Bulletin de documentation* 7/1989 p. 33.

<sup>19</sup> Although consensus on EU membership has generally been high, it has become less unconditional during the debating and ratification process of the Maastricht Treaty, where fears were expressed by some political parties (notably by right-wing ADR) that if integration is taken beyond reasonable limits, Luxembourg's identity might be threatened. In an opinion poll conducted in 1997, 71% of the population declared themselves in favour of European Union membership. In this opinion poll Luxembourg ranks third after Ireland (83%) and the Netherlands (76%) (see European Commission, *Eurobarometer* 48, autumn 1997).

between their peoples." The principle of equality makes sure EU member states have equal rights but also equal duties to fulfil in the European integration process.

The principle of supranationality makes the European Union in some respects *sui generis*. Contrary to common practise in intergovernmental organisations, the EU's *acquis communautaire* is legally binding for all the member states. This is most notably true for the Treaties in their entirety, for all legislation enacted to date and for legal acts passed by the EU's supranational institutions (European Commission and the European Court of Justice) without the explicit consent of the member states. The *acquis communautaire*, which takes pre-eminence over national legislation, is legally binding for large and small states alike and thus provides more effective safeguards against the aggressive pursuit of national interests than decisions taken by non-supranational international organisations. Another facet of supranationalism lies in the ever growing practice that member states can be bound against their wish. Although certain policy fields (e.g. taxation) still require unanimous decision-making, an ever growing number of decisions are taken by qualified majority in the Council of Ministers where member states have weighted votes.

EU membership also provides a number of political advantages for the small state. Where formerly power politics reigned, Luxembourg gets now guarantees of a more or less good behaviour between states and most importantly between its powerful neighbours France and Germany. Active participation in the supranational organisation implies that member states relinquish parts of their national sovereignty to a higher unit. Ironically, it is exactly by relinquishing parts of its sovereignty that Luxembourg sees its sovereignty as being increased.<sup>20</sup> By having access to the EU's policy and decision-making structures, Luxembourg has the opportunity to participate in and influence collective decision-making. Hence the small state has the opportunity to have a real political activity and a voice to express its interests alongside its larger partners on an international level. Integration, especially in the form of supranationality, gives the small state the opportunity to become an international actor and at the same time it is a safeguard against the aggressive pursuit of national interests. By way of integration Luxembourg can free itself of its structural weaknesses and obtain an international influence which is disproportionate to its small dimension. The increase in international status is particularly obvious when the small state is holding the Presidency in the Council of Ministers.

For a small state with an almost complete lack of foreign policy tools (e.g. military capacities, access to sensitive information) and missing an extended diplomatic apparatus, EU membership provides enhanced access to foreign policy tools and to

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<sup>20</sup>See the statement of Jacques Santer, former Prime Minister of Luxembourg, on Luxembourg's status in the EU: "Je crois même qu'un petit pays a plus de pouvoirs. On parle parfois d'*abandon de souveraineté*. Il n'y a pas d'abandon: on transfère une partie de la souveraineté à d'autres organes où l'on peut codécider sur tout avec les partenaires". (Santer Interview 'Premier voyage royal: l'union au Grand-Duché' in *La Libre Belgique*, 17 March 1994).

diplomatic information basically via Common Foreign and Security Policy (CFSP). Luxembourg takes advantage of a better and more efficient representation when the EU (in particular the European Commission) is acting as an external representative and is negotiating with other international organisations on behalf of its member states (e.g. during the GATT negotiations). In particular the Council Presidency gives Luxembourg the opportunity to deal with high politics and provides it with the necessary means (e.g. the *troika* and the support provided by the Council Secretariat) to represent the EU on the world stage. Alongside the information gained in the EU's decision-making forum (the Council of Ministers), enhanced access to information is obtained, formally and informally, as the large member states agree to share often sensitive information with their smaller partners. In addition, the small state gains invaluable information due to its close co-operation with the Commission and the Council Secretariat, in particular when holding the Council Presidency.

Another advantage for the small state lies in the federal-type decision-making system of the EU, which ensures that all states are represented in the decision-making bodies while paying special attention to minorities. By taking into account the size and the principle of equality of states, small member states can be said to be overrepresented in the EU's institutions and exert an influence that is disproportionate to their size.<sup>21</sup>

Along with the legal and political advantages of European integration, the economic payoffs can also be substantial for a small member. EEC membership grants Luxembourg access to a market that is many times bigger than its own thus enabling it to trade with a larger number of trading partners. With regard to its economic dependence, unhindered trading within the EEC as a powerful trading bloc is obviously a greater gain for a small state than for a large trading unit. Hence one can say that in relative terms, economic pay-offs are usually greater for a small state than for a larger one. In absolute terms, though, the gains are more rewarding for the big states.<sup>22</sup>

#### 1.4 The Council of Ministers

It is within the institutional framework of the Council of Ministers<sup>23</sup> where a small state like Luxembourg seems to feel best placed to pursue what can be considered as the core

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<sup>21</sup>S. Baillie, The Seat of European Institutions: An Example of Small State Influence in European Decision-making (European Policy Process Occasional Paper No. 11) (Florence, 1996) p. 2. Luxembourg is represented by one Commissioner in the European Commission and one judge in the European Court of Justice. The principle of 'degressive proportionality' ensures that Luxembourg gets some minimum representation in the European Parliament (6 MEPs). In the Council of Ministers, Luxembourg's two weighted votes are disproportionately high compared to Germany's ten weighted votes. The rotating Council Presidency is held during six months by large and small states alike.

<sup>22</sup>R. Väyrynen, 'Small States in the New European Context' in W. Bauwens/A. Clesse/ O.F. Knudsen (eds) Small States and the Security Challenge in the New Europe (Brassey's Atlantic Commentaries No 8) (London, 1996) p. 113

<sup>23</sup> On 8 November 1993, shortly after the Maastricht Treaty entered into force, the Council decided that it should henceforth be known as the 'Council of the European Union' (see OJ No. L281, 16.11.93, p. 18). For practical reasons, we use the denomination of 'Council of Ministers' or 'Council' in this thesis.



of its strategy towards the European Union: battling in realistic terms for the progress of European integration while defending those national interests of the state that are considered as vital for preserving a certain degree of sovereignty.<sup>24</sup> The Council of Ministers is the European Union's most important negotiating and decision-making institution. It is interesting to note that the Benelux countries - fearing a loss of their national sovereignty - demanded the creation of a Council of Ministers where the national governments would be represented as a counterweight to the supranational institutions during the negotiations for the Treaty of Paris.<sup>25</sup>

Being both executive and legislature, the Council can take decisions about the development of Community policies as well as agree, amend or reject the Commission's proposals for legislation while always acting within the legal framework of the Treaties. As the central meeting place of the national governments, it is here where the member states' representatives labour to find common solutions and to defend their country's national position on Community business (the so-called first pillar of TEU), Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA). In practice and contrary to the general expectations of the founders of the Community, the Council evolved to become the most 'powerful' of the EU's three main decision-making institutions. The Council and its members, which after all represent the interests of the member states, jealously defended, and in some respects extended the Council's decision-making power to guarantee that "national governments are centrally placed to influence most aspects of EU business".<sup>26</sup>

The Council is in some respects the most intergovernmental institution as it has the greatest national input. The most important decisions on EU legislation are taken here by national representatives delegated by the member states. This national input is visible vertically throughout the Council hierarchy. At the lowest level of the hierarchy, the working groups and committees, which are responsible for assisting and preparing the work of the Council, are attended by national officials of the relevant member states; at a higher level, the Committee of Permanent Representatives (Coreper), composed of senior national officials from the member states' Brussels-based Permanent Representations, prepare the agenda for the various Council meetings and have considerable negotiating and decision-making capacities; at a more senior level, national ministers negotiate and take decisions on sector-specific issues in sectoral Councils (e.g. Agriculture Council, Ecofin, etc.) or in the General Affairs Council (GAC) where the Foreign Ministers fulfil a general co-ordinating function and take decisions regarding Common Foreign and Security Policy (CFSP). Virtually all major decisions on policy initiation and priorities are taken – unanimously in most cases - by

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<sup>24</sup>See G. Trausch (et al) Le Luxembourg face à la construction européenne (Luxembourg, 1996) p. 9; Ministère des Affaires Etrangères, Débat sur la CIG de 1996. Chambre des Députés, 12 July 1995. Exposé introductif de M. Jacques F. Poos, Ministre des Affaires Etrangères p. 3.

<sup>25</sup> See G. Trausch (et al), Le Luxembourg face à la construction européenne p. 7.

<sup>26</sup> N. Nugent, The Government and Politics of the European Union, (3rd ed.) (London, 1995) p. 123.

the Heads of State and Government within the European Council, the most senior forum within the Council hierarchy.<sup>27</sup> Furthermore the Council Presidency arrangements are shared on a six-monthly basis among the member states. Little wonder that the links between the Council of Ministers and the member states are considered to be of crucial importance and that member states pay a lot of attention to maintaining an effective co-ordination system between the national capital and the Council of Ministers (see Chapter Two).

The intergovernmental character of the Council is also reflected in its voting rules. Some key decisions (including those of a fiscal or constitutional nature) are still taken by unanimity. Irrespective of the voting rules and even where qualified majority voting is allowed, it has become a habit within the Council to operate by consensus.<sup>28</sup> As a result of the Single European Act (1986) and the Maastricht Treaty (1993) some of the Council's intergovernmental features were somewhat assuaged: opportunities to reach decisions by QMV were extended, making voting much more acceptable; the influence of the European Parliament to act as a co-legislator was enhanced by introducing the co-operation and assent procedures - both created by the SEA - and by the co-decision procedure, which was created by the Maastricht Treaty.<sup>29</sup>

## **1.5 Behavioural Implications of Small-State Status in the Council of Ministers**

The inherent weaknesses of a small state actor as described above have hypothetical implications for the behaviour of the actor in the Council of Ministers and for the behaviour of the other actors in the Council towards him. Some of these behavioural implications may provide important opportunities of action, which the small state may use to exert influence in the Council of Ministers. These behavioural implications will be set out below.

### **Guardian of a *Communaautaire* Spirit**

Generally speaking, the small state actively supports a proactive development of European integration. This means that it may act as a catalyst and propose innovative ideas to make European integration advance.<sup>30</sup> This also means that it continuously works for a strong European institutional framework and for a deepening of the various

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<sup>27</sup> The European Council (Art. D TEU) is sometimes viewed as not belonging to the Council hierarchy. It was not mentioned in the founding Treaties and only came to be institutionalised at the 1974 Paris summit. Legal recognition was given for the first time in 1986 via SEA.

<sup>28</sup> See F. Hayes-Renshaw/H. Wallace, *The Council of Ministers* (London, 1997) p. 18.

<sup>29</sup> Under the new Treaty of Amsterdam, opportunities for using QMV as well as the co-decision procedure are to be extended to new policy areas. This means that the member states are currently losing ever more grip over their national sovereignty to the EU.

<sup>30</sup> See Ministère d'Etat du Luxembourg, 'Die Rolle Luxemburgs in Europa' in *Bulletin d'information et de documentation* 6/1992 p. 61.

EU policies and processes on the grounds that the establishment of rules regulating the relations between European states is particularly beneficial to the small state and preferable to power politics. Aware of its inherent weaknesses, the small state uses its position at the centre of EU decision-making to act as a guardian of a *communautaire* spirit, that means it closely observes the application of the rules of the game and the preservation of the institutional framework. Specifically, the small state tends to foster the development of elements of supranational authority within the EU's institutional framework. It does so by supporting the independence and a strong role of the European Commission and the European Court of Justice and by fostering the respect of the rules of vote and procedure. The reason being that the small state fears getting caught in the "tricky mechanism of intergovernmental co-operation".<sup>31</sup> It distrusts intergovernmentalist bargaining and tries to prevent the accumulation of power of larger member states known as a *directoire*.<sup>32</sup> Hence the it sees its interests best preserved within the supranational sphere of the European Commission that has assumed a political responsibility to strive for an overview of the interests of all member states. The small state considers the Commission as the main representative of Community interests and, unless it strongly defends a vital national interest, often rallies to the Commission's view in Council negotiations, considering the Commission as a natural ally and a small-state protector.

### **Low-profile Approach**

As a result of its inherent weaknesses, the small state has a dedicatedly vital interest in only a limited range of policy sectors in EU decision-making. Hence the small state's involvement in the Community negotiating and decision-making process is characterised by a more or less restrained participation in a high range of policy fields. This means that on many issues discussed in the Council of Ministers, the small state takes a 'low-profile approach'<sup>33</sup>. This does, however, not mean that the small state is indifferent to most policy issues under discussion. It often finds itself on the same line than the Commission or the majority of member states as its interests often merge with the ones of the Community as a whole. We can therefore speak of a concordance of Community and small state interests. What might appear as a disadvantageous position at first sight still provides the small state with important opportunities of action. The low-profile approach and the ensuing detachment on many policy issues place the small state in a perfect position to assume the roles of neutral co-ordinator and mediator both in Council negotiations and - the more so - when holding the Council Presidency.

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<sup>31</sup> M. Hirsch, 'Influence Without Power: Small States in European Politics' in The World Today 32:3 (1976) p. 115

<sup>32</sup> Small states fear that part of the agenda of the EU is shaped outside the negotiating fora in Brussels by an inner core of large member states (notably France and Germany) striking deals in diplomatic negotiations.

<sup>33</sup> S. Baillie, The Seat of European Institutions p. 3.

## Non-competitive Relationship

Small-state status with all the weaknesses it implies does not only condition the small state's behaviour towards other actors but also the behaviour of other actors towards the small state. Sasha Baillie has described Luxembourg's status in the international system as a non-competitive one with regard to other, mostly larger, states.

Larger states tend to be more tolerant, understanding and even supportive towards the behaviour and the interests of a smaller partner. As a result, Luxembourg may be able to behave in a self-interested way without provoking opposition on the part of its larger and potentially more influential partners. The advantages a small state reaps may be substantial from its point of view, yet negligible from the point of view of a larger state.<sup>34</sup>

Given the limited range of issues in which the small state has an important interest and its low level of intervention during the Council negotiations (see low-profile approach), a non-competitive relationship between the small state and other states can be said to be prevalent in the Council of Ministers. It may provide the small member state with important opportunities of action. Thus the small state's attempt to obtain special concessions in the Council of Ministers by drawing attention to its special situation may be successful because it has a non-competitive relationship with its larger partners.

### 1.6 Hypothesis

With regard to these preliminary clarifications the assumption is made that active participation in the Council of Ministers, the EU's central decision-making body, is an opportunity for Luxembourg, the smallest EU member state, to turn an apparent weakness (small size and its consequences) into an advantage. The hypothesis is put forward that the institutional framework of the Council of Ministers confers a disproportionately high amount of influence on Luxembourg. This influence is disproportionate with regard to its small size and its inherent weaknesses derived from smallness. At the same time we maintain that Luxembourg has an absolute political weight that is relatively small and not comparable with the political weight of larger member states. On the basis of these hypotheses we analyse Luxembourg's influence in the Council of Ministers and its consequent behaviour. In this respect influence is to be understood as the ability "to have the *desired effect on outcomes* in issues it [Luxembourg] has an interest in".<sup>35</sup> It will be assumed that active participation in the EU's major decision-making body provides the smallest EU member state with important opportunities of action. Our aim is to identify those opportunities of action and the tools Luxembourg applies to make its voice heard and the strategies it uses to maintain, strengthen or justify its status quo.

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<sup>34</sup> S. Baillie, The Seat of European Institutions p. 3.

<sup>35</sup> S. Baillie, The Seat of European Institutions p. 1.

## 2 Communicating with the Council of Ministers

*Un petit pays ne vaut essentiellement pas les hommes qui le représentent.*

Jean-Jacques Kasel

Formally the Council of Ministers is the Community's principal decision-making body. At the same time it is the most obviously intergovernmental of the EU's three main institutions.<sup>36</sup> It is the institution where the power of the member states has most clearly been channelled. For the European Union member states, the importance of the Council stage of decision-making in the European Union's legislative process has proven undeniable. At the various levels of their domestic politico-administrative hierarchy, EU governments are continuously involved in the Community decision-making system. At political level, the heads of state and government meet in European Council and the ministers in the various sectoral Councils; at administrative level, senior government officials meeting at Coreper level, and (more or less) senior officials and experts meeting at working party level are involved in the study of new legislative proposals and in the preparation and defence of bargaining positions. Governments have become increasingly aware of the importance of efficient national co-ordinating mechanisms to establish an aggregate national negotiating position that combines the different sectoral approaches. This co-ordination chain extends from co-ordination within ministries and interministerial co-ordination at domestic level to a co-ordination channel between national administrations and Community institutions, a role played by the Brussels-based Permanent Representation. An efficient co-ordination mechanism and clear lines of authority can be considered as the key to a consistent and coherent line in EU bargaining. This has become all the more important during the last decade. As a result of a greater use of qualified majority voting ever since the Single European Act (1986), the decision-making process has been speeded up, which means that more decisions are taken more quickly. In addition, a 'Europeanisation' of almost every domestic ministry has taken place. Whereas in the past agriculture, trade and finance ministries were the only ones to be traditionally affected by EU policy-making, most ministries are now confronted with EU affairs at variable degrees.

With this in mind, it is interesting to see which co-ordination mechanisms the smallest EU member state has installed to formulate a consistent and coherent bargaining position in the Council of Ministers. This chapter focuses on the main aspects of co-ordination: interministerial co-ordination, the central co-ordinating unit and the domestic-EU interface, that is the Permanent Representation in Brussels. The main focus is on the preparation stage of decisions, involving the national

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<sup>36</sup> The institutions primarily involved in the EU's legislative process are the European Commission, the Council of Ministers and the European Parliament.

administrations in the study of new proposals and in the preparation of bargaining positions. We highlight the main characteristics of Luxembourg's co-ordination system and try to find an answer to the question of how effective it is to achieve a consistent and coherent negotiating stance in the Council of Ministers.

## **2.1 Special Features of Luxembourg's Co-ordination of European Policy Making**

Each government is in some respects *sui generis*, with its administrative structures shaped by the country's historical, cultural and socio-political past. The co-ordination system of each member state is a function of its domestic political and governmental system and deeply entrenched practice. The experience of member states in this field is so idiosyncratic that it cannot easily be transplanted from one national context into another one. The most apparent specific features of the Luxembourg government are its decentralised as well as highly pragmatic and informal administrative system. These idiosyncrasies have a considerable impact on Luxembourg's co-ordination of EU policy-making and have to be seen within the framework of the following premises: first, a general lack of human and financial resources; second, a vested interest in only a limited number of EU policy areas and third, a strong national consensus on EU membership and policies.

### **A Highly Pragmatic and Informal Administrative System**

One central feature of Luxembourg's administrative system is that its lack of human and financial resources has forced its actors to adopt a pragmatic and informal approach in handling matters. In the early days of the European Communities, Luxembourg was faced with the problem of how to adapt a small national administration to an increased number of tasks that EC membership conferred on it. De Muysier describes the predicament of the time:

(...) Il a fallu trouver un compromis entre la nécessité d'assurer l'accomplissement satisfaisant des travaux supplémentaires et, d'autre part, l'impossibilité de gonfler proportionnellement les effectifs administratifs. C'est ainsi que le gouvernement a été amené à se préoccuper du bon rendement de ses services plutôt que de l'application stricte des textes répartissant les compétences (...).<sup>37</sup>

Due to the impossibility of increasing the administrative personnel proportionally to the increased volume of tasks, Luxembourg was obliged to apply the same pragmatic and informal approach that was characteristic of its national administration to its co-ordination system with the Council of Ministers. Hence Luxembourg has a co-

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<sup>37</sup> G. de Muysier, 'La préparation de la décision communautaire au niveau national luxembourgeois' in P. Gerbet/D. Pepy (eds) *La décision dans les Communautés européennes* (Bruxelles, 1969) p. 230.

ordination mechanism that is pragmatic and informal rather than rigid and highly formalised.

### **Informal Contacts and Short Communication Ways**

The informal and pragmatic approach that reigns in Luxembourg's national administration can be best seen in the short hierarchical distances within its administration. Departmental officials who are in charge of an EU dossier have a direct reach to their respective minister to discuss any issue of political weight. Consultations are done informally either by phone or by direct contact.<sup>38</sup> The same is true for consultations with the Brussels-based Permanent Representation. In practice, officials in the technical departments are in informal contact, mainly by telephone, with the Permanent Representation. Jean-Marc Hoscheit, a former Deputy Permanent Representative, writes: "L'essentiel des affaires se traite de manière informelle entre agents se connaissant personnellement la plupart du temps, instaurant ainsi un système de coopération très souple entre fonctionnaires et départements."<sup>39</sup> Short communication routes, and regular and close personal contacts among officials promote a flexible approach to the definition of the national position, which is only possible in a small administration. Hitherto close contacts also seemed to have obviated the need for an institutionalised system of interministerial co-ordination comparable to the French or British co-ordination systems.<sup>40</sup>

### **Polyvalent Officials**

Luxembourg's officials are less specialised than their EU counterparts abroad.<sup>41</sup> This applies to those officials in the technical departments as well as to those in the Permanent Representation (see below). A small administration obliges officials to get familiar with a broader field of issues than a large one where specialists are in charge of specific technical issues. A small administration thus avoids a certain rigidity that is typical of large ones. The organisation of tasks has to be done according to what is practically feasible and necessary. "Au sein des autorités gouvernementales, l'organisation du travail et la répartition des tâches s'est faite en fonction des nécessités ou possibilités pratiques, plutôt que selon une stricte observance des textes

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<sup>38</sup> J.M. Hoscheit, 'La Présidence du Conseil des Ministres des Communautés européennes: Les Présidences du G.D. de Luxembourg' in C. O'Nuallain (ed) The Presidency of the European Council of Ministers. Impacts and Implications for National Governments (London, 1985) p. 192.

<sup>39</sup> J.M. Hoscheit, 'La Présidence du Conseil des Ministres' p. 191.

<sup>40</sup> Unlike most EU member states, France and the UK have created special interministerial units to co-ordinate the national position on EU policies. France established the *Secrétariat général du Comité interministériel pour les questions de coopération économique européenne* (SGCI) and the UK created the European Secretariat in the Cabinet Office. Luxembourg's Permanent Representative Kasel expressed, however, in a personal interview that the need for an institutionalised system of interministerial co-ordination is becoming ever more acute.

<sup>41</sup> J.M. Hoscheit, 'La Présidence du Conseil des Ministres' p. 192.

communautaires".<sup>42</sup> As a result, Luxembourg's representatives in the various Council meetings are polyvalent generalists whose general knowledge may prove to be of great benefit in practice. They are at home in more than one policy area and may adapt more quickly to changing bargaining situations. Generalists are also in an advantageous position to seek consensus among differing parties or to broker compromises in logjammed negotiations. A disadvantage is that Luxembourg lacks expert knowledge in many policy areas. But then again, the question may be raised whether a country with as little policy areas in which it has a vested national interest really needs to have specialist knowledge across the board. Polyvalence has also another facet in Luxembourg's administration. As a result of a lack of senior officials, less senior officials are allowed to negotiate important dossiers.<sup>43</sup>

### Great Freedom of Action of Officials

Luxembourg's co-ordination system allows its representatives to work within a relatively loose framework.

En effet, le fonctionnaire de la carrière supérieure qui représente le pays peut agir la plupart du temps sur base d'instructions générales, sans avoir à demander constamment des orientations détaillées. Très souvent le fonctionnaire n'a pas reçu de consigne spécifique avant le début des négociations. Il connaît la matière, il s'est entouré de tous les renseignements nécessaires et sait prendre sa responsabilité. Ce n'est que lors des négociations de dossiers 'chauds' que le ministre concerné intervient directement et personnellement en donnant des instructions précises.<sup>44</sup>

That is to say that Luxembourg's negotiators act on the basis of general instructions from the government and are able to negotiate on relatively important matters at all levels of the Council machinery. This also means that they are given greater freedom of action and responsibility within the Council meetings than their counterparts from other member states. It has in fact been stated that Luxembourg's representatives enjoy the greatest freedom of action of all member states.<sup>45</sup> This pragmatic approach has both advantages and disadvantages. An obvious advantage is that a loose negotiating framework fosters manoeuvrability and flexibility in the formulation of the national position. Luxembourg's negotiators do not have to consult their government each time negotiations take a new turn. This serves the smooth functioning of the Council as a whole as it prevents awkward issues to be referred up the Council hierarchy. A disadvantage is that such a great freedom of action presupposes a great competency of negotiators. Much depends on the personality, experience and negotiating skills of

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<sup>42</sup> G. de Muyser, 'La préparation de la décision communautaire au niveau national luxembourgeois' p. 230.

<sup>43</sup> J.M. Hoscheit, 'La Présidence du Conseil des Ministres' p. 192.

<sup>44</sup> S. Merten-Beissel, 'L'administration luxembourgeoise et l'intégration européenne' in C. Debbasch (ed), *Administrations nationales et intégration européenne* (Paris, 1987) p. 54.

<sup>45</sup> F. Hayes-Renshaw/H. Wallace, *The Council of Ministers* (London, 1997) p. 223.



single representatives. According to Nugent a further disadvantage is that "too much independence for representatives can lead to the necessity of awkward backtracking at a later negotiating stage if a misjudgement is made".<sup>46</sup>

### **'Unity of Personnel'**

As a result of a lack of personnel, Luxembourg's administration portrays a unique phenomenon that can be described as that of 'unity of personnel': the same officials are involved at the various stages of the preparation, negotiation and implementation of EU decisions.

(...) Le même fonctionnaire qui participe en tant qu'expert à la phase préparatoire, négocie aux divers échelons de la structure du Conseil, rédige les mesures nationales d'exécution, participe le cas échéant à la procédure parlementaire, effectue la mise en oeuvre pratique, tout en gardant le contact avec le secteur socio-professionnel concerné et contrôle l'application.<sup>47</sup>

This means that one and the same official may be involved in the preparation of the national position at national level, in the defence of the country's position within the Council hierarchy and in the national implementation procedure of the decision. A possible advantage is that officials who are involved in all the stages of the procedure are in good knowledge of the respective dossier, which, as a result, may be time-saving and promote a better flexibility of the co-ordinating system.

### **Autonomy of Technical Departments**

Visible signs of decentralisation of Luxembourg's administrative system are the great freedom of action that the single technical departments enjoy in formulating the national position and the absence of a formal committee system. Officials of the technical departments are responsible for their own policy areas and communicate their position to the Foreign Ministry, the leading ministry responsible for the co-ordination of EU affairs. Although the Foreign Ministry assures some co-ordination of the positions of the respective ministries before sending instructions to the Permanent Representation in Brussels, the autonomy that the departments enjoy may lead to inconsistencies in the formulation of the national position.

C'est pourquoi des domaines comme l'agriculture, l'énergie ou encore les problèmes économiques spécifiques échappent dans une mesure variable au département des Affaires étrangères. Ce système n'est viable que dans la mesure où des contacts étroits sont possibles entre les fonctionnaires des ministères concernés.<sup>48</sup>

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<sup>46</sup> N. Nugent, *The Government and Politics of the European Union* (3<sup>rd</sup> ed.) (London, 1995) p. 414.

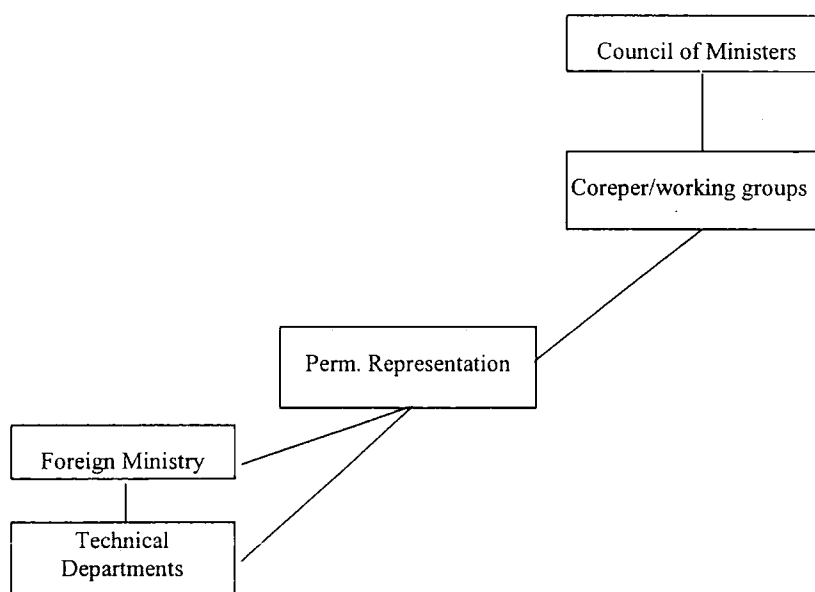
<sup>47</sup> S. Merten-Beissel, 'L'administration luxembourgeoise et l'intégration européenne' p. 55.

<sup>48</sup> J.M. Hoscheit, 'La Présidence du Conseil des Ministres' p. 193.

As shown above, close contacts among officials from the various departments, often knowing each other personally do exist and the decentralised nature of the system has but rarely lead to inconsistencies in the formulation of the national position.

## 2.2 Interministerial Co-ordination

Luxembourg's administration has no institutionalised co-ordination mechanism comparable to the French SGCI or the British European Secretariat. An aggregate national position is achieved in ad hoc co-ordination mechanisms. The main administrative institutions involved in Luxembourg's co-ordination system are the technical departments, the Foreign Ministry as the central co-ordinator of EU policy and the Brussels-based Permanent Representation that forms the link between the national administration and EU institutions (see figure 2.1).



**Fig. 2.1 Luxembourg's co-ordination system of EU policy and decision-making**

Although the technical ministries exert a substantial influence on the formulation of policies, the Foreign Ministry has the leading responsibility for the co-ordination of EU policy at national level. It co-ordinates a highly decentralised structure and basically fulfils three tasks: it acts as a mailbox, it contributes to the formulation of the national position and has some reconciliatory function. This triple role needs, however, some greater specification. Officially the Foreign Ministry fulfils the role of a mailbox where all communications between the technical ministries, the EU institutions and the Permanent Representation pass. In practice this rule is not always applied since urgent matters are settled in direct contact with departments and the Permanent Representation.<sup>49</sup>

<sup>49</sup> S. Merten-Beissel, 'L'administration luxembourgeoise et l'intégration européenne' in p. 53; G. de

The Foreign Ministry plays an important co-ordinating role in the formulation of the national position: the Permanent Representation sends a dossier to be treated to the Foreign Ministry, which passes it on to the respective technical department for comment and study. Once a position has been formulated in the technical department, it is sent to the Foreign Ministry which transmits it with or without any special comments to the Permanent Representation.<sup>50</sup> In practice, however, the positions adopted in the various Council working groups evade the competence of the Foreign Ministry as officials take a position along the criteria adopted in their respective departments without consulting the Foreign Ministry each time.<sup>51</sup> It can be said that a kind of symbiosis has been found between the Foreign Ministry and the technical departments: whereas the former deals with the political aspects of a dossier, the latter concentrate on its technical aspects.

Due to a lack of vital national interests in many policy fields and the pragmatism and close contacts fostered by the smallness of Luxembourg's administration, it has so far proved unnecessary to create an institutionalised system of interministerial committees. Only matters of vital importance, e.g. the issue of the Luxembourg seat of EU institutions, are treated in interministerial committees.<sup>52</sup> Should the formulation of the national position give rise to divergences, the pragmatic and informal administrative system ensures a quick solution by means of ad hoc negotiation and co-ordination. In such a case, it is very often the Foreign Ministry that takes the initiative to convene an ad hoc interministerial committee chaired by a Foreign Ministry official, to solve potential ministerial clashes and to discuss matters of vital importance for the country. If the conflict cannot be solved in ad hoc meetings or when it touches on a matter of vital national interest, it will be discussed in the weekly cabinet meetings of the ministers ('Conseil de gouvernement').<sup>53</sup>

### **2.3 The Permanent Representation**

The Permanent Representation is the main link between the national administration and the EU institutions. In practice much of Luxembourg's co-ordination of European policy making is ensured by the Permanent Representation which enjoys a high status in Luxembourg's administration. This can be seen in the great impact that its oral and

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Muysers, 'La préparation de la décision communautaire au niveau national luxembourgeois' p. 234. See also the following comment: "The tendency for certain ministries to try to circumvent inter-ministerial co-ordination by exerting direct pressure on Brussels-based negotiators is a fact of Community life. It happens regularly, particularly on the part of the influential ministries (foreign affairs, agriculture and economic affairs)" (F. Hayes-Renshaw/C. Lequesne/P.M. Lopez, 'The Permanent Representations of the Member States of the European Communities' in *JCMS* 28:2 (1989) p. 131).

<sup>50</sup> J.M. Hoscheit, 'La Présidence du Conseil des Ministres' p. 190.

<sup>51</sup> G. de Muysers, 'La préparation de la décision communautaire au niveau national luxembourgeois' p. 231.

<sup>52</sup> J.M. Hoscheit, 'La Présidence du Conseil des Ministres' p. 191.

<sup>53</sup> J.M. Hoscheit, 'La Présidence du Conseil des Ministres' p. 190; G. de Muysers 'La préparation de la décision communautaire au niveau national luxembourgeois' p. 234.

written reports have on the formulation of the national position<sup>54</sup>, in the high degree of autonomy that the Permanent Representative and its staff enjoy in defending Luxembourg's positions in Coreper and the various working groups they attend, and in the enhanced co-ordinating role it plays when the country holds the Presidency (see Chapter Five). The post of Permanent Representative is considered as one of the most influential, if not *the* most influential of Luxembourg's diplomatic service. With this in mind, the Permanent Representation can be considered as occupying a key position in Luxembourg's co-ordination structure.

Luxembourg's Permanent Representation distinguishes itself in some respects from those of other member states: first, with regard to its small size; second, with regard to the status, length of term of office and autonomy of the Permanent Representative; third, concerning the high ratio of diplomats to specialists; fourth regarding the large margin of manoeuvre that its officials enjoy even in important questions at all levels. These idiosyncrasies can be considered as being a function of the country's small national administration.

### Size and Staffing of the Permanent Representation

Luxembourg's Permanent Representation reflects the small size of the national administration and is the smallest one in Brussels. With a total of 14 members in 1998<sup>55</sup>, there seems to be no direct link between the number of staff employed in Brussels and the important tasks the Permanent Representation has to fulfil. The size of Luxembourg's Permanent Representation is, however, not only a function of the small national administration but also of the small size of the country, of the short distance which separates Luxembourg from Brussels and of the limited range of issues in which Luxembourg has a vital interest.

Luxembourg	1958	1968	1978	1988	1995	1998
	1	3	2	2	7	14

Table 2.1 Evolution of the staffing of the Luxembourg Permanent Representation from 1958 to 1998<sup>56</sup>

The Permanent Representation depends directly upon the Foreign Ministry and all its staff stem from here. The post of Permanent Representative is a most prestigious and influential position. Long-established habits of national administration and the high consensus Luxembourg enjoys with regard to EU membership and policies implies that the job is conferred on a career diplomat on the grounds of merit rather than partisanship or political reasons. Much depends on the personality of the Permanent

<sup>54</sup> Hoscheit, Jean-Marc, 'La Présidence du Conseil des Ministres' p. 195.

<sup>55</sup> During the Presidency the staff is increased. Luxembourg relies then on the ad hoc support from diplomats in bilateral embassies and from the central administration. During the 1997 Luxembourg Presidency, the staff was inflated to 23 members (information provided by PR).

<sup>56</sup> Adapted from F. Hayes-Renshaw/H. Wallace, The Council of Ministers p. 223.

Representative. Hence the Luxembourg government puts a high premium on the capabilities, expertise and negotiating skills of the Permanent Representation's prime negotiator. This is all the more important since the Permanent Representative has a role to play at all stages of the Council decision-making process but above all in Coreper. Generally a 'senior generalist' from the Foreign Ministry, the Permanent Representative has first-hand EU experience, negotiating skills, insider knowledge and access to informal information in order to successfully defend the country's interests during the weekly meetings of Coreper II where the Permanent Representatives meet to discuss matters of 'political' weight. It is expected that the Deputy Permanent Representative, who negotiates Luxembourg's position with regard to 'technical' matters in Coreper I, has similar qualifications. The long terms of office served by these two most senior officials show that much importance is attributed to the capabilities and experience of Luxembourg's prime negotiators in the preparatory Council machinery (see table 2.2).

Perm. Rep.	Term of office	Deputy Perm. Rep.	Term of office
Lambert Schaus	1958-60	Adrien Meisch	1958-60
Albert Borschette	1960-70	Jean Dondelinger	1961-70
Jean Dondelinger	1970-84	Jean Schleich	1970-73
		Paul Peters	1973-76
		Joseph Weyland	1976-79
		Jean Mischo	1979-83
Joseph Weyland	1984-91	Jean Feyder	1983-87
		Thierry Stoll	1987-91
Jean-Jacques Kasel	1991-98	Jim Cloos	1991-93
		Jean-Marc Hoscheit	1993-98
Nicolas Schmit	1998-?	Marc Ungeheuer	1998-?

**Table 2.2 Overview of Luxembourg's Permanent Representatives and Deputy Permanent Representatives from 1958 to present day (1998)<sup>57</sup>**

The table shows that Luxembourg's Permanent Representatives serve an average term of office of eight years. Only Belgium's Permanent Representatives serve a longer average term of office (ten years). Luxembourg's Permanent Representative who served longest in this function is Jean Dondelinger (14 years plus 9 years as deputy!). With an average term of office of four years, Luxembourg's Deputy Permanent Representatives serve a shorter term of office than the Permanent Representatives. Compared with the length of term served by other EU Deputy Permanent Representatives, this length of term corresponds to the general trend.<sup>58</sup> Among Luxembourg's deputies the one who served longest in this function is again Jean Dondelinger (9 years). The long terms of office served by Permanent Representatives, who often served as deputies as well (e.g. Dondelinger and Weyland), guarantees a great stability of the national co-ordination mechanism. Their daily exposure to EU affairs constitutes an accumulation of

<sup>57</sup> Adapted from M. Westlake, *The Council of the European Union* (London, 1995) p. 306.

<sup>58</sup> See Annex X.2.3 on member states' Permanent Representatives and Deputy Permanent Representatives, 1958 to 1995 in M. Westlake, *The Council of the European Union* p. 305-7.

experience and intimate knowledge that is of fundamental importance for a small member state with a small administration.

In general terms, the member states' Permanent Representatives are serviced by national officials on secondment who are both diplomats and technicians in a ratio of 40:60.<sup>59</sup> Here Luxembourg forms again an exception. Whereas most member states' Permanent Representations employ a larger number of specialists to deal with the increasing number of policy sectors within the Council's working groups, the ratio of diplomats to specialists is 71:29 in Luxembourg's Permanent Representation.<sup>60</sup> Due to the limited number of personnel of its administration, Luxembourg cannot afford to release specialists permanently to Brussels. To a lesser degree this paucity of technicians may be explained by the relatively few areas of really vital national interests touched on in the Council of Ministers. Thus the technical experts remain in Luxembourg and attend meetings in Brussels whenever necessary, leaving the day-to-day work to a small group of less specialised officials (or generalists) in the Permanent Representation.

### **The Role of Luxembourg's Permanent Representation**

The role of a member state's Permanent Representation is ambivalent and twofold. Its overall charge is to represent and defend the member state's views vis-à-vis EU institutions in Brussels and at the same time it is a key source of information to keep the capital informed of what is happening in Brussels. With regard to the Permanent Representation's first task, one can say that representation and defence of a member state's views is more effective the more the officials from the Permanent Representation are involved in the national co-ordination procedure. Luxembourg is well prepared in this respect. Senior officials from Luxembourg's Permanent Representation make a crucial contribution to the national co-ordination of EU policy making. They are closely associated with the formulation of national positions to the extent that the Permanent Representative attends almost weekly co-ordination meetings in the capital.<sup>61</sup> According to Hayes-Renshaw, Lequesne and Lopez this is important for three reasons:

First, it is an indication of the perceived importance of such officials, whose job it is to defend the national position, not only during meetings, but in the course of all their contacts with colleagues from other member states. Second, it provides them with a much more direct means of influencing governmental opinion in the capital than is the case in Brussels. Finally, the greater the involvement of the official of the Permanent Representation in the formulation

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<sup>59</sup> F. Hayes-Renshaw/H. Wallace, *The Council of Ministers* p. 220. "It is interesting to note that a greater number of officials from the line departments than career diplomats is evident (...) [in the Permanent Representations] across the Community as a whole" (F. Hayes-Renshaw/C. Lequesne/P.M. Lopez, 'The Permanent Representations of the Member States of the European Communities' pp. 124-5).

<sup>60</sup> See table 9.1 on the ratio of diplomats to home civil servants in the Permanent Representations in 1995 in F. Hayes-Renshaw/H. Wallace, *The Council of Ministers* p. 221.

<sup>61</sup> Information provided by Luxembourg's former Permanent Representative Jean-Jacques Kasel during a personal interview.

of the national position, the easier it will be for him/her to negotiate in Brussels, in that they will have a clearer idea of the national problems and the margin of manoeuvre granted to them, whether implicitly or explicitly.<sup>62</sup>

Luxembourg's Permanent Representative meets the Foreign Minister (or senior officials from the Foreign Ministry) and the departmental ministers two to three times per month in the so-called 'Union committee' meetings ('Comité de l'Union'). The main purpose of these meetings is to provide some information to the Foreign Ministry of what policies are under way and to get instructions on what general position to take on certain dossiers. Unfortunately the 'Union committee' meetings are not held with the expected discipline and have become a victim of material constraints (in particular lack of time) of ministers.<sup>63</sup>

Furthermore, officials in the Permanent Representation are in regular contact with 'European correspondents' ('correspondants européens') in the technical departments. Each technical department has a certain number of 'European correspondents', i.e. officials in charge of EU dossiers who are in regular and direct contact with the Foreign Ministry and the Permanent Representation, in particular with the Deputy Permanent Representative.<sup>64</sup> As regards the defence of the national position, Luxembourg's co-ordination mechanism grants the Permanent Representative and its staff a large margin of manoeuvre even in important questions in the working groups and in Coreper. The Luxembourg government allows them to negotiate flexibly and to decide on relatively important questions at all levels.

The considerable autonomy the Luxembourg permanent representatives to the EU enjoy means that they are not hampered by hierarchical and cumbersome administrative procedures but are able to assess situations on the basis of their personal knowledge and experience in a rational, swift and efficient manner. Rapid assessment of situations and swift adaptation gives the small state an advance on its partners when manoeuvring circumstances to its own advantage.<sup>65</sup>

Such a flexible approach, which is by far not common among all the member states' delegations, promotes speed, manoeuvrability and efficiency. Especially those member states that have a lot of interests to defend insist on more rigid guidelines and try to refer decisions upwards to the ministerial level. At the same time a flexible approach is much more dependent on the capabilities of single negotiators.

With regard to the Permanent Representations' second task, they inform the capital of possible or impending EU legislation. Officials from Luxembourg's

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<sup>62</sup> F. Hayes-Renshaw/C. Lequesne/P.M. Lopez, 'The Permanent Representations of the Member States of the European Communities' p. 130.

<sup>63</sup> Information provided by Jean-Jacques Kasel.

<sup>64</sup> Information provided by Jean-Jacques Kasel. According to Kasel, the system of 'European correspondents', which was an initiative launched after the Edinburgh European Council in 1992 is functioning relatively well.

<sup>65</sup> S. Baillie, The Seat of the European Institutions: An Example of Small-State Influence in European Decision-making (European Policy Process Occasional Paper No. 11) (Florence, 1996) p. 4.

Permanent Representation send Commission proposals and minutes from the various Council meetings with added comments to the Foreign Ministry, who then forwards copies of it to the responsible departments. In practice, however, the Permanent Representation also sends the copies direct to the departments. This information gathering requires a good official and informal information network.<sup>66</sup> Concerning the unofficial co-ordination channels, it is important that the Permanent Representation can count on the co-operation of compatriots who staff cabinets and Directorates General of the Commission. In this respect, Luxembourg's good access to the cabinet of the President of the European Commission is an important source of information that is not to be underestimated. The fact that Luxembourg's Permanent Representatives have a long term of office also enhances their insider knowledge and first-hand experience. Knowing, for instance, about the prospective stance of other member states on a certain dossier in Coreper negotiations is an important asset for a member state, especially if it holds the Council Presidency, as it provides it with a deeper understanding of what is technically possible in the respective dossier. It must, however, be pointed out that Luxembourg's information network is under no circumstances comparable to the one of the larger member states.

## 2.4 Efficiency of Luxembourg's Co-ordination System

The formulation of a national position to defend in Council meetings is the result of a long debate and co-ordination efforts at national level. Efficient co-ordination mechanisms between the national capital and Brussels and between national ministries are of prime importance to formulate an aggregate national position. This raises the question of how to measure the efficiency of a national co-ordination system. A major goal that the national actors pursue with their co-ordination efforts is to achieve a consistent and coherent line in EU bargaining. The reason being that:

Repeated inconsistencies in the national position suggest bad co-ordination and fuzzy lines of authority. Nationals at the receiving end of inconsistency may find they lack credibility among their European colleagues during negotiations and, in the worst cases, they may be forced into embarrassing climb-downs when their instructions are changed.<sup>67</sup>

Hence coherence and consistency in the formulation of the national position may serve as a measure for evaluating the efficiency of co-ordination systems. A coherent line in EU bargaining may be achieved if at least one of the following prerequisites are fulfilled. There need to be:

- a high degree of domestic consensus on EU issues;

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<sup>66</sup> Official information may be gained from the Commission and in working party and Coreper meetings and so on. Informal information may be gained from informal contacts with members of the Commission, during lunch time, etc.

<sup>67</sup> F. Hayes-Renshaw/H. Wallace, The Council of Ministers p. 216.



- a strong co-ordinating system for reconciling different viewpoints and imposing a sense of direction.<sup>68</sup>

The first prerequisite seems to be given in Luxembourg's case. Except for the limited number of policy areas where Luxembourg has a particular national interest, the country's negotiators generally defend positions that lie close to the Commission's proposals and/or to where a consensus lies amongst a majority of partners.<sup>69</sup> In this respect Luxembourg starts with a great advantage against those partners that are in a minority position.

Let us now explore whether the second prerequisite (strong reconciliation and direction-giving structure) holds true for Luxembourg's co-ordination system. As we have seen above, Luxembourg has a decentralised and highly pragmatic and informal co-ordination system. Obvious advantages of this system were shown to be the great flexibility with which a national position may be formulated thanks to short communication ways and reduced hierarchical procedures. The 'unity of personnel' and the great freedom of action that Luxembourg's negotiators enjoy equally fosters flexibility and manoeuvrability. In this respect, Luxembourg's representatives have a priori a great advantage vis-à-vis their EU counterparts. Most of them are polyvalent generalists and have good foreign language skills.<sup>70</sup> This grants them a certain versatility in negotiations, the capability to adapt quickly to changed situations and to be resourceful in negotiation and brokerage. This also provides them with the right capabilities to act as consensus seekers and mediators in logjammed negotiations (see also Chapter Three and Four).

But what about the ability of the national government to co-ordinate across the Councils? Does a pragmatic co-ordination system allow the national government to take a consistent and coherent position horizontally (i.e. across the various sectoral Councils) and vertically (i.e. at the various levels of the Council hierarchy)? The worst thing that can happen to any government is that negotiators in one policy sphere contradict those in another one. In this respect, Luxembourg's decentralised administrative system may constitute a weakness. An apparent disadvantage of a decentralised administrative system is that "any issue which cuts across established lines of responsibility, or which raises the question of overall priorities, may remain unresolved at the national level and lead to a negative or passive position in the Community negotiations".<sup>71</sup> In particular the great autonomy that the technical departments enjoy contributes to the risk of contradictory positions. As a matter of fact it happens once in a while that the Ministry of Agriculture adopts a different position from the Ministry of Finance and that both

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<sup>68</sup> H. Wallace, 'The Presidency of the Council of Ministers of the European Communities; A Comparative Perspective' in C. O'Nuallain (ed) The Presidency of the European Council of Ministers. Impacts and Implications for National Governments (London, 1985) p. 265.

<sup>69</sup> S. Merten-Beissel, 'L'administration luxembourgeoise et l'intégration européenne' p. 54.

<sup>70</sup> Representatives are completely fluent in French and German, which are Luxembourg's administrative languages, and most of them equally in English.

<sup>71</sup> H. Wallace, National Governments and the European Communities (London, 1973) p. 37.

ministers take contradictory positions in their respective sectoral Councils. It equally happens that the position taken in Coreper I is differing from the one taken at a higher level by the ministers.<sup>72</sup> This shows that inconsistencies exist both at vertical and at horizontal level. This may be a hint that the Foreign Ministry, the main co-ordinating body, lacks authority and strength to reconcile different viewpoints and to impose a sense of direction. Diverging positions of ministries may well be solved in ad hoc meetings. But in a decentralised system based on informal and ad hoc policy and reconciliation formulation too much depends on a strong common identity of officials<sup>73</sup> and on their willingness to maintain close contacts.

Though advantages it may have, another factor that might impede the formulation of a coherent line in EU bargaining is the great autonomy that Luxembourg's negotiators enjoy in negotiations at every level of EU decision-making. This autonomy makes Luxembourg's co-ordination system very actor-dependent. To a large extent the formulation and in particular the defence of the national position is subject to the capabilities of the actors at Council level. Much depends on the personality, negotiating skills, experience and length of experience of the negotiators, the more so as Luxembourg's officials receive little training. There may be a risk that representatives go too far in their position at a lower level of the Council hierarchy so that it needs some backtracking at a higher Council level.

Hence in a decentralised system such as Luxembourg's, the central co-ordinating body needs to provide a strong enough reconciliation capacity and should be able to impose an even stronger sense of direction, which does not seem to be given.<sup>74</sup> Officially the Foreign Ministry fulfils these functions but in practice the Permanent Representation plays a crucial de facto co-ordinating role: the large margin of manoeuvre its negotiators enjoy in Council meetings, the close and almost daily informal contacts with the technical departments, its function as a key source of information for the Foreign Ministry and the technical departments and the almost weekly visits of the Permanent Representative in the capital make the Luxembourg Permanent Representation a crucial co-ordinator that assumes the role of a filter in the national co-ordination system. According to Permanent Representative Kasel the government is acutely aware of the weaknesses of Luxembourg's co-ordinating mechanism. First ideas have appeared to install a central co-ordinating system within the Prime Minister's Office ('Ministère d'Etat') that would be similar to the French SGCI. This office would be 'chapoté' by a senior official from the Foreign Ministry and would fulfil a central information-gathering and co-ordination function in the formulation of an aggregate national position.

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<sup>72</sup> Information provided by Jean-Jacques Kasel.

<sup>73</sup> Baillie writes in this respect: "Aware of the external dependence and vulnerability of the small state, domestic actors cooperate closely, reach compromises and are likely to agree on a common interest when dealing with European issues". (S. Baillie, The Seat of the European Institutions p. 4).

<sup>74</sup> Jean-Jacques Kasel points out that once the third stage of EMU is entered, a strong co-ordination system is of even greater importance both for national and EU policies.

In general terms it can be said that although Luxembourg's current co-ordination structure fosters a flexible approach to decision-making processes at EU level, it seems to lack some strength in the sense that it cannot directly strengthen the country's means of influence in the EU decision making process. Weaknesses are inherent in the decentralised nature of the national administration. The informality that characterises the co-ordination structure and the great autonomy that the involved actors (single departments, Permanent Representation and officials) enjoy in formulating the national position may lead to inconsistent positions during the decision-making process. This makes the co-ordination system to a large extent actor-dependent and incidentally transfers major aspects of co-ordination from the Foreign Ministry to the Permanent Representation, which also plays the crucial role of a filter.

### 3 Negotiating Status in the Council of Ministers

*Tandis qu'un gros devient maigre,  
un maigre passe de vie à trépas.*

Joseph Bech

Effective national co-ordination of European policy and decision-making is a crucial element in the efficient formulation of negotiating stances (see Chapter Two) but it is not the only factor that determines negotiating outcomes in the Council of Ministers. A member state's formal voting weight as well as its actual political weight are decisive for the outcome of negotiations. The same is true for the personality, experience and negotiating skills of government representatives. This chapter will analyse what influence Luxembourg has on decision-making both with regard to the member state's formal voting weight under the different voting modes (unanimity and majority voting) and with regard to its actual political weight. We shall make a clear distinction between the relative influence Luxembourg has under the current voting system and the actual political influence it has in the sense of being able "to have the *desired effect on outcomes* in issues it has an interest in"<sup>75</sup>. It is common knowledge that Luxembourg is highly overrepresented in the Council of Ministers, but how about its actual political influence? Can Luxembourg's 'overrepresentation' in the Council of Ministers induce us to presume it has an equally higher political influence?

#### 3.1 Voting and the Relative Influence of Luxembourg

Luxembourg's favourable formal position in the Council of Ministers is particularly well reflected in the Council's voting system. In theory, Council decisions are taken on the basis of either unanimity or majority voting, the latter taking two forms: simple majority and qualified majority voting (QMV). Under unanimity and simple majority voting Luxembourg enjoys absolute equality with its partners in the Council. In practice, there is a continuing preference for consensual decision-making in the Council, even where QMV is possible. Many items of legislation are passed without resorting to a formal vote. Teasdale provides the figures for the period between December 1993 and March 1995 where of 283 legislative acts adopted in the Council under QMV only 72 involved a formal division and of these, 40 were cases in which votes were cast against, and in 32 cases abstentions were expressed.<sup>76</sup> Since Council voting is 'opaque' there is no reliable way of establishing the voting behaviour of the member states. Hayes-Renshaw and Wallace assert there is no evidence whatsoever of small states systematically outvoting larger ones. Equally evidence is lacking on which and how many decisions are blocked

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<sup>75</sup> S. Baillie, The Seat of the European Institutions: An Example of Small State Influence in European Decision-making (European Policy Process Occasional Paper No. 11) (Florence, 1996) p. 1.

<sup>76</sup> A. Teasdale, 'The Politics of Majority Voting in Europe' in Political Quarterly 67:2 (1996) p. 103.

because there is an implicit or explicit blocking group.<sup>77</sup> In this respect it is important to note the hypothetical nature of the following outline of Luxembourg's formal voting power in the Council of Ministers.

### **Unanimity Voting**

Under unanimity voting each member state has one vote, with an abstention not preventing the adoption by the Council of legislative acts which require unanimity (Art. 148(3) EC). Ever since the Single European Act (1985) and later on the Maastricht Treaty (1991) extended the use of qualified majority voting to new areas – thus making decision-making more supranational - fewer decisions are adopted by unanimity. Still, crucial areas of Union competence to some of which Luxembourg is particularly sensitive, remain subject to unanimity: amendments to the Treaties (Art. N(1) TEU), accession of new member states (Art.O TEU), the determination of the seat of institutions (Art. 216 EC).<sup>78</sup> Within the sphere of internal market decisions where the majority of decisions is subject to QMV, harmonisation of taxation (Art. 99 EC), equally a 'hot potato' for Luxembourg, is subject to the unanimity rule as well. The two intergovernmental pillars, Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA), are also to a great extent subject to unanimity voting.<sup>79</sup> Thus Luxembourg's vote has the same weight as Germany's or France's concerning the adoption of joint actions or the definition of common decisions. Hence the smallest member state has a considerable influence on the formulation of the EU's foreign policy. The obverse of the unanimity requirement, the legal veto<sup>80</sup>, gives each member state an equal opportunity to block any Commission proposal it disapproves. Thus, theoretically, tiny Luxembourg has the possibility to block a decision favoured by all the other member states. Whether this is possible in practice for a small state is explored in Chapter Four.

### **Majority Voting**

Another instance where Luxembourg enjoys absolute equality is when votes are taken by simple majority. Article 148(1) of the EC Treaty stipulates that "save otherwise provided (...), the Council shall act by a majority of its members." This means that

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<sup>77</sup> F. Hayes-Renshaw/H. Wallace, *The Council of Ministers* (London, 1997) pp. 54-5.

<sup>78</sup> Areas subject to unanimity are specifically stated in the Treaty. Annex VII.3.1 in M. Westlake, *The Council of the European Union* (London, 1995) pp. 112-3 provides a list of these areas.

<sup>79</sup> The new Treaty of Amsterdam stipulates, however, there will be potentially greater use of qualified majority voting in CFSP.

<sup>80</sup> For matters of clarity a clear distinction is made between the legal veto, applying in those areas (mainly taxation, social laws and some international agreements) where members' decisions have to be unanimous, and the political veto, that is the Luxembourg Compromise, allowing a member state to block any item of legislation provided it can show that a vital national interest is at stake. Concerning the debate whether the Luxembourg Compromise is dead or still prevalent see A. Teasdale, 'The Life and Death of the Luxembourg Compromise' in *JCMS* 31:4 (1993) pp. 567-579.

where the Treaty makes no express provision to the contrary, a simple majority automatically applies. A simple majority is attained when eight of the current fifteen member states, each holding one vote, vote in favour. It must however be pointed out that in practice, this voting procedure covers relatively few cases and is mainly used for procedural questions (e.g. convening an Intergovernmental Conference).

The absolute equality that Luxembourg enjoys with all the other member states under unanimity and simple majority voting does not apply under the most frequently used decision-making method in the Council, that is qualified majority voting (QMV).<sup>81</sup> By giving each member state a weighted vote (see table below), QMV is based on the principle that "some member states are treated as more equal than others".<sup>82</sup>

**Table 3.1 History of voting weights, current population, majority and blocking minority thresholds<sup>83</sup>**

	Votes 1958-73 (EC 6)	Votes 1973-81 (EC 9)	Votes 1981-86 (EC 10)	Votes 1986- 95 (EC/EU 12)	Votes since 1995 (EU 15)	Pop (mio) (+%) (1995)
B	2	5	5	5	5	10.1 (2.7%)
F	4	10	10	10	10	58.0 (15.6%)
D	4	10	10	10	10	81.6 (22%)
I	4	10	10	10	10	57.2 (15.4%)
L	1	2	2	2	2	0.4 (0.1)
NL	2	5	5	5	5	15.4 (4.1%)
DK	-	3	3	3	3	5.2 (1.4%)
IRE	-	3	3	3	3	3.6 (0.9%)
UK	-	10	10	10	10	58.3 (15.7%)
GR	-	-	5	5	5	10.4 (2.8%)
P	-	-	-	5	5	9.9 (2.6%)
SP	-	-	-	8	8	39.1 (10.5%)
A	-	-	-	-	4	8.0 (2.1%)
FI	-	-	-	-	3	5.1 (1.3%)
SW	-	-	-	-	4	8.8 (2.3%)
<b>Total</b>	17	58	63	76	87	371.1
<b>QM (+%)</b>	12 (70.5%)	41 (70.5%)	45 (71.5%)	54 (71%)	62 (71%)	
<b>BM (+%)</b>	6 (35.2%)	18 (31%)	19 (30%)	23 (30%)	26 (30%)	
<b>Super QM</b>	4/6 MS	6/9 MS	7/10 MS	8/12 MS	10/15 MS	

*Legend:* B=Belgium; F=France; D=Germany; I= Italy; L=Luxembourg; NL=Netherlands; DK=Denmark; IRE=Ireland; UK=United Kingdom; GR=Greece; P=Portugal; SP=Spain; A=Austria; FI=Finland; SW=Sweden. QM=qualified majority (currently 62 out of 87 votes); BM=blocking minority (currently 26 out of 87 votes); Super QM=Super-qualified majority (currently 62 votes in favour cast by at least 10 MS); MS=member state.

<sup>81</sup> There are two types of qualified majority: Article 148(2) EC provides that, where the Treaties require the Council to act by a qualified majority, and where the Council is acting on the basis of a Commission proposal, Council acts require at least 62 votes in favour. This, at the very minimum, would require the agreement of 8 member states. The same article provides that where the Council is not acting on a Commission proposal, a Council act requires 62 votes in favour cast by at least ten (that is, two-thirds) of the member states (super-qualified majority).

<sup>82</sup> A. Teasdale, 'The Politics of Majority Voting in Europe' p. 104.

<sup>83</sup> Adapted from M. Westlake, *The Council of the European Union* p. 96 and F. Hayes-Renshaw/H. Wallace, *The Council of Ministers* p. 46.

The large member states (France, Germany, Italy and the UK) currently have ten weighted votes, Spain, a medium large member state, has eight votes. Within the category of medium-sized member states, Belgium, Greece, the Netherlands and Portugal have five votes. Within the category of small member states, the largest ones, Austria and Sweden have been given four weighted votes, Denmark, Ireland and Finland three votes each and Luxembourg, the smallest member state, has been allocated two votes. Although not stated in the EC Treaty, the votes are roughly weighted in ranking order – but not in proportion - of population size so that the larger member states exert a greater voting influence. Hosli notes that next to population size, factors such as economic power and 'historical precedent' also seem to influence the allocation of weighted votes.<sup>84</sup> These factors are well reflected in the considerations the representatives of the member states had in 1951 and 1957 when they allocated Luxembourg's weighted votes:

(...) Tiny Luxembourg, which had initially been created as a buffer state between France and Germany, had been occupied during the Second World War, was on the side of the victorious Allies, was itself a significant coal and steel producer, was a founder member of the Benelux organization, and was, despite its small scale, a sovereign state. Luxembourg could not be denied some place in the scheme of things, and so was awarded the absolute minimum possible – one point, on the base of which all other calculations were made.<sup>85</sup>

For Luxembourg the economic factor seemed to have played a crucial role in the allocation of weighted Council votes. Being an important coal and steel producer Luxembourg was lucky that European integration started with economic co-operation in the coal and steel sector.<sup>86</sup> This secured the country equal representation in the Council of Ministers including minimum representation for weighted votes.

### **Overrepresentation of Luxembourg**

The calculations made at that time introduced one contradictory yet central feature of EC decision-making that has become an increasingly political issue during the last years<sup>87</sup>: overrepresentation of Luxembourg and other small member states. The founding member states made sure that Luxembourg's weighted vote had no influence on the outcome of decisions<sup>88</sup>, and yet, like other small member states, Luxembourg has

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<sup>84</sup> M. O. Hosli, 'Admission of European Free Trade Association States to the European Community: Effects on Voting Power in the European Community Council of Ministers' in *International Organization* 47:4 (1993) pp. 633-4; Teasdale expresses a similar idea when he writes that "from the start, the weighting extended to small states has always been greater than that justified on strict population grounds" (A. Teasdale, 'The Politics of Majority Voting in Europe' p. 102).

<sup>85</sup> M. Westlake, *The Council of the European Union* pp. 90-1.

<sup>86</sup> G. Trausch (et al), *Le Luxembourg face à la construction européenne* (Luxembourg, 1996) p. 7.

<sup>87</sup> Especially within the context of institutional reform that is currently discussed (see Chapter Six).

<sup>88</sup> See Trausch stating that during the negotiations leading to the Treaty of Rome, a note was added stipulating that Luxembourg's weighted vote should by no means have any effect on decision-making (Anciens de l'Athénée, 'L'Europe à l'aube du troisième millénaire: Quelles perspectives pour le

been highly overrepresented as regards its voting share in the Council ever since the introduction of weighted votes. This means that there is an imbalance between voting weight and population. Although Luxembourg has been given the lowest weighting (currently two votes) this is disproportionately high with respect to its population (approximately 420,000 inhabitants). Luxembourg thus has one vote per 210,000 inhabitants. To take the other extreme, Germany, the largest member state with a population of 81.6 million inhabitants, is approximately 200 times bigger than its tiny neighbour but has been given a weighting (10 votes) that is not proportionately higher when taking the relation population - weighted vote as a calculation basis: Germany has one vote per 8.1 million inhabitants.

To comprehend the overrepresentation of small states we need to understand why weighted votes have been introduced after all? During the negotiations for the Treaties of Paris and Rome, the original six member states calculated and negotiated arrangements that provided a system of checks and balances between small and large member states but which slightly favoured the smaller members. The considerations of the founding fathers consisted in introducing a system whereby the small member states' weighted vote was low enough so that they could not block all together a decision, and where the larger member states' weighted vote was twice as high as the one of Belgium or the Netherlands but still low enough, so that a single large state could not automatically obtain a binding majority and thus dominate decision-making. A peculiarity of the system is that it guarantees the right to pre-eminence to the large member states while preventing them from bullying the smaller members. Hence small member states would be protected from 'big-country bullying'. At the same time a certain equality between the largest member states had to be guaranteed by giving them the same number of weighted votes (four votes). With the blocking minority threshold set at six votes, the three small member states could not block a decision against the will of the three large ones, and the big three would all have to act together to achieve the qualified majority threshold (12 votes).

Today, with the threshold for qualified majority set at 62 out of a total of 87 votes, 'large-state bullying' is even less possible. The five largest states (although representing two-third of the EU's population) cannot achieve QMV by their own efforts but need to seek the support of smaller member states to make a legislative act pass. At the same time the smallest member states (that is Luxembourg and the three-vote and four-vote states) still cannot block a proposal<sup>89</sup> without the help of two medium-sized or one larger member state. Hence the system of weighted votes which, on the surface, seems to foster inequality with respect to the differing weighted votes does indeed contribute to the equality of member states when giving it a closer look:

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Luxembourg?' in *Bulletin de Liaison des Anciens de l'Athénée* No 13 (1998) pp. 9-10).

<sup>89</sup> In order to block a proposal to be taken under QMV, a coalition of member states needs to form a blocking minority currently consisting of at least 26 out of the total of 87 weighted votes.



The importance of majority voting lies not so much in the fact that it prevents small States from blocking important decisions, as such members could as a rule be brought into line by political pressure. What the majority principle does is make it possible to outvote large Member States that would withstand political pressure. This principle thus contributes to the equality of Member States and must therefore be regarded as the cornerstone of the Community constitution.<sup>90</sup>

This possibility to "outvote large Member States that would withstand political pressure" has become easier for small states ever since the 1995 enlargement tipped the balance to their advantage. Although it is still true that a coalition of the smallest member states cannot block a decision without any help of medium-sized and larger ones, a clear imbalance in favour of small states and the falling trend of the blocking minority<sup>91</sup> make it easier for small and medium-sized states to block a decision. The fear of an increased weight of a larger number of small states became most visible during the 1995 enlargement negotiations. In particular Spain and the UK feared a decrease in their potential veto power and argued for maintaining the blocking minority threshold at 23 votes in an expanded Union. Luxembourg and its Benelux partners argued strongly in favour of an increased blocking minority on the grounds that an unchanged blocking minority would have increased the voting power of the large member states. The ensuing Ioannina Compromise was intended to reassure Spain and the UK that the decrease in their relative voting power caused by an increase in EU members would be taken into account, even if informally.<sup>92</sup>

### **Voting Permutations Between 1958 and Today**

Under the current majority voting system, a variety of permutations exist for Luxembourg to vote in favour or against a Commission proposal. Since the 1995 enlargement, Luxembourg's voting position has considerably improved due to the range of coalitions it can join after new small members (Austria, Finland and Sweden) joined the EU. If Luxembourg wants to block a proposal in a coalition consisting of other small states, it needs to rally the support of Austria, Sweden (4 votes each), Finland, Ireland and Denmark (3 votes each) and either two of the five-vote states or Spain or one ten-vote state.<sup>93</sup> A blocking minority can be achieved by the smallest states representing only around 13 % of the Union's population. If Luxembourg wants to block a proposal in a coalition with its Benelux partners, it needs to rally the support of at

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<sup>90</sup> K. Borchardt, *The ABC of Community Law* (4<sup>th</sup> ed) (Luxembourg, 1994) p. 24.

<sup>91</sup> Table 3.1 shows that the percentage of votes needed to block a proposal dropped from 35.2 % between 1958 and 1973 to around 30 % after 1973.

<sup>92</sup> See Council Decision of 29 March 1994, OJ C 105/1, 13 April 1994. The Ioannina Compromise states that the Council would continue for a time to seek a wider basis of agreement on issues where members representing 23 or more, but no less than 26 votes, indicated sustained opposition. The text, which is a Council decision, does not amend the Treaties.

<sup>93</sup> This theoretic perception should, however, not give a wrong impression of a reality in which it is almost unheard of that small states outvote large ones in a systematic way.

least two more, preferably large states. Luxembourg could become a pivotal coalition partner for the formation of a blocking minority where none of the five larger members could be persuaded to join and either Ireland, Denmark or Finland could not be won over either. In this case an alliance of at least six member states, including at least two of the four five-vote states (Belgium, Greece, the Netherlands or Portugal) needs to be formed where Luxembourg's two votes could be decisive to block the respective proposal. Another instance where Luxembourg's vote could become pivotal is when two large member states try to block a proposal and need the support of two small members. Similarly, a multitude of voting formations exist where Luxembourg is needed to make a decision pass.

Luxembourg did not always have as wide a range of possibilities to form alliances. Especially between 1958 and 1973, that is until the first enlargement, the country was a powerless country with regard to majority voting. The idea finalised in the Treaty of Rome was to grant Belgium and the Netherlands (2 votes each) twice the number of votes of Luxembourg (1 vote) and Germany, France and Italy, the three larger member states (4 votes each), i.e. twice the number of votes of Belgium and the Netherlands. Luxembourg could only block a measure if it managed to recruit the votes of one larger member state plus those of either Belgium or the Netherlands. With only one (odd) vote and the qualified majority set at 12 out of 17 votes, Luxembourg had no formal impact on voting. Hence from 1958 until the first enlargement in 1973, Luxembourg was a 'dummy country'<sup>94</sup>. Luxembourg's one vote was not pivotal for the formation of a qualified majority, which could be attained by the votes of two large member states plus Belgium and the Netherlands or by the three larger member states alone. Nor was it needed for forming a blocking minority. This was set at six votes and consisted of the votes of two larger member states or one larger member state and those of either Belgium or the Netherlands. The reason why Luxembourg was a 'dummy country' was because all the other member states had an even number of votes so that Luxembourg with its odd one vote was never pivotal for a voting coalition to be successful.

In the 1973 enlargement, Luxembourg's weighted votes were increased to two votes. Ever since 1973 there have been no changes of voting weights for any of the member states. With the qualified majority set at 41 out of 58 votes between 1973 and 1981, Luxembourg's higher share in weighted votes gave the small member state's vote some impact on the voting outcome. In this new Community of Nine, Luxembourg's assistance was needed if the other four small members wanted to block the four large ones (blocking minority required 18 votes). Luxembourg's support was not needed as soon as one large member state was part of the blocking minority.

When Greece became a member of the European Community in 1981, the qualified majority was set at 45 out of 63 votes; the blocking minority now required 19

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<sup>94</sup> Term coined by P. Affuso/S. Brams, 'New Paradoxes of Voting Power on the EC Council of Ministers' in *Electoral Studies* 4:2 (1985) pp. 135-9.

votes. In this Community of Ten, Luxembourg's vote was less crucial than in the previous Community of Nine. In order to block the four large member states, Luxembourg had no crucial impact on the formation of a blocking coalition of small member states. It could join a blocking coalition of small states consisting of the three five-vote states (Belgium, the Netherlands and Greece) and one three-vote member state (Denmark or Ireland) but the five-vote states were not reliant on Luxembourg's vote to stand against the large member states. Yet again this enlargement offered new opportunities for forming voting coalitions.

From 1986 until 1995, Luxembourg's vote could be important in a number of different voting constellations though it was not absolutely crucial for the formation of voting coalitions. In the Community of Twelve, the qualified majority was set at 54 out of 76 votes and a blocking minority required 23 votes. If Luxembourg wanted to block a decision in a coalition of small states, it needed the support of three five-vote states plus Denmark's and Ireland's. However it must be pointed out that Luxembourg's vote was not crucial if the small states wanted to form a block against the large member states. If two large member states wanted to block a decision, Luxembourg's support was not enough and another (small) member state's support had to be found to form a blocking minority. However, in a blocking minority consisting of Spain (8 votes), two five-vote member states and one three-vote member state, Luxembourg's vote could be crucial to block a decision.

### **Luxembourg's Relative Voting Power**

Majority voting, which has almost become the norm in Council decision-making since the SEA, is closely linked with the issue of imbalance between small and large member states. Successive enlargements, and especially the 1995 enlargement strengthened the position of small members and reduced the voting power, especially of large member states. This overrepresentation of small states and the relative voting power they possess has become an increasingly political issue. Quantitative measures have been applied to assess the relative voting power of states. The various techniques used, in particular the Shapley-Shubik power index and the Banzhaf power index, produce similar results: whereas the relative voting power of large member states declines, the relative voting power of smaller ones increases.

Table 3.2 Current weighted votes, population, and relative voting power under QMV<sup>95</sup>

	Number of votes	Share of votes (%)	Population (mio) in 1995	Relative voting power (%) <sup>*</sup>
<b>B</b>	5	5.7	10.1 (2.7%)	5.52
<b>F</b>	10	11.5	58.0 (15.6%)	11.67
<b>D</b>	10	11.5	81.6 (22%)	11.67
<b>I</b>	10	11.5	57.2 (15.4%)	11.67
<b>L</b>	2	2.3	0.4 (0.1%)	2.07
<b>NL</b>	5	5.7	15.4 (4.1%)	5.52
<b>DK</b>	3	3.4	5.2 (1.4%)	3.53
<b>IRE</b>	3	3.4	3.6 (0.9%)	3.53
<b>UK</b>	10	11.5	58.3 (15.7%)	11.67
<b>GR</b>	5	5.7	10.4 (2.8%)	5.52
<b>P</b>	5	5.7	9.9 (2.6%)	5.52
<b>SP</b>	8	9.1	39.1 (10.5%)	9.55
<b>A</b>	4	4.5	8.0 (2.1%)	4.45
<b>FI</b>	3	3.4	5.1 (1.3%)	3.53
<b>SW</b>	4	4.5	8.8 (2.3%)	4.54
<b>Total</b>	87	99.4	371.1	100

Legend: B=Belgium; F=France; D=Germany; I= Italy; L=Luxembourg; NL=Netherlands; DK=Denmark; IRE=Ireland; UK= United Kingdom; GR=Greece; P=Portugal; SP=Spain; A=Austria; FI=Finland; SW=Sweden

\* Based on the Shapley-Shubik power index<sup>96</sup>

The five largest member states (France, Germany, Italy, Spain and the UK) with a total population of 294.2 million inhabitants have a share of 55.1 % in the votes. The four smallest member states (Denmark, Finland, Ireland and Luxembourg) have a population of 14.3 million inhabitants but a share of 12.5 % in the Council votes. This means that the four smallest member states have a population that is about 20 times smaller than the one of the five largest member states, and yet they have a share in one eighth of the Council votes. The case of Luxembourg with 0.1% in the share of EU population and 2.3% in the share of Council votes exemplifies overrepresentation at its best.

Luxembourg also enjoys an advantageous position with regard to its relative voting power. In general, the share in the vote total and the relative voting power of countries has decreased each time new members joined the Community.<sup>97</sup> It seems to be quite

<sup>95</sup> Adapted from M. Westlake, *The Council of the European Union* p. 97, F. Hayes-Renshaw/H. Wallace, *The Council of Ministers* p. 46 and M.O. Hosli, 'Coalitions and Power: Effects of Qualified Majority Voting in the Council of the European Union' in *JCMS* 34:2 (1996) p. 265.

<sup>96</sup> For a general discussion of the effects of majority voting on the voting power of EU member states on the basis of the Shapley-Shubik voting power index see M. O. Hosli, 'Coalitions and Power' (1996). The Shapley-Shubik power index is a traditional measure of voting power. "It essentially calculates the proportion of cases in which a member can be pivotal within a coalition of members, that is, turn the voting coalition from a winning one into a losing one and vice versa" (M. O. Hosli, 'Coalitions and Power' p. 261). For a critique on power indices on the grounds that they ignore the policy preferences of member states in the Council see G. Garrett/G. Tsebelis, 'An Institutional Critique of Intergovernmentalism' in *International Organization* 50:2 (1996) pp. 269-99.

<sup>97</sup> This holds only true under QMV. For decisions requiring unanimity, there is not much variation in voting power between the members since all of them hold a veto.

logical that "in relative terms, the shares of individual members in the vote total decreased with an increase in the number of members"<sup>98</sup> and that a loss in voting power goes with it. Hence it seems to be completely illogical that a member state experiences an increase in voting power when new members join the Community. This is exactly what happened to Luxembourg in the 1973, 1981 and 1995 enlargements. Although its share in the vote total decreased as new members joined, Luxembourg witnessed a gain in voting power even though all the other member states experienced the contrary. Affuso and Brams call this phenomenon the 'paradox of new members'.<sup>99</sup>

	1958-73	1973-81	1981-85	1986-95	Since 1995
<b>Luxembourg</b>	0	0.95	3.02	1.18	2.07

Table 3.3 Voting power (%) for QMV in the Council of Ministers calculated on the basis of the Shapley-Shubik power index<sup>100</sup>

As table 3.3 shows, Luxembourg witnessed an increase in voting power of 0.95 % in the 1973 enlargement, 2.07 % in the 1981 enlargement and 0.89 % in the 1995 enlargement. One reason being that in all of these enlargements, the new members that joined were small and medium-sized member states (except the UK and Spain) offering a wider range of opportunities for small states to participate in winning coalitions and to make a crucial contribution under the new constellation.<sup>101</sup> Affuso and Brams give a specific explanation for the increase in voting power Luxembourg experienced in 1973. As we have seen above, Luxembourg was a 'dummy country' between 1958 and 1973, that is Luxembourg had no voting power at all during that period. Luxembourg's one (odd) vote could not be pivotal for a voting coalition as all the other member states had an even number of votes and qualified majority was set at 12. Affuso and Brams describe the 'paradox of new members' that occurred in the 1973 enlargement as follows:

Despite the fact that the new Council now included three new members, with a combined total of 16 votes (England, 10; Denmark and Ireland, 3 each), and Luxembourg's proportion of votes fell from  $1/17=0.059$  in the old Council to  $2/58=0.034$  in the new Council, it had greater voting power in the new Council. (...) It seemed to us an anomalous change, because one would expect that when new members are added to a weighted voting body like the Council, and the proportion of votes of each of the old members therefore decreases, the voting power of the old members should also decrease. Yet, this did not occur in the case of Luxembourg.<sup>102</sup>

<sup>98</sup> M.O. Hosli, 'Coalitions and Power' p. 263.

<sup>99</sup> See 'New Paradoxes of Voting Power on the EC Council of Ministers' (1985).

<sup>100</sup> Adapted from M.O. Hosli, 'Coalitions and Power' p. 265.

<sup>101</sup> M.O. Hosli, 'Coalitions and Power' p. 265 and 'Admission of European Free Trade Association States to the European Community' p. 640.

<sup>102</sup> P. Affuso/S. Brams, 'New Paradoxes of Voting Power on the EC Council of Ministers' p. 135.

Affuso and Brams point out that this increase in voting power is all the more extraordinary since Luxembourg's weighted votes only doubled whereas the other original member states' voting weights were increased by a factor of 2.5 % (from 4 votes to 10 for the large member states and from 2 to 5 for Belgium and the Netherlands). Still it was Luxembourg's relative voting power that increased whereas the voting power of the other original member states decreased.

### **3.2 A Role Without Any Influence?**

Does Luxembourg play a role in the Council of Ministers and if so, what role does it play? The very fact of being a member of the European Union with all the rights and duties EU membership confers, gives Luxembourg the right to play a role in the Council of Ministers, be it through its right to vote, be it through its right to sit around the negotiating table and to voice its interests or be it when taking the chair during the Council Presidency. Jim Cloos, head of the Santer cabinet, remarks: "(...) Nous pouvons jouer un rôle à l'intérieur de l'Union quand il s'agit de nos intérêts ou quand il s'agit de définir ou de modeler, p.ex., le fonctionnement de la politique extérieure, même si cela s'avère de plus en plus difficile".<sup>103</sup> It seems to be more difficult for a member state, the more so for a small one, to make its voice heard in a Community of Fifteen than in a Community of, say, Nine or Six. Hence it is very important for Luxembourg to be well represented at all levels of the Council hierarchy, to stand out with expertise on Community dossiers and Council procedures and to inspire confidence in the Council. Generally speaking, it can be said that the role Luxembourg plays in the Council is determined by the Council level (preparatory level, Council of Ministers or European Council level), by the type of sectoral Council and by the items on the agenda.<sup>104</sup> Well aware of its lack of tools and resources to play a leading role at most senior level and having a vested national interest in only a limited range of policy fields, Luxembourg adopts a *low-profile approach* (see Chapter One) in the European Council where the heads of state and government take 'general political guidelines' (Art. D TEU) as well as in the General Affairs Council (GAC), the most senior Council, where foreign ministers perform an important co-ordinating role.

#### **The European Council**

At European Council level, Luxembourg takes a rather passive approach, keeping out of the limelight, letting the other (mostly larger) partners define policy orientations or fight out unresolved conflicts. Only matters of vital national importance induce the country's representative (in this case the Prime Minister) to intervene and to draw attention to a

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<sup>103</sup> Anciens de l'Athénée, 'L'Europe à l'aube du troisième millénaire' p. 12.

<sup>104</sup> The following description is based on information provided during a personal interview with Jean-Jacques Kasel, former Luxembourg Permanent Representative with the EU.

particular problem. At this level the personality and length of experience of the representative play an important role. Most of Luxembourg's post-war Prime Ministers have been members of the government for at least ten years, holding other portfolios before or after they became Prime Minister. Unlike his predecessors<sup>105</sup> who did not intervene a lot, the current Prime Minister Jean-Claude Juncker, a tough negotiator of straightforward argument, has certain fields of interest that arouse him personally on which he makes brief but sharp interventions. Due to his wealth of contacts, his widespread respect and his gift for building consensus, Juncker cajoled more than once a compromise at European Council level, especially between Luxembourg's larger neighbours France and Germany of whose developments he is a close observer and whose languages he speaks fluently.<sup>106</sup> This neutral mediating role that the Prime Minister may assume at European Council level is based on Luxembourg's non-competitive relationship with its larger partners, its central position in the interaction process at the source of information, and its general low-profile approach.

### **The Council of Ministers**

At Council of Ministers' level, the role Luxembourg plays can no longer be defined as passive. At this level of the Council hierarchy, we need to distinguish between the General Affairs Council (GAC), the most senior Council, and the sectoral Councils (e.g. Agriculture Council, Environment Council, etc.). The lack of information of a small diplomatic service places Luxembourg in a weaker position to deal convincingly with the GAC's steadily increasing burden of primary work associated with CFSP. This, however, has the advantage of presenting Luxembourg as a useful provider of 'good offices' for other members. Luxembourg therefore assumes the role of neutral co-ordinator, brokering compromises and making procedural as well as textual suggestions. A detailed expert knowledge of European dossiers and its place at the centre of the decision-making process make the country's representatives interlocutors on many a difficult dossier and procedural matters. The fact that Jacques Poos, Luxembourg's Foreign Minister, is the doyen of the GAC gives Luxembourg's voice often, though not always, greater weight.

In sectoral Councils, the role Luxembourg plays is largely a function of the item on the agenda. On dossiers in which the country has no vested national interest, the representatives take, again, a more detached stance and are more reluctant to intervene. Luxembourg plays for example a lesser role in the formulation of nuclear energy policy but its activity in the camp of protectors against nuclear energy is all the more intense. Since only a limited number of issues have high-priority status in terms defence of national interests, Luxembourg's level of intervention is generally low (low-profile

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<sup>105</sup> E.g. Jacques Santer or Pierre Werner.

<sup>106</sup> See the mediating role that Prime Minister Juncker assumed at the 1996 Dublin European Council (below).

approach). There seems to be a fear of being a nuisance and a general reluctance among Luxembourg's Council representatives to intervene unless a vital interest is at stake as a statement by former Prime Minister Jacques Santer exemplifies:

It remains true that it is sometimes more difficult for a smaller country to invoke a national interest, especially if such interests collide or are thought to collide with those of more powerful countries. A small state is therefore well advised to be careful not to become a permanent source of irritation to its partners. It has to remember that it is often important not to be important, especially if no vital interests are at stake.<sup>107</sup>

As soon as matters are on the agenda whose passing would threaten Luxembourg's sovereignty, ministers get very active and interventions increase. This is for example the case in Ecofin Councils when matters of crucial importance for the country's thriving financial centre are being discussed. Jean-Jacques Kasel asserts that in such a case Luxembourg enjoys a priori the same right to defend its interests as any other member state.

### **Coreper and Working Groups**

At preparatory level, i.e. at Coreper and working party level, member states voice for the first time the relative importance of a dossier and formulate their objections to particular issues. It is at this level where the size of a member state does not play an important role anymore. Member states' representatives enjoy the same status, Permanent Representatives in Coreper being senior government officials and representatives in working parties being national experts, often officials themselves. Here the *Realpolitik* 'equality' (in the vein of 'all members are equal but some are more equal') prevailing at senior Council level turns out to be a fully guaranteed equality where members enjoy equal status. Members of working parties are often close acquaintances and share a certain intimacy through their common knowledge in their specialised field.<sup>108</sup> The same is true for Permanent Representatives who, in perfect inside knowledge of European affairs, may act with greater informality than their respective ministers and whose daily working life is often marked by personal friendships.<sup>109</sup> This more sincerely felt equality and Coreper's informal atmosphere encourage Luxembourg's delegates to act more spontaneously than at superior Council level and to play a truly active role. Luxembourg thus adopts a *high-profile approach* which consists in active participation on almost every dossier. The general reluctance to intervene in dossiers of little national interest that prevails at formal ministerial level is

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<sup>107</sup> Ministère d'Etat du Luxembourg, 'The Economic Integration of the Grand Duchy of Luxembourg: Past Experience and Prospects' in *Bulletin de documentation* 7/1989 p. 37.

<sup>108</sup> M. Westlake, *The Council of the European Union* p. 318.

<sup>109</sup> Consider Jean-Jacques Kasel's description of the Permanent Representatives' life in Brussels: "We live together in Brussels, we drive the same cars, sit every week around the same negotiating table, meet the same people."



absent at preparatory level. Luxembourg voices its position on almost every dossier and takes advantage of its role of neutral co-ordinator and small partner to sometimes "say what others refrain from saying or cannot say" (Kasel). Active participation in Coreper can also take the form of providing 'good offices', of offering constructive support to the chair in helping to reach agreement. Since virtually all items on the Council agenda have to pass the Coreper filter, one could argue that Luxembourg, though adopting a low-profile approach at ministerial level, exerts a covert influence on most European dossiers through its high-profile approach in Coreper.

### **Luxembourg's Actual Political Weight**

A question that is equally interesting and which nuances the previous one is whether Luxembourg has a substantial influence on policy outcomes in the Council. When reading through government speeches and interviews given by government members, there seems to be common awareness and general consensus that Luxembourg is theoretically and legally on an equal footing with its partners but that this does not mean that its actual influence in decision-making does equal those of other member states. Prime Minister Juncker's statement illustrates this view when he asserts that one of the founding principles of post-war Europe is that Luxembourg has the same rights but that as a small state "we can't make full use of these rights. We could use the veto maybe once every 10 years; everyone knows that Britain, France and Germany will always have greater rights".<sup>110</sup> Luxembourg simply cannot impose decisions on other member states the way its larger partners can.<sup>111</sup> Nor can it block decision-making or be a nuisance the way a large partner can. Luxembourg's representatives seem to be well aware of their place in these "observable hierarchies of political influence and economic weight".<sup>112</sup> With regard to the weighting of votes, Foreign Minister Jacques Poos asserts:

Cette pondération a été introduite, à juste titre me semble-t-il, pour tenir compte de réalités politiques indéniables. Les envergures géographiques et démographiques des pays, la qualité et le volume de leurs économies, leurs richesses naturelles, leurs puissances militaires font que chaque souveraineté nationale pèse d'un poids différent dans la balance internationale. C'est un fait. On ne peut guère être un nain économique et un géant politique, même si certains soutiennent que l'inverse est possible.<sup>113</sup>

A general view therefore prevails that nothing substantial can be done in EU policy and decision-making against the will of one of the large member states, especially of France

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<sup>110</sup> D. Gardner, 'Survey of Luxembourg (2): Firm Ideas on the Duchy's EU Role. Political Profile of Jean-Claude Juncker' in *Financial Times*, 19 October 1994.

<sup>111</sup> G. Trausch in *Anciens de l'Athénée*, 'L'Europe à l'aube du troisième millénaire' p. 12.

<sup>112</sup> H. Wallace quoted in P. De Schoutete, 'The European Community and its Sub-systems' in W. Wallace, *The Dynamics of European Integration* (London, 1990) p. 114.

<sup>113</sup> Ministère d'Etat du Luxembourg, 'Le rôle des petits pays dans la Communauté' in *Bulletin d'information et de documentation* 2/1992 p. 22.

and Germany.<sup>114</sup> This is because, as Jacques Poos rightly observes, not only different weightings of votes but also political and economic weight play an important part in the making of Community decisions. Philippe de Schoutheete, Belgium's Permanent Representative, perceptively describes the underdog position of small states when he observes:

Quite apart from the weighting of votes, it is clear that the political and economic clout of Member States plays a part when it comes to the making of Community decisions. It is easier to set aside the opposition of a small country than that of a large one. This is self-evident and a matter of *Realpolitik*; it applies to any multilateral organization and perhaps even to human society as a whole. One cannot deduce from it the existence of a privileged decision-making mechanism.<sup>115</sup>

A further question then imposes itself: well aware of its *Realpolitik* place in the Council hierarchy of states, what strategies does Luxembourg apply to strengthen its position in the Council, to enhance its opportunities of action, to give weight to its voice and to defend its interests?

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<sup>114</sup> Hosli even speaks of an 'informal veto power' of France and Germany (M.O. Hosli 'Coalitions and Power' p. 259); see also P. de Schoutheete, 'The European Community and its Sub-systems' p. 114.

<sup>115</sup> P. De Schoutheete, 'The European Community and its Sub-systems' p. 114.

## 4 Negotiating Strategies and Tactics

*Entre le faible et le fort, c'est la loi  
qui libère et la liberté qui opprime.*

Condorcet

In view of its small size, its voting weight and political influence, what behaviour does Luxembourg adopt during Council negotiations? Do Luxembourg's representatives develop specific strategies in the Council of Ministers to make their voice heard and to provide them with opportunities of action? Is there a visible change in Luxembourg's behaviour depending on whether it has or has no specific national interest in a certain policy field? Depending on its interests at stake, Luxembourg seems to walk a tightrope between supranational and intergovernmental spheres. Luxembourg takes a dedicatedly *communautaire* approach to European integration, favouring strong supranational institutions and the *communautarisation* of the intergovernmental Treaty pillars (CFSP and JHA). Its limited resources, its structural weaknesses and its low-profile approach caused by its smallness urge Luxembourg together with its two Benelux partners to consider itself as the 'guardian of a *communautaire* spirit'. It can therefore be generally argued that Luxembourg's participation in EU decision-making is firmly set within the supranational sphere and many of the steps it takes happen within it.

It would, however, give a wrong impression to consider Luxembourg as giving itself unconditionally to the cause of deeper integration. No state would do so. Luxembourg's attitude to European integration is marked by an inherent ambiguity which is best visible in the strategies it takes in the Council. It may therefore be argued that Luxembourg moves within the supranational sphere when it adopts its general low-profile approach (that is when matters of no vital importance are on the agenda) or when it acts as a neutral co-ordinator. But as soon as EU policy outputs are likely to threaten its vital national interests or its very status within EU institutions, then the government may fall into the intergovernmental sphere, making use of the mechanisms of intergovernmental bargaining. Luxembourg's attitude to voting in the Council is symptomatic for this ambiguous attitude. The government is basically in favour of qualified majority voting for the sake of a more efficient decision-making. During the 1996 Intergovernmental Conference (IGC), Luxembourg strongly favoured the extension of QMV to new domains (see Chapter Six). And yet in policy fields of vital national interest it treasures unanimity voting as former Prime Minister Jacques Santer asserts:

Specific interests of small countries are best taken into account by a Council of Ministers deciding by unanimity. The trouble is that by this kind of procedure many decisions will never be taken. And small countries are of course strongly interested in a Community which is able to work efficiently and to take quick

decisions.<sup>116</sup>

The behaviour and strategies Luxembourg adopts to strengthen its position in the Council, to make its voice heard or to defend its national interests are set out below.

#### 4.1 Strategies of Neutrality

Luxembourg primarily uses strategies of neutrality when it acts within the sphere of supranationality, when there is no vital national interest at stake and when it may work for the general benefit of deeper integration. The strategies range from taking the Commission as an ally to acting as a neutral coordinator and mediator.

##### The Commission - An Ally

Generally speaking, whether or not direct national interests are at stake, Luxembourg (like other small partners) professes a visible fear against the formation of a *directoire* of large member states, i.e. an 'operational alliance regularly composed of the *large Member States*'<sup>117</sup>, and sees its position best secured by viewing the Commission as a natural ally. Being the guardian of the Community treaties and interests, small states regard the Commission as a safeguard for their interests and strongly oppose the diminution of its authority in favour of intergovernmental institutions any time it is threatened. Note the words of Foreign Minister Jacques Poos formulated in a speech on the role of small states in the EC: "(...) L'émergence d'un directoire des 'Grands' serait un retour en arrière contraire à l'esprit même des Traités successifs".<sup>118</sup> And further down: "Garant de l'avantage commun, la Commission est appelée aussi à être le défenseur des droits des Etats membres de moindre envergure". A recent example where Luxembourg opposed the weakening of the Commission in favour of intergovernmentalism was an initiative undertaken by Kohl and Chirac in June 1998. The ideas on decentralisation and subsidiarity professed in a common letter sent to the British Presidency were considered by the European Commission and many small states, including Luxembourg, as a measure intended to weaken the EU's supranational institutions and to strengthen intergovernmentalism in favour of large member states.<sup>119</sup>

A strong convergence of interests between Luxembourg and the Commission consisting in a definite respect for the Treaties and a determined federal-mindedness, makes Luxembourg often side with the proposals of the Commission, in particular when it has no national interest in a particular policy field.

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<sup>116</sup> Ministère d'Etat du Luxembourg, 'The Role of Small Countries in the Emerging European House' in *Bulletin de documentation* 6/1990 p. 42.

<sup>117</sup> P. De Schoutheete, 'The European Community and its Sub-systems' in W. Wallace, *The Dynamics of European Integration* (London, 1990) p. 114.

<sup>118</sup> Ministère d'Etat du Luxembourg, 'Le rôle des petits pays dans la Communauté' in *Bulletin d'information et de documentation* 2/1992 p. 23.

<sup>119</sup> See f.i. R. Hilgert, 'Machtansprüche' in *Lëtzebuurger Land* 45:25 (19.6.1998) and M. Hirsch, 'Sur-Place' in *Lëtzebuurger Land* 44:26 (26.6.98).

En général, le Luxembourg prend dans les négociations communautaires le point de vue d'une stricte orthodoxie communautaire, respectant et la lettre et l'esprit des actes juridiques européens et soutenant bien souvent une position de conciliation moyenne, plutôt favorable aux propositions de la Commission.<sup>120</sup>

This general like-mindedness between Luxembourg and the Commission may constitute an important asset when the country is defending a specific national interest as it hopes to get some reciprocal solidarity from the Commission for its general support.

### **Coalitions and Alliances**

To make its voice better heard, to promote Community interests as well as its own ones more efficiently, Luxembourg forms coalitions or alliances with like-minded partners in particular policy domains. According to Helen Wallace, coalitions are "the deliberate concerting of positions among partners as distinct from chance alignments or compatible but uncoordinated positions".<sup>121</sup> In practice, alliances of member states vary according to sectoral interests. This is because member states hold similar policy preferences or have compatible objectives in some areas but not in others. Helen Wallace states three objectives for joining forces in a coalition: maximizing pay-offs on individual issues; maximizing pay-offs on a range of linked issues; and conditioning the milieu of negotiations.<sup>122</sup> De Schoutheete distinguishes between temporary alliances "in the quest for short-term interests" and long-term alliances of a "more durable nature, one that is deeper and more highly organized" to which he also refers as 'sub-systems'.<sup>123</sup> Depending on the policy field Luxembourg's interests coincide with those of the member states to which it feels close for geographical, historical, economic or cultural reasons.

### The Benelux Union

Luxembourg has the privilege to belong to one of the few long-term alliances which exist within the EU, that is Benelux Union between Belgium, Luxembourg and the Netherlands. De Schoutheete calls this union - established in 1948 as a customs union - 'the sub-system par excellence'. Benelux co-operation is unique for several reasons:

- it is the oldest long-term coalition within the EU;
- it played a vanguard role during the early days of the European Communities;
- it is one of the motors of European integration;

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<sup>120</sup> J.M. Hoscheit, 'La Présidence du Conseil des Ministres des Communautés européennes: Les Présidences du G.D. de Luxembourg' in C. O'Nuallain, The Presidency of the European Council of Ministers. Impacts and Implications for National Governments (London, 1985) p. 188.

<sup>121</sup> H. Wallace, 'Negotiations and Coalition Formation in the European Community' in Government and Opposition 20:4 (1985) p. 459.

<sup>122</sup> H. Wallace, 'Negotiations and Coalition Formation in the European Community' p. 463.

<sup>123</sup> P. De Schoutheete, 'The European Community and its Sub-systems' p. 106.

- it is the object of a special article in the Treaty of Rome that explicitly allows such a union to exist within the broader Treaty framework.<sup>124</sup>

Co-operation between the Benelux countries and co-ordination of their policies serves several objectives:

- it maximises their influence within EU institutions and decision-making;<sup>125</sup>
- it gives them added weight in constitutional talks (e.g. on institutional reform);
- it allows them to act as a spokesperson for small member states in general;<sup>126</sup>
- Benelux also plays the role of mediator between conflicting interests.

Benelux co-operation takes place at various levels both formally and informally. Issues on the EU agenda are often discussed at formal Benelux meetings. In addition, the heads of government consult each other informally before each European Council, and ministers contact each other before important Council meetings. Informal contacts at various administrative levels are regular.

Depending on the interests at stake, the Benelux trio fulfils both a conservative role, trying to defend or preserve a status quo (e.g. during the recent debate on institutional reform), and the role of a catalyst, trying to achieve progress on certain policies other member states are not yet ready for (e.g. the Schengen Agreement). It is, however, important to note that the three countries do not always share the same views and may advocate different attitudes towards different policy issues.<sup>127</sup> According to Prime Minister Jean-Claude Juncker it is much more important to concentrate efforts on a strong co-operation and not on differences of opinion:

Aujourd'hui les prises de position nationales évitent les sujets qui pourraient nous diviser. Nous voulons maintenant approfondir nos accords et aplanir nos désaccords. Du reste, ce n'est pas une catastrophe de voir trois pays à ce point liés prendre des positions divergentes.<sup>128</sup>

This statement, however, shows that Benelux co-operation was not always as strong as it is today. Although the Benelux trio had played an active role e.g. in setting up the

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<sup>124</sup> Art. 233 EC specifies that "the provision of this Treaty shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands (...)."

<sup>125</sup> De Schoutheete remarks: "At the milestones in the life of the Community (the empty chair in 1965, the crises of British membership, the budgetary quarrel, the enlargements, the negotiations for the Single Act, or the Delors package) we regularly find the Benelux countries acting together to defend common positions" ('The European Community and its Sub-systems' p. 117).

<sup>126</sup> Benelux has become so popular in its function as a 'small-state spokesperson' that Prime Minister Juncker saw himself faced with informal demands, one by Austria, another by Portugal, to join Benelux consultations (see Ministère d'Etat du Luxembourg, 'L'Europe à l'aube du 21e siècle' in Bulletin d'information et de documentation 4/1995 p. 244).

<sup>127</sup> Different views exist f.i. concerning defense matters within CFSP where Luxembourg and Belgium rather share the French views and the Netherlands rather those of the UK (see interview with J. Poos 'Un entretien avec le Ministre des affaires étrangères' in Le Monde, 9 December 1992).

<sup>128</sup> Interview Juncker 'Sur l'avenir de l'Union européenne: Jean-Claude Juncker' in Le Soir, 20 September 1995.

Schengen system and as mediator in the negotiations for SEA and TEU, many a scholar deplored that Benelux co-operation was limited to simple rituals and that there were rarely recognised common interests before 1995.<sup>129</sup> After Maastricht, the Benelux partners recognised the importance of co-operating more closely on major European debates and it came to a *rapprochement* of views. Since 1995, or rather since the three countries have new Prime Ministers, Benelux co-operation has been given new life. Jean-Luc Dehaene, Jean-Claude Juncker and Wim Kok can be seen as the motor of Benelux co-operation, which has also an effect on the co-operation among Benelux foreign ministers. The Benelux partners now consider themselves as one of the motors of European integration and as the Union's mediators, roles they fulfilled in the early days of the Communities:

Nous pouvons jouer un rôle intermédiaire entre le nord et le sud, entre les grands et les petits, entre le couple franco-allemand et le reste de l'Union. Le Benelux peut même animer le couple franco-allemand dont je ne sais s'il est suffisamment fort pour être le moteur d'une Union à Quinze. L'Europe est un bi-moteur! On ne peut pas laisser aux seuls Français et Allemands le soin de la construire.<sup>130</sup>

Benelux co-operation can be said to have been revitalised at the 1995 Cannes European Council where the Benelux states strongly influenced the negotiations on Europol. As a consequence, there has been regular consultation regarding the negotiations for Agenda 2000 and for the 1996 IGC in order to establish a common position. A revitalised, strong Benelux co-operation is of particular interest for Luxembourg at a time where the Union faces major reforms.<sup>131</sup>

### Temporary Coalitions

The second type of coalitions are temporary coalitions between governments, which Helen Wallace prefers to call 'caucus groups'<sup>132</sup>, especially if they are limited only to one single issue. They may be considered as one form of what Reinhard Rummel rightly termed 'multiple bilateralism'<sup>133</sup>, i.e. 'the constant flow of contacts and meetings which precede and accompany Commission consultations and Council sessions'. Such caucus

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<sup>129</sup> E.g. J.L. Brinkhorst, 'Quarante ans après Messine. Une nouvelle chance pour les Etats du Benelux?' in *Cahiers de Droit Européen* Nos 3-4 (1995) p. 260; A. Gillissen, 'The Benefits of European Community Membership' in Dunleavy/Stanyer (eds) *Contemporary Political Studies 1994* (vol. II) (Belfast, 1994) p. 848.

<sup>130</sup> Jean-Claude Juncker on the role Benelux should play during the 1996 IGC in an interview ('Sur l'avenir de l'Union européenne: Jean-Claude Juncker' in *Le Soir*, 20 September 1995).

<sup>131</sup> Foreign Minister Jacques Poos therefore asserted in the government's 1996 Declaration on Foreign Policy: "Nous avons pleinement soutenu la revitalisation du Benelux à travers lequel nous exerçons une influence multipliée sur le devenir de l'Union" (Ministère d'Etat du Luxembourg, 'Déclaration de politique étrangère' in *Bulletin d'information et de documentation* 1/1996 p. 128).

<sup>132</sup> H. Wallace, 'Negotiations and Coalition Formation in the European Community' p. 461.

<sup>133</sup> The three forms of 'multiple bilateralism' are discussed in H. Wallace, 'Negotiations and Coalition Formation in the European Community' p. 461 and include consultation between the Commission and individual governments, caucus groups, and more durable coalitions.

groups are in the interest of individual governments. The range of new subjects the ministers have to handle in Council require more informal consultation between pairs or sometimes larger groupings of governments (in capitals or by telephone). The aim is to define common objectives, to explore issues or to define a line to take vis-à-vis the Commission or other members in the Council. Luxembourg has particularly strong contacts with its large neighbours, France and Germany, and its two Benelux partners. Being largely in favour of deeper integration, all of these countries seem to be bound by a common attitude to European integration and their common status as EC founding members.

An example of regular bilateral ad hoc consultation are the contacts that existed between the Luxembourg and German Ministers responsible for post and telecommunications.<sup>134</sup> Another instance of bilateral contacts, which according to former Permanent Representative Kasel is a completely new phenomenon, are the regular (almost weekly) phone calls Jean-Claude Juncker has with his French and German homologues in his capacity as Prime Minister and Finance Minister. For a small state like Luxembourg that suffers from a constant lack of diplomatic information, these phone calls are an invaluable source of information, which is immeasurably more precise than any information that Luxembourg's diplomats could ever obtain. Another short-term alliance existed in the run-up to the 1996 IGC among those member states that showed a true willingness to make the integration process advance, an alliance that could be informally called the 'Six minus one'. These meetings were held on the level of the advisers to the heads of government of the founding member states, except Italy.<sup>135</sup> They were important for Luxembourg to get acquainted with the positions of other member states on the IGC and in particular on institutional reform. Social policy is another domain where Luxembourg sporadically meets the Labour Ministers of Belgium, France, Germany and the Netherlands to discuss large orientations of social policy within what is called 'Maastricht Group'. Prime Minister Juncker, who is also Labour Minister, considers these ad hoc meetings as a sound box for testing ideas, his own as well as those of his homologues. In the field of agriculture, Luxembourg meets its Benelux partners as well as Germany, Austria and Denmark in a circle called 'enlarged Benelux' or 'Aachen Circle' in order to explore informally the agricultural interests of these member states. Informal meetings such as these came into being to either establish common positions or to exchange opinions, depending on the issue under discussion.<sup>136</sup>

Another form of 'multiple bilateralism' are ad hoc consultations between the Commission and individual governments before propositions are tabled and while they

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<sup>134</sup> Information provided by Jean-Jacques Kasel. These contacts between Mady Delvaux-Stehres (Luxembourg) and Wolfgang Bötsch (Germany) do not exist any longer since postal services have been privatised in both countries.

<sup>135</sup> Jean-Jacques Kasel regrets that Italy did not participate in these meetings, all the more so since on many issues Italy has the same integrationist views as Luxembourg, sometimes even stronger ones.

<sup>136</sup> Information provided by Frank Schmit during a personal interview.



are being negotiated. The fact that the current President of the European Commission is a Luxembourg national gives Luxembourg's officials and politicians 'privileged access' to the President's cabinet and is an invaluable source of information. Luxembourg currently also enjoys 'privileged access' to Competition Commissioner Karel van Miert due to close contacts with Luxembourg's Minister of Economic Affairs, Robert Goebbels, contacts which had some impact on the distribution of financial aids for Luxembourg and on the implantation of services in Luxembourg.<sup>137</sup>

### **Neutral Co-ordinator and Mediator**

Based on a strong conviction that a small state should not be a nuisance in international relations but needs to justify its presence in international institutions, Luxembourg's representatives consider their primary role as one of neutral co-ordinator and 'provider of good services'.<sup>138</sup> Luxembourg's basic ambition consists in being a reliable and trustworthy partner for other member states and for the Union as a whole. There is a general feeling that the lack of political and economic weight needs to be compensated by the personal reliability of its representatives. Luxembourg pays great attention to maintaining a good reputation based on the experience, competency and sincerity of its Council delegates. In this respect the personality of each of its Council representatives is of great importance.

When Luxembourg has no vested interest at stake, its non-competitive relationship with other member states places it in an ideal situation to fulfil the role of mediator and neutral co-ordinator between the conflicting interests of other, often larger member states. By tradition a mediator between its powerful neighbours France and Germany, Luxembourg keeps fulfilling this function within the Council of Ministers. Though Luxembourg seems to play the role of mediator ('honest broker') out of a strong interest to make Community business progress, it would however be wrong to assume it does it without pursuing any personal gain. Sasha Baillie writes: "Enjoying a central position in the interaction process, at the source of information, the small state is able to assess the situation objectively and steer the process in a way the outcome will be favourable to itself, or at least will not harm its interests".<sup>139</sup>

Prime Minister Jean-Claude Juncker, for instance, played a key role at the 1996 Dublin European Council in the settling of a Franco-German dispute that threatened to derail EMU. The conflict was nurtured by deep cultural differences between France and Germany, France arguing that the European Central Bank (ECB) must be countered by a political body to steer economic policy, Germany insisting ECB should be independent. Along with it came France's refusal at the beginning of the summit to

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<sup>137</sup> Information provided by Jean-Jacques Kasel.

<sup>138</sup> See f.i. G. Thorn, 'Le rôle du Luxembourg dans la politique internationale' in A. Ries et al (eds) Lambert Schaus. Luxembourg, Belgique, Europe (Luxembourg, 1977) pp.106-114.

<sup>139</sup> S. Baillie, The Seat of the European Institutions: An Example of Small State Influence in European Decision-making (European Policy Process Occasional Paper No. 11) (Florence, 1996) p. 3.

accept Germany's plan for the so-called stability pact. Juncker stepped in as a mediator, working closely with the Irish Presidency and the Belgian Finance Minister, and managed to broker a compromise that was acceptable to both conflicting parties. Juncker's mediating efforts could be successful for several reasons. Being from a country situated at the cultural border between France and Germany, Juncker has a profound understanding of both states' culture and language; in his dual capacity as Prime Minister and Finance Minister and because of his long-term Council experience, he has an expert knowledge of European affairs and the Maastricht Treaty to whose drafting he contributed during the 1991 Luxembourg Presidency; he could also speak with authority as Luxembourg was the only member state at the time to fulfil the convergence criteria for EMU. The example shows that with regard to these mediating advantages vis-à-vis other member states and a strong, natural interest in a stable relationship between its large neighbours, Luxembourg's mediating role was fully accepted by its Council partners.<sup>140</sup>

## 4.2 Defence of Vital National Interests

As soon as matters touching Luxembourg's few vital national interests are tabled, the country's representatives abandon their low-profile approach and get very active both at preparatory and at ministerial level. Only for matters touching the very heart of Luxembourg's sovereignty does the country adopt a primarily intergovernmental attitude during the meetings. Dossiers of particular national interest include the harmonisation of fiscal legislation, banking legislation, company law, Common Agricultural Policy and steel industry, free movement and immigration. Another issue of vital national interest is the seat of the European institutions in Luxembourg.<sup>141</sup> This European presence is estimated to have an important economic impact. A further dossier to which Luxembourg is very sensitive is the one concerning institutional reform, in particular Luxembourg's representation in EU institutions (see Chapter Six).

The strategies and tactics used to defend Luxembourg's vital national interests in the Council are multiple and varied and happen, at various stages of Council decision-making. They may start with a well-argued negotiating strategy and range from close co-operation with the European Commission, alliances with other member states, vetoes and the threat of vetoing, to the search for derogations. Like most other member states,

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<sup>140</sup> For a description on how Luxembourg plays the role of mediator when holding the Council Presidency see Chapter Five.

<sup>141</sup> Luxembourg is home to a number of European institutions and hosts Council meetings during the months of April, June and October. It currently hosts the European Court of Justice, the Court of Auditors, the European Investment Bank, some Directorates-General of the Commission, the Secretariat of the European Parliament, the Office for Official Publications, Eurostat and the European Translation Centre. A good account on the seat of European institutions in Luxembourg and small-state influence is given by S. Baillie, *The Seat of the European Institutions*. Baillie writes: "Ever since the High Authority of the ECSC came to be located in Luxembourg in August 1952 successive Luxembourg governments have followed a consistent policy of defending the location of certain European institutions in the Grand Duchy" (p. 11).

Luxembourg prefers to cooperate strongly with the Commission on those issues where it has a particularly keen interest, both before propositions are tabled and while they are being negotiated. Close contacts are of particular importance in the pre-negotiating phase to make clear what interests are at stake for Luxembourg, and to make the Commission aware of the risks and problems that the member state might incur in practice. Close consultation is important for both sides: for the Commission to assess the limits of feasibility of the proposal under discussion (a proposal that meets too strong an opposition may already die in the pre-negotiating phase); for Luxembourg to draw attention to the risks that the respective proposal might involve for the country's economy or sovereignty.

Small states equally tend to seek coalition partners on issues that are perceived as directly affecting their national interests. For Luxembourg it is important not to stand alone on such an issue in order to prevent being outvoted. In such a case, the country's delegates discreetly seek to form an alliance with one or more member states in order to have increased leverage. The strategy consists in seeking an alliance with other states, preferably with those with which Luxembourg has common economic and political interests or historical and cultural links. There seems to be no evidence that Luxembourg is strategically looking for alliances with small states as it is indeed rare that small states share common interests.<sup>142</sup> As we have shown above, one very important alliance is Benelux. During the 1996 IGC, Benelux meetings were held at the level of the Personal Representatives of the member states in order to consult each other on issues to which the Benelux states attach a high priority and to define common positions regarding institutional reform, etc.<sup>143</sup> The same Benelux alliance exists to defend common views with regard to Agenda 2000, the Commission programme that envisages a reform of CAP, EU financing and structural funds. An instance where Luxembourg entered an alliance with a close neighbour is when it joined efforts with Belgium during the negotiations of the Treaty of Amsterdam to make sure that not only the seat of institutions but also the seat of agencies and services was to be mentioned in the revised Treaty.

### **Vetoes or the Threat of Vetoing**

As a last resort, Luxembourg's delegates may use the veto or threaten with the use of it. The veto or the threat of vetoing a legislative act is a strategy Luxembourg's representatives in the Council may only resort to when a vital national interest is most likely to be threatened. Luxembourg's attitude to the use of vetoes is a mirror of its general attitude to Council decision-making and another instance where it walks the tightrope between supranational and intergovernmental spheres. Generally there seems

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<sup>142</sup> The only instance where small states seem to have a combined interest is their presence in the EU's institutional and decision-making setup.

<sup>143</sup> This and the following information was provided by Jean-Jacques Kasel.

to be a great reluctance to blocking decision-making, but as soon as it comes to the very heart of a national interest and when there is a legal possibility to use the veto (that is under unanimity voting), Luxembourg feels urged to make use of its right of veto in the name of its vital interest. The following statement by Foreign Minister Jacques Poos does well reflect the government's attitude to the veto, which considers it as a 'dissuasive weapon':

Le droit de dire non, confiné à des domaines importants, clairement et limitativement énumérés dans le Traité, est une arme dissuasive aux mains des gouvernements et des parlements nationaux. Comme toute arme dissuasive, il est destiné à n'être qu'utilisé qu'en dernier ressort. Mais, comme toute arme dissuasive, il modifie les rapports de force lors d'une négociation.<sup>144</sup>

According to Jean-Jacques Kasel, the last and only time Luxembourg blocked a decision to be taken by unanimity (legal veto) was at the Ecofin Council of December 1989 where the Finance Ministers had to decide over the principles of a withholding tax.

Concerning matters to be decided by QMV, Luxembourg shows a great reluctance to invoke the Luxembourg Compromise, that is the political veto, or to threaten to do so. Although strongly opposed to passing the Lawyers Directive<sup>145</sup> in the Council in December 1997, Luxembourg refrained from using the political veto but stood alone and got overruled. Former Permanent Representative Kasel points out that Luxembourg did not invoke the Luxembourg Compromise on that occasion which, according to him, is always somewhere prevalent. "We'd better be careful not to do invoke it. Our philosophy is to always find arrangements beforehand, with the Commission or with certain partners in case we have a real problem". This statement by Luxembourg's Permanent Representative raises two issues: Is the Luxembourg Compromise still alive? And if so, does a small member state have enough leverage after all to resort to the veto, be it the political or legal one? Or in other words, how much solidarity and understanding do member states show towards the vital national interest of a small member state? In this context it is important to note that the SEA involved a change in the 'veto culture' as it extended majority voting in a substantive way to new areas. Hayes-Renshaw and Wallace write: "(...) The language and practice of veto power have altered. The notion of explicit veto has declining plausibility, except when unanimity is the technical rule".<sup>146</sup> Teasdale even goes as far as to declare the Luxembourg Compromise dead.<sup>147</sup> Whether all practitioners and researchers would go as far is another question. But an article published in 1995 in *The Economist* reveals that

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<sup>144</sup> Ministère des Affaires Etrangères, Débat sur la CIG de 1996. Chambre des Députés, 12 juillet 1995. p. 6.

<sup>145</sup> Directive 98/5/EC of the EP and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained (OJ L 077, 14 March 1998, pp.36-43).

<sup>146</sup> F. Hayes-Renshaw/H. Wallace, The Council of Ministers (London, 1997) p. 262.

<sup>147</sup> A. Teasdale, 'The Life and Death of the Luxembourg Compromise' in JCMS 31:4 (1993).

the Luxembourg Compromise was last wielded by Germany in 1986 to prevent a modest cut in farm prices though, once in a while, member states threaten to use it. France, for instance, threatened to do so during the GATT ratification process.<sup>148</sup> This incidence shows that a large member state that has political leverage can still successfully use the political veto as weapon. How about a small member state like Luxembourg? There is no evidence that Luxembourg ever used or threatened to use the Luxembourg Compromise. There is, however, some awareness among Luxembourg's experts in EU decision-making that, no matter what voting mode any item of legislation is subject to, a small member state does not have sufficient political leverage to block it repeatedly or for a longer time. Consider the following statement by Gilbert Trausch concerning the Commission proposal on withholding tax harmonisation which Luxembourg vetoed on 18 December 1989:

Qu'en serait-il de notre influence si les 14 Etats membres insistaient sur l'harmonisation contre la volonté du Luxembourg? Je ne pense pas qu'un petit pays comme le nôtre pourrait bloquer durablement les projets importants de la Commission.<sup>149</sup>

Joseph Weyland, a former Luxembourg Permanent Representative, agrees with Trausch when he asserts: "Je doute que nous puissions opposer un tel véto une deuxième fois. Mais avant cette ultime action, il y a toujours des moyens de négocier et de trouver des compromis".<sup>150</sup> These statements show that Luxembourg is more than reluctant to play power politics. Rather than finding themselves cornered and subsequently overruled by taking too extreme a position, Luxembourg's representatives prefer to work with other means to attain a solution they can live with.

One long-term strategy is to show a maximum of understanding for other member states' problems and hoping to get a similar treatment from other partners if Luxembourg itself faces problems.<sup>151</sup> This strategy is based on some reciprocal treatment Luxembourg hopes to get due to its general low-profile approach (derived from its reluctance to intervene in matters of no vital interest). Gaining some solidarity from EU partners is all the more important since many items of legislation are passed without resorting to a formal vote. Even where decisions are taken by QMV, the chairman always aims at the highest degree of consensus. Consider the statement by Jim Cloos, the head of cabinet of the President of the European Commission:

C'est le jeu des négociations: on ne cherche pas à acculer un Etat au pied du mur mais à trouver une solution acceptable pour tous les partenaires. (...) Il est

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<sup>148</sup> 'Vetomania' in *The Economist*, 18 February 1995.

<sup>149</sup> Anciens de l'Athénée, 'L'Europe à l'aube du troisième millénaire' p. 16.

<sup>150</sup> Anciens de l'Athénée, 'L'Europe à l'aube du troisième millénaire' p. 17.

<sup>151</sup> Information provided by Jean-Jacques Kasel: "What we aim at is obtaining as much understanding as possible from other member states by not criticising everything and by showing a lot of interest for other member states' problems."

toujours étonnant de voir comment des petits pays réussissent à défendre leurs intérêts au sein de l'Union et que l'on essaie d'autre part, par tous les moyens possibles, de trouver une solution.<sup>152</sup>

Jean-Jacques Kasel therefore considers the recourse to majority voting as a 'dissuasive weapon' to be used against member states that are unwilling to give in on some item of legislation. He considers it important to keep the discussion going, to give in on some item of lesser interest in order to save some other item of greater importance. If, however, the position of a member state is too extreme, the chairperson will proceed to the vote and the respective member state will be overruled. This is exactly what happened to Luxembourg in December 1997 concerning the Lawyers' Directive where Luxembourg stood alone and got overruled.

Another such strategy consists in giving high priority to having a well-argued negotiating strategy. Luxembourg's Council representatives are convinced that well presented and convincing arguments that forcefully describe the interests at stake will meet the understanding and solidarity of other members.<sup>153</sup> On the basis of such forceful arguments the deviant member state may try to obtain special arrangements or derogations. Good arguments were for example advanced - unsuccessfully though - concerning Luxembourg's claim to the seat of the European Central Bank (ECB). On the basis of the provisions of financial institutions annexed to the Merger Treaty of 1965, Luxembourg argued it had a legal claim to the seat of the ECB, which it correspondingly invoked.

Another quite smart strategy consists in ensuring that those areas affecting vital national interests be decided by unanimity rather than majority voting. QMV has been extended to new areas each time the Treaty has been revised, that is under SEA, TEU and under the Treaty of Amsterdam. During all these Treaty revisions, Luxembourg could make sure with the support of other member states that those domains in which it has vital national interests remain subject to unanimity. The 1995 Luxembourg government memorandum for the 1996 IGC mirrors Luxembourg's half-hearted position regarding the extension of QMV to new areas:

Au niveau du Conseil une extension du vote à la majorité qualifiée s'impose en principe. L'unanimité doit cependant rester d'application pour tous les domaines touchant intimement à la souveraineté des Etats et donc à celle des Parlements nationaux tels que les révisions des traités, la citoyenneté européenne, les nouvelles adhésions, la fiscalité et les ressources propres.<sup>154</sup>

Luxembourg does not stand alone with this strategy. Along with Luxembourg, a number of EU partners (e.g. the Netherlands, Germany, Sweden) are in favour of maintaining

<sup>152</sup> Anciens de l'Athénée, 'L'Europe à l'aube du troisième millénaire' p. 19.

<sup>153</sup> Consider the statement of Joseph Weyland: "(...) L'exposition des difficultés réelles soutenue par une argumentation valable trouve la compréhension sur une base consensuelle des autres Etats membres" (Anciens de l'Athénée, 'L'Europe à l'aube du troisième millénaire' p. 20).

<sup>154</sup> Ministère d'Etat du Luxembourg, 'Aide-mémoire du Gouvernement luxembourgeois sur la Conférence Intergouvernementale de 1996' in Bulletin d'information et de documentation 2/1995 p. 169.

unanimity voting in, for instance, the field of taxation, a fact ensuring Luxembourg is not isolated in this position.<sup>155</sup>

### **Fiscal Harmonisation and Citizenship – Two Cases in Point**

A long-term high-priority subject of vital national interest is the dossier on tax harmonisation. Any changes in this domain could affect the functioning or the very existence of Luxembourg's financial centre, a major pillar of its less diversified economy. Luxembourg, which has become a thriving financial centre on the basis of a liberal tax regime<sup>156</sup> and tight banking secrecy, is particularly sensitive to any plans of the European Commission to ensure a minimum of effective taxation of savings within the Community and to any attempts to abolish banking secrecy.<sup>157</sup> Attempts made by the Commission to introduce a minimum withholding tax on interest payments to savers and investors were successfully withstood at the Ecofin Council of 18 December 1989 by the Luxembourg government which made use of its legal veto.<sup>158</sup> The dossier was frozen until Commissioner Monti presented, ironically enough during the 1997 Luxembourg Presidency, a new fiscal strategy at the informal Ecofin Council of September at Mondorf-les-Bains. At the Ecofin Council of 1 December 1997, member states adopted a code of conduct for business taxation and invited the Commission to "bring forward a proposal on the taxation of savings".<sup>159</sup>

Fiscal harmonisation is a most interesting policy field to analyse the nature and the range of strategies applied by Luxembourg to defend a vital national interest. It is a policy field where Luxembourg applied a whole range of the above named strategies. But it is primarily a matter where Luxembourg was for a long time in the blocking field, where it vetoed a Commission proposal in 1989 or threatened to veto further legislative acts. It is, however, important to note that Luxembourg changed its negotiating strategy during the negotiations for the code of conduct for business taxation being no longer in the blocking field but intending to play a constructive role. Although the government is no longer an obstacle to the introduction of a harmonised withholding tax, its position remains basically the same: it does not accept the introduction of a withholding tax unconditionally.

A first and most important strategy consists in presenting a forceful negotiating strategy, in particular concerning the ongoing discussion on the introduction of a

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<sup>155</sup> See Juncker interview 'Sur l'avenir de l'Union européenne'.

<sup>156</sup> Non-resident investors do not pay income tax, capital gains tax, inheritance tax or withholding tax. Contrary to most other EU member states, Luxembourg's resident investors do not pay withholding tax either.

<sup>157</sup> A good overview on the issue of withholding tax and banking secrecy in Luxembourg is given in the following article: Schaffner, Jean, 'Faut-il introduire une retenue à la source sur intérêts à Luxembourg?' in *Luxemburger Wort*, 15 December 1997.

<sup>158</sup> See Anciens de l'Athénée, 'L'Europe à l'aube du troisième millénaire' p. 17. Tax harmonisation, whether under Article 99 or 100 EC Treaty requires the unanimous action of the Council.

<sup>159</sup> European Commission, 'Council Conclusions on Taxation Policy' in *Bull. EU* 12-1997.

minimum withholding tax across the EU. To prevent being isolated in this dossier, the current Juncker I government is willing to show greater flexibility, quite unlike previous governments. This new flexibility is pragmatic and shrewd but not unconditional.<sup>160</sup> First, the withholding tax debate should not be limited to the EU but extended to OECD level, so that tax havens like Liechtenstein and Switzerland would be covered as well. The reason being that Luxembourg's government fears the introduction of a withholding tax at EU level would provoke an outflow of capital to off-shore tax havens. Second, *all* tax havens in *all* EU member states need to be involved, which implies that the fiscal territory and the geographical territory correspond (aimed at Channel islands, Monaco and the Dutch Antilles). Third, banking secrecy, a domain closely linked with withholding tax, needs to be preserved. Fourth and most importantly, Luxembourg aims at a global fiscal harmonisation (including business taxation, etc.). This last condition is primarily aimed at Belgium, Ireland and the Netherlands where corporate-tax rates are more advantageous than in Luxembourg. Luxembourg's negotiating strategy is quite shrewd: knowing quite well that it is impossible to fulfil these conditions in the near future, the government's new 'flexibility' leaves it no longer isolated. This implies that those member states that were hiding behind Luxembourg's blocking position need to show their hand.

Another recent tactical move was made by Luxembourg's Foreign Minister at the GAC of 13 July 1998. Due to a lack of figures and studies, Jacques Poos suggested that before the start of any harmonisation within this field, the Commission should launch an impact study to assess the consequences of capital outflow to third countries that the introduction of a withholding tax at EU level would cause.<sup>161</sup>

Fiscal harmonisation is also a policy field on which the Luxembourg government maintains close contacts with the Commission, in particular with Commissioner Mario Monti, responsible for financial affairs. A recent example where Luxembourg consulted the Commission on a regular basis was before the code of conduct for business taxation was agreed upon at the Ecofin Council of 1 December 1997. The debate centred on a package of measures of which withholding tax was of primary importance for Luxembourg's financial centre. Both the Justice and Budget Minister, Marc Fischbach, and the Finance Minister, Jean-Claude Juncker, co-operated closely with Mario Monti in order to explain Luxembourg's position, to make clear where no concessions could be made and to give the right messages.<sup>162</sup> Co-operation on this issue was all the more close since Luxembourg had to chair the meeting as it held the Council Presidency during the second semester of 1997.

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<sup>160</sup> This new readiness for discussion can be seen as a tactic to make those member states state their position that had been hitherto hiding behind Luxembourg's blocking position. Note Prime Minister Juncker's statement: "(...) même si le Luxembourg, pour un quart d'heure ou pour un semestre, avait pris congé de l'Union Européenne les autres ne seraient pas arrivés à une conclusion" (Ministère d'Etat du Luxembourg, 'L'Europe à l'aube du 21e siècle' p. 247).

<sup>161</sup> R. Hilgert, 'Impaktstudie' in *Lëtzebuurger Land* 45:29 (17 July 1998).

<sup>162</sup> This and the following information was provided by Jean-Jacques Kasel.



A further strategy consisted in seeking an alliance with other member states, including preferably a large member state, in order to increase its leverage. This was the case in 1989 when Luxembourg joined forces with the UK to oppose the introduction of a withholding tax<sup>163</sup>, which allowed Luxembourg to successfully veto this proposal at the December 1989 Ecofin Council.

Luxembourg's government is also particularly sensitive to matters directly touching home affairs. One such issue is the right of EU nationals to vote and to stand as a candidate in local government and EP elections if they are living in an EU member state of which they do not have the nationality. Stipulated by Article 8 B of TEU, the Council was requested to pass a directive concerning EP elections before 31 December 1993 and for local government elections before 31 December 1994. What hardly caused a problem for any other member state, went to the heart of Luxembourg's sovereignty. With a one third of the population and half of the workforce being foreign, Luxembourg would theoretically have run the risk of no longer being represented by its own nationals in EP or that its local authorities were governed by a majority of non-Luxembourgers. In this matter Luxembourg consulted the Commission on a regular basis during the negotiations for the directives. The country's representatives could make it clear to the Commission that it insisted on a derogation in this matter taking into account its specific situation. The government managed to win such a derogation requiring five years' residence before eligibility to vote and ten years' before eligibility for office. It could obtain the derogation because its negotiating strategy was based on convincing arguments, which aroused the solidarity of its partners.

These strategies show that small states do have opportunities of action even though their political and economic weight is low. Many of these strategies may be successful because of Luxembourg's general low-profile approach in the Council, its reputation as a provider of good offices and the solidarity it generally shows towards other members. Still a small member state cannot rely solely on these attributes. It needs to present the same forceful arguments than a larger partner to convince the Commission and the other member states. The above mentioned strategies also show that even a deeply federally-minded member state like Luxembourg is prepared to defend its vital interests most vehemently, though the tools it uses may be more subtle and covert than those of larger member states.

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<sup>163</sup> Germany and the Netherlands were equally opposed though for different reasons.

## 5 The Council Presidency

*...the Luxembourg Presidency has all the signs of being driven by a sedate couple who only take to the road on Sundays and then infuriate other motorists by respecting the speed limit.*

The European 28/30 December 1990

The Council Presidency is an important instance where - during six months - a small member state can exert an influence that is unrelated to its size, and its political and economic weight. Promoted in the 1960s by defenders of intergovernmentalism (especially by de Gaulle), the Presidency has gradually become one of the most important mechanisms in EU decision-making. The following chapter explores the advantages and disadvantages of small-state Presidencies before describing the secret of success of the Luxembourg Council Presidencies. Why is it so important for a small member state to steer the European boat for six months? What are the risks into which it may run?

Article 146 of the EC Treaty stipulates a rotating system according to which the Council Presidency rotates every six months among the member states.<sup>164</sup> Being based on the principle of equality of states, the Presidency compensates the smaller member states for possible tendencies towards domination which large EU partners might occasionally feel inclined to exercise. Table 5.1 shows that the Presidency's rotating system ensures that member states of every size hold the Presidency regularly.

Rotation	Year	MS (1st sem./2nd sem.)
<b>Alphabetical</b> (- 1992)	1991	L/NL
	1992	P/UK
<b>Alternating</b> (1993-June 1998)	1993	DK/B
	1994	GR/D
	1995	F/SP
	1996	I/IRE
	1997	NL/L
	1st sem. 1998	UK
<b>Balanced rotation</b> (as of July 1998)	2nd sem. 1998	A
	1999	D/FI
	2000	P/F
	2001	SW/B

Table 5.1 Council Presidency rotations 1991-2001<sup>165</sup>

<sup>164</sup> Until the end of 1992 the sequence of member states holding the Presidency corresponded to the country names in alphabetical order in their native tongue. From 1993 to 1998 the 'alternating' rotation alternated the pairs of countries holding the Presidency in one year to ensure that the different workloads of the two semesters were taken into account. Due to considerations relating to CFSP, the 'balanced' rotation was worked out to make sure that the *troika* would always consist of at least one larger member state. It has taken effect as of July 1998.

<sup>165</sup> Adapted from M. Westlake, *The Council of the European Union* (London, 1995) pp. 50-1 and F. Hayes-Renshaw/H. Wallace, *The Council of Ministers* (London, 1997) p. 138.

*Legend:* A=Austria; B=Belgium; D=Germany; DK=Denmark; F=France; FI=Finland; GR=Greece; I=Italy; IRE=Ireland; L=Luxembourg; NL=Netherlands; P=Portugal; UK=United Kingdom; sem.=semester; SP=Spain; SW=Sweden.

Whereas at normal times the influence of the small member on Community affairs is limited, the Presidency places it at the very centre of EU decision-making. First, the small country has the opportunity to influence the rolling EU agenda to a certain extent by setting priorities in its six-monthly programme. Second, it has the 'power of the chair' and as such the opportunity to steer and influence the outcomes of debate and decision-making (e.g. influence on the timing of voting). Being at the crossroads of national and Community interests, the Council Presidency has a lot of influence on the way national interests will be defended and Community targets achieved. Third, the Presidency is visible on the international stage when handling external relations (CFSP) and hosting European Council meetings, thus adding prestige and media attention to the small country. In addition it is a rare occasion where the small state is in a position to take decisions in the name of larger states. As a founding member of the EC, Luxembourg assumed the Presidency role ten times in between 1958 and 1998 as table 5.2 shows:

Year	1 <sup>st</sup> sem.	2nd sem.
1960	+	
1963	+	
1966	+	
1969	+	
1972	+	
1976	+	
1980		+
1985		+
1991	+	
1997		+

**Table 5.2 Luxembourg's Council Presidencies from 1958 to 1998**

The Council Presidency is not only a function that is most visible to the outside world but it is also involved at all levels of the Council hierarchy. At European Council level, the head of state or government acts as a host and chairs one or more summits. At Council of Ministers level, it is the foreign minister of the country holding the Presidency who plays a leading role. At Coreper level, senior national officials chair the meetings, and at working group level, chairmanship is assumed by more or less senior civil servants. Hence the national attitude towards the Presidency is an important prerequisite to guarantee a successful outcome of the presidential tasks.

## **5.1 National Position Towards the Presidency**

Luxembourg considers the Presidency as an inherent right that the principle of equality confers on small and large members alike. Hence Luxembourg's leaders relied on this principle during the 1996 Intergovernmental Conference as they strongly defended the right of small states to retain the rotating Council Presidency. Unlike some larger

member states, small states do not usually consider the Presidency as a cumbersome routine job and therefore want to perform the job as best as possible. The Luxembourg government's 1998 Foreign Policy Speech gives a good insight into the national position towards the Council Presidency.

Pour notre pays, la Présidence ne s'est jamais réduite à une exécution de routine d'une lourde charge qui incombe périodiquement à tous les Etats membres de l'Union. Pour nous, elle est toujours un test qui nous permet de démontrer notre capacité d'assumer pleinement et activement une des tâches les plus importantes dans la conduite des affaires de l'Union. Elle est surtout une chance qui nous permet de faire avancer cette construction européenne à laquelle le destin de notre nation est intimement lié.<sup>166</sup>

For Luxembourg the Presidency has a threefold meaning. First, its leaders consider the Presidency as a confirmation of the country's national sovereignty.<sup>167</sup> Luxembourg considers the task as an opportunity to confirm its existence as a European and international actor. In this respect, its leaders intend to give their best during the six-monthly Presidency and provide a good record of achievements. Second, the country's leaders consider the Presidency as a test and as a means of self-justification. For the small member, each Presidency constitutes a new test that needs to be passed to prove that a small member is able to successfully fulfil the uphill task. At the same time, the Presidency is a means to justify Luxembourg's presence in the European Union by showing that small states are not a *quantité négligeable* but that they can indeed render useful services to the Union. This is why Luxembourg considers the Presidency primarily as a service rendered to the Community.<sup>168</sup> Third, as a guardian of a *communautaire* spirit Luxembourg considers the Presidency as a chance to make European integration advance. This is most visible when the balance within the EU seems to tip in favour of intergovernmentalism and/or when the status of the small state seems to be threatened. The growing intergovernmental tendencies and the small state/large state debate instigated during the 1996 Intergovernmental Conference (see Chapter Six) induced the 1997 Luxembourg Presidency to take a more assertive attitude. Luxembourg's leaders consider the Presidency not only as the administration of EU business but they increasingly show ambitions to take initiatives and to provide a

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<sup>166</sup> Ministère d'Etat du Luxembourg, 'Déclaration de politique étrangère, le 5 mars 1998' in Bulletin d'information et de documentation 2/1998 p. 2.

<sup>167</sup> Consider the statement of Luxembourg Foreign Minister Jacques Poos: "Gérer, et bien gérer, la présidence n'est pas seulement un devoir. C'est essentiellement l'affirmation de notre existence nationale" (Ministère d'Etat du Luxembourg, Déclaration de politique étrangère, le 23 octobre 1991' in Bulletin de documentation 5/1991 p. 10).

<sup>168</sup> See the statement of Jacques Poos: "(...) La Présidence représente un service que les Etats membres rendent à tour de rôle à l'Union. C'est d'abord et avant tout la gestion sereine et méthodique d'un calendrier et d'échéances imposés avec l'objectif de fournir une contribution concrète à notre processus d'intégration" ('Discours de fin de Présidence du Président du Conseil de l'Union européenne, M. Jacques F. Poos, Ministre des Affaires étrangères du Luxembourg devant la session plénière du Parlement Européen, Strasbourg, le 17 décembre 1997'

[<http://www.uepres.etat.lu/uepres/textes/discours/17dec001.htm>] 29 May 1998.

certain policy direction.<sup>169</sup> The predominant feeling of having to justify Luxembourg's presence in the European Union when holding the Presidency places those involved under a double pressure: the physical and nervous pressure of managing the workload; the psychological pressure of showing its fellow members and the world that Luxembourg is up to this uphill task, and that its small status does not diminish its ability to manage the EU programme. Finally, perhaps more than any other EU member state is Luxembourg fully aware of its own limits and of the necessity to come up with a good record of achievements when holding the Presidency. Being the smallest member state, it knows quite well that any blunder would be interpreted in an adverse way.

## 5.2 National Co-ordination during the Presidency

The administrative role a member state has to fulfil when holding the Presidency carries an enormous workload for any member state but is a particular burden for a small country with a small administration (see Chapter Two). The administrative task, which is the Presidency's most important one, consists basically in managing the every-day business of the Council of Ministers and requires a high amount of responsibility, good co-ordination and effective staffing. In particular Luxembourg struggles with the problem of lacking personnel when holding the Presidency. The country is especially vulnerable to the heavy administrative burden when it comes to the running of everyday European business. During the 1997 Council Presidency, the Luxembourg government chaired around 40 sectoral Council meetings, six informal Council meetings, two European Councils, weekly Coreper sessions and around 230 working groups within Coreper and CFSP. This puts a high pressure on everyone involved in the running of the Presidency. Unforeseen incidents may develop into a major administrative problem. How does Luxembourg's administration try to overcome administrative constraints derived from its smallness?

The largely decentralised system of Luxembourg's interministerial co-ordination may add to the vulnerability of a small administration. It is obvious that a decentralised system may present a risk during the Presidency due to a lack of co-ordination in the Presidency's position. In this respect, Luxembourg's Brussels-based Permanent Representation assumes an important co-ordinating role that is crucial for the smooth running of the Presidency.<sup>170</sup>

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<sup>169</sup> "En 1997, la présidence luxembourgeoise n'a pas seulement voulu gérer. Nous avons l'ambition d'inspirer, d'orienter, voire de piloter. Nous avons utilisé autant la force de la persuasion que la recherche du compromis" (Ministère d'Etat du Luxembourg, 'Déclaration de politique étrangère, le 5 mars 1998' in Bulletin d'information et de documentation 2/1998 p. 2).

<sup>170</sup> "Il est certain que ce dispositif très décentralisé comporte certains risques et quelques cas de positions très contradictoires ont pu exister. Néanmoins ce danger a pu être limité grâce au rôle de filtre que joue le représentant permanent présidant le Coreper" (J.M. Hoscheit, 'La Présidence du Conseil des Ministres des Communautés européennes: les Présidences du G.D. de Luxembourg' in C. O'Nuallain (ed) The Presidency of the European Council of Ministers . Impacts and Implications for National Governments (London, 1985) p.191).

It is worth noting that interministerial co-ordination does not undergo major changes in view of an upcoming Presidency. At normal times the Ministry of Foreign Affairs has the leading responsibility for the co-ordination of EU policies at national level and for EU affairs. When Luxembourg is holding the Presidency, the Permanent Representation in Brussels assumes a central role. Before and during this six-monthly period, organisational matters are administered by the Ministry of Foreign Affairs in close collaboration with the Permanent Representation in Brussels. Much of the organisational work, including the staffing for the chair, is assumed by the Permanent Representation with the help of the Foreign Ministry. The Permanent Representation has a strong input in the provisional organisation which is discussed between the Foreign Ministry, responsible for the logistical co-ordination, and the technical ministries. In the event of these negotiations the provisional schedule is finalised and communicated to the officials who will chair the working groups. Generally one single co-ordination meeting will be held in the capital a few months before the Presidency starts. Additional ad hoc preparatory meetings may be held at the Permanent Representation.<sup>171</sup> Preparations for the 1997 Luxembourg Presidency started in early 1996.<sup>172</sup> They included one ad hoc meeting in February 1997 where procedural matters were discussed between the Permanent Representative and the Deputy Permanent Representative on the one hand, and senior officials from the Foreign Ministry and other departments on the other hand. The Presidency programme was finalised in a co-ordination meeting held in June.<sup>173</sup> The Permanent Representation can therefore be said to act as a motor during Presidency times. It contributes to the organisational plan, to the calendar of meetings and to the Presidency programme. It also organises ad hoc preparatory meetings and maintains especially close contacts with the Council Secretariat and less stronger ones with the Commission and the European Parliament. The Permanent Representation also has a certain influence on the designation of the working groups' chairpersons.

Inherent weaknesses of the Luxembourg administrative system (like the lack of personnel and the decentralised co-ordination system) are partly counterbalanced by the following measures. First, experience has proved that small member states do rely on an active partnership with the Council Secretariat. Whereas large states are often more reluctant to involve the Council Secretariat as they fear that it could undermine their prestige, status and policy aims<sup>174</sup>, the small number of personnel makes the Council

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<sup>171</sup> J.M. Hoscheit, 'La Présidence du Conseil des Ministres' p.191.

<sup>172</sup> Ministère d'Etat du Luxembourg, 'Conférence de presse sur le dispositif de la Présidence luxembourgeoise' in *Bulletin d'information et de documentation* 1/1996 p. 105.

<sup>173</sup> Information provided by former Permanent Representative Jean-Jacques Kasel during a personal interview.

<sup>174</sup> E. J. Kirchner/A. Tsagkari, 'Reforming the EC Council Presidency' in E. J. Kirchner/A. Tsagkari (eds) *The EC Council Presidency. The Dutch and Luxembourg Presidencies* (UACES Proceedings 9, 1993) p. 54.

Secretariat a helpful tool for the small member state, not only for carrying out logistical and administrative tasks but also for giving advice. The close relations between Luxembourg and the Council Secretariat are largely conducted through the Brussels-based Permanent Representation, where personal relations and linguistic ability of Luxembourg's officials become of paramount importance. Luxembourg sees the strength of the Council Secretariat in its discreet role. It considers it as a very efficient instrument of the Presidency whose tasks consist in following the instructions and the political input given by the Presidency.<sup>175</sup> The relation between the Luxembourg Presidency and the Council Secretariat is so close that some have used the term 'symbiosis' to describe it.<sup>176</sup> Especially for Luxembourg, the technical, legal and organisational assistance provided by the Council Secretariat is of invaluable help. More than a year ahead of the Presidency, the Permanent Representative, in close collaboration with the Council Secretariat, establishes a list of the meetings to chair and estimates the approximate need in personnel. Hoscheit describes to what extent the Luxembourg Presidency relies on the Council Secretariat:

Dans une très large mesure, le Luxembourg utilise les services du Secrétariat pour préparer les négociations. Des échanges réguliers ont lieu entre le secrétaire général et le représentant permanent pour préparer les discussions du Coreper. De même, tous les présidents des groupes de travail sont vivement encouragés à prendre contact avec les fonctionnaires du Secrétariat.<sup>177</sup>

Hoscheit goes on to confirm that Luxembourg is the member state that uses the services of the Council Secretariat most effectively and in a way they were meant for. Luxembourg takes advantage of services like the drafting of reports, compromise papers for chairpersons and answers to parliamentary questions, the briefing of ministers, etc.

Second, in order to alleviate the problem of lacking personnel and chairpersons, Belgium and the Netherlands have competency to chair some of the working groups, especially those dealing with matters in which Luxembourg has no direct competence (e.g. textile, fisheries, sea law, commodities). It is a Community rule that in case a member state does not chair a working group, the country being next to hold the Presidency chairs it. The Luxembourg Presidency forms, however, an exception to this rule. Given the close links with Belgium and the Netherlands (in Benelux and BLEU), the latter two are exceptionally competent to represent Luxembourg in such a case.<sup>178</sup> It has become common practise that Belgian officials chair some working groups dealing with economic matters, whereas Dutch officials chair those dealing with political

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<sup>175</sup> See J. Weyland, 'Strategies and Perspectives of the Luxembourg Presidency' in E. J. Kirchner/A. Tsagkari (eds) *The EC Council Presidency. The Dutch and Luxembourg Presidencies* (UACES Proceedings 9, 1993) p. 20.

<sup>176</sup> J. M. Hoscheit 'La Présidence du Conseil des Ministres' p. 198.

<sup>177</sup> J. M. Hoscheit 'La Présidence du Conseil des Ministres' p. 197.

<sup>178</sup> The treaty on Belgo-Luxembourg Economic Union (BLEU) gives Belgium the mandate to represent Luxembourg in certain domains and an agreement between Luxembourg and the Netherlands gives the latter the mandate to represent Luxembourg in those states where it has no embassy of its own.

matters. It is, however, important to note that out of a range of about 230 working groups and committees, Belgian and Dutch officials only chaired six or seven during the 1997 Luxembourg Presidency. Another measure consists in resorting to the help of ambassadors and retired officials for chairing Council meetings. In addition, administrative support is provided by university graduates who are employed for a limited time.<sup>179</sup> Altogether the 1997 Presidency personnel has doubled when compared with the 1991 Presidency.<sup>180</sup>

Third, small size does, however, not only provide disadvantages. As described in Chapter Two, Luxembourg's small public administration is characterised by informal contacts and short lines of communication. As the working methods within Luxembourg's administration stay more or less the same during the Presidency, rapid and informal management allows for a more effective handling of the Presidency. A statement by Ambassador Joseph Weyland, who played a decisive role during the 1991 Luxembourg Presidency, confirms this:

If your communication lines are very short and individuals know that they are responsible for a particular dossier and have general guidance on what to do it is much easier to manage. When you have larger teams, you have problems of management. This is normally a difficulty 'bigger' Presidencies have experienced. They have too many people. Therefore, the best solution is to have a small team, of high quality, which ensures that messages are being distributed effectively and where individuals bear personal responsibility for their dossier.<sup>181</sup>

A small Presidency team implies, however, that the effective running of the task is very actor-related.

### **5.3 Disadvantages of Small-State Presidencies**

#### **Representational Problems**

Along with the administration of EC affairs, the Presidency also covers administrative and representational tasks within the framework of Common Foreign and Security Policy (CFSP). This includes the organisation and chairing of meetings with third countries but also the representation of the EU to the outside world. This representational function in CFSP matters can be a very glamorous task for a small member state speaking abroad on behalf of the European Union and preparing and implementing CFSP decisions. This is particularly true when the small member state holds the Presidency during the second semester and it represents the EU at the UN

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<sup>179</sup> During the 1997 Luxembourg Presidency around 50 university graduates were employed half of which were assigned to the Foreign Ministry. Information provided by Jean-Jacques Kasel.

<sup>180</sup> Ministère d'Etat du Luxembourg, 'Conférence de presse sur le dispositif de la Présidence luxembourgeoise' p. 105.

<sup>181</sup> J. Weyland, 'Strategies and Perspectives of the Luxembourg Presidency' p. 20.



General Assembly. At the same time CFSP matters can impose severe limits on the small member state, especially on Luxembourg. Here again, an obvious drawback is the fact that Luxembourg lacks human and logistic resources. It is confronted with staffing problems at its embassies abroad and lacks diplomatic representation in many countries.<sup>182</sup> Hoscheit distinguishes the following problems: "L'absence d'ambassades propres est un facteur négatif, d'une part en raison de la carence d'information de première main disponible, d'autre part en raison de la confusion de positions communautaires dans un pays tiers".<sup>183</sup> But he goes on to state that it is only due to the support given by the Commission, Belgium and the Netherlands as well as some other member states that Luxembourg's Presidency actors can successfully handle CFSP and representational matters.<sup>184</sup> During the 1997 Luxembourg Presidency, the staff of Luxembourg's major representations with international organisations in Geneva (UN), New York (UN) and Vienna (OSCE) was increased.<sup>185</sup> For the small member state the *troika*<sup>186</sup> also provides some help in managing the heavy workload in external relations and in implementing common actions. At the time of the EFTA enlargement it had been agreed that a smaller member state holding the Presidency is backed by at least one larger *troika* member, a safeguard to assuage the worries of some regarding the representational role of small countries in CFSP matters.<sup>187</sup>

### The Time Factor

With only six months available, the Presidency puts a high pressure on Luxembourg's ministers and officials who are particularly exposed to a high physical and nervous pressure. It is well important for small countries to cooperate closely with the Council Secretariat and to start planning well in advance but there will always be incidents like international crises or unforeseen additional tasks, which the Presidency cannot expect. During the first semester of 1991, the Luxembourg Presidency had to deal with the Gulf war, the beginnings of the civil war in Yugoslavia and the disintegration of the Soviet Union. Ahead of its 1997 Presidency, Europe's heads of state and government decided at the June 1997 Amsterdam Council - on demand of the newly elected French Socialist

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<sup>182</sup> A bilateral treaty of Dutch-Luxembourg co-operation for diplomatic representation concluded on 24 March 1964 stipulates that the Netherlands ensure the diplomatic and political representation of Luxembourg where the country has no representation of its own.

<sup>183</sup> J. M. Hoscheit 'La Présidence du Conseil des Ministres' p. 199.

<sup>184</sup> A major advantage in this context is the fact that Luxembourg's officials have outstanding foreign language skills.

<sup>185</sup> Ministère d'Etat du Luxembourg, 'Conférence de presse sur le dispositif de la Présidence luxembourgeoise' p. 105.

<sup>186</sup> The *troika* consists of the preceding, the incumbent and the succeeding presidencies, which share out tasks in conducting external relations. It was first introduced with regard to EPC matters in 1981 in the so called London Report.

<sup>187</sup> Since the onset of EPC in 1970, four *troikas* have not included one of the largest member states: 1972-73: Luxembourg, Netherlands, Belgium; 1973-73: Netherlands, Belgium, Denmark; 1991-92: Luxembourg, Netherlands, Portugal; 1993-94: Denmark, Belgium, Greece.

government - to organise a special European Council on Employment, the organisation of which had to be assumed by the succeeding Luxembourg Presidency.

Another important factor for the small member state is whether it holds the Presidency office during the first or the second half of the year. Agricultural prices have to be agreed in the first semester and the budget in the second half of the year, both being time consuming occupations. August, however, has always been considered a holiday month in Brussels, thus "a 'second semester' Presidency does not have six months. It has about four and a half months, missing the month of August, and normally, if you run things well you close the shop around 13 December".<sup>188</sup> This formerly caused the problem that wherever an even number of member states occurred, the same member states always held the Presidency during the same half of the year. The irony is that between 1958 and 1976 Luxembourg and Belgium each held the Presidency in the first half of the year whereas Italy and Germany, both larger member states, held the office during the second half of the year during the same period.<sup>189</sup> Suggestions to extend the presidential mandate to one year are heavily contested among small and large member states alike. Joseph Weyland states the reasons from a small state's angle:

Six months is the maximum and it is a physically very demanding time, twelve hours a day, weekends included and I cannot imagine an individual lasting more than a year doing the job. This is not feasible and would not necessarily be wise because it would give one member-state too much power for too long a time. Think of the bigger member-states which are more authoritarian than the smaller ones. They are normally more determined to push their own interests than the smaller countries are. There is also a consideration that Presidencies of a longer period prolong antagonisms and create blockages which cannot easily be removed subsequently. Hence I feel that six month duration Presidency is sufficient.<sup>190</sup>

This statement shows that Luxembourg is not only opposed to a one-year Presidency for physical reasons but also because it fears a more aggressive pursuit of national interests by larger member states.

### **The Initiative Function**

A six-monthly Presidency is just a phase in the preparation and implementation of the EU's longer term goals. The selection of policy priorities by a single Presidency is therefore largely influenced by the EU timetable. In addition the small member state is heavily constrained in launching initiatives. Each incoming Presidency submits a six-monthly programme with targets it hopes to achieve, usually including regular agenda

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<sup>188</sup> C. R. Van Beuge, 'Strategies and Perspectives of the Dutch Presidency' in E. J. Kirchner/A. Tsagkari (eds) *The EC Council Presidency. The Dutch and Luxembourg Presidencies* (UACES Proceedings 9, 1993) p. 23

<sup>189</sup> M. Westlake, *The Council of the European Union* (London, 1995) p. 47-8.

<sup>190</sup> J. Weyland, 'Strategies and Perspectives of the Luxembourg Presidency' pp. 19-20.

items as well as some new ideas. Presidency initiatives will have to go through the official stage of Commission proposals before they can be dealt with in the Council of Ministers. In practice, the initiative function - a traditional function of the Commission - involves a great amount of collaboration between the Presidency and the Commission. However, real opportunity to promote initiatives is heavily constrained<sup>191</sup>, the more so for small-state governments. Without the backing of at least one larger member state, a small state's ability to promote initiatives is highly limited. It rather executes initiatives that were the ideas of larger member states, especially of France or Germany. One *Le Monde* journalist put it very shrewdly:

Les louanges adressés aux petites nations pour une présidence 'réussie' d'une instance communautaire le sont en fonction du zèle mis par les 'petits' à mettre en oeuvre les idées des 'grands', et non pas pour avoir fait passer à l'échelle européenne des préoccupations qui leur sont spécifiques.<sup>192</sup>

Such was the case when Luxembourg implemented the initiative of the newly elected French Socialist government to hold a special Employment Summit during its 1997 Presidency, a condition set by France for accepting the 'Stability Pact' during the Amsterdam European Council.

#### **5.4 Determinants of Luxembourg Presidencies' Effectiveness**

Notwithstanding the disadvantages that small-state status confers on Luxembourg, the smallest member state hitherto performed its Council Presidencies with great commitment, mediatory skills and effectiveness. Ever since 1985, the Luxembourg Presidencies coincided with crucial moments in European integration: the preparation of the Single European Act (SEA) in 1985, the preparation of the Treaty on European Union (TEU) in 1991 and the preparation of the eastern enlargement process and the third phase of EMU in 1997. Although most of the preparations both for SEA and TEU were done under a Luxembourg Presidency, the smallest member state never had the opportunity to conclude the negotiations, which was done during the following Dutch Presidency in each case.

One of the major tasks of the 1985 Presidency was to launch the internal market project for 1992 and to prepare the institutional reforms needed to adapt the EC institutions to the new challenge. The pragmatism of Luxembourg's government made it opt for a reform limited to specific areas instead of a change of the Treaties, making it thus possible to respect the time schedule.<sup>193</sup> Among the major achievements of the 1985 Luxembourg European Council (2 and 3 December) are the reform and strengthening of EC institutions and powers (especially those of the EP by introducing

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<sup>191</sup> F. Hayes-Renshaw/H. Wallace, *The Council of Ministers* p.146.

<sup>192</sup> Luc Rosenzweig, 'Les avanies des petits pays dans la grande Europe' in *Le Monde*, 25 March 1997.

<sup>193</sup> M. Heintz/M. Hirsch, 'L'Union européenne et la présidence luxembourgeoise' in *Courrier hebdomadaire* No 1588-1589, CRISP (1998) p. 7.

the co-operation procedure), an extension of QMV to new areas and an extension of the policy competence of the monetary, technological and environmental domains. To honour the efforts made by the Luxembourg Presidency, the SEA was signed in Luxembourg on 17 February 1986, shortly after the end of the Luxembourg Presidency.

One of the big successes of the 1991 Luxembourg Presidency consisted in its ability to press ahead with the two Intergovernmental Conferences on Political Union (PU) and on Economic and Monetary Union (EMU) although it had to respond to the Gulf crisis, the civil war in Yugoslavia and the collapse of the USSR. A shrewd strategy of the Luxembourg Presidency, consisting in pressing ahead with the two most urgent dossiers, i.e. the two IGCs and the completion of the internal market, enabled the Presidency to present in a very short time (17 April 1991) a compromise paper on the IGCs, the so-called Luxembourg non-paper, which was a synthesis of the previous months. At the end of the Luxembourg Presidency, the two IGCs had reached a similar stage and Luxembourg had been able to fulfil the uphill task of submitting a negotiating basis with which every delegation could live.<sup>194</sup>

The 1997 Luxembourg Presidency, which fell into a transition phase, did not bring historic results. Still, it was a successful Presidency as it contributed in a crucial way to the integration process. Important progress had been achieved in the field of employment, enlargement and taxation. One of the big successes consisted in the quantifiable employment goals achieved at the November Employment Summit despite the diverging national employment situations and the different ideological approaches in employment matters. One of the credits of the 1997 Presidency is also that precisely Luxembourg, a member state notorious for blocking legislation on taxation, unblocked the dossier on tax harmonisation by achieving consensus on a 'Code of Conduct on Business Taxation'. Important compromises were achieved in the enlargement process where Luxembourg had to find a method and a methodology as to how prospective members can join the Union.

Considering the weaknesses that are often associated with small-state Presidencies we have to ask what factors contribute to the success of Luxembourg's Presidencies. Helen Wallace gives the following explanation:

I am not sure, however, that one should expect all small countries in the chair, to be able to perform as successfully as Luxembourg Presidencies have done. This has something to do with Luxembourg's history, geography, and its relationship with neighbouring states, which enabled Luxembourg to play this

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<sup>194</sup> Consider the following statement by Joseph Weyland: "Looking back on it, by April 80% of the Maastricht outcome was already on the table" (J. Weyland, 'Strategies and Perspectives of the Luxembourg Presidency' p. 17).

particular role.<sup>195</sup>

Much also depends on the rolling Community programme. A member state holding the Presidency at crucial moments in European integration is charged with a challenging Presidency programme, which it needs to face with success. Unless this challenge is given, the Presidency cannot do any more but offering its services and administering the rolling programme.

### **The Presidency's Stance Towards Integration**

The stance a member state has towards the goals of integration may affect the way it handles the Presidency. By tradition, Luxembourg has a less ideological and a more pragmatic approach to European integration, which also affects the way it runs the Presidency.<sup>196</sup> A strong concordance of national and Community interests places Luxembourg in the ideal position to act as a neutral co-ordinator and mediator. Having only a few national interests to defend and knowing about the importance of a strong and integrated Europe, Luxembourg's leaders consider the Presidency as an opportunity to achieve important progress. In this sense, it can be said that Luxembourg is the member state that holds the most 'European' Presidency. Jacques Delors, former President of the European Commission, says:

Qu'il préside le Conseil ou qu'il préside le Conseil européen, le Luxembourg a montré les mêmes qualités: un solide professionnalisme, une grande impartialité, une volonté résolue de faire progresser la Communauté. De par sa situation géographique comme en raison de la structure de son économie, les intérêts du Luxembourg se confondent largement avec ceux de la Communauté. Il est rare qu'il ait eu des demandes ou des exigences spécifiques à faire valoir. La présidence luxembourgeoise est donc – et a toujours été – une présidence véritablement européenne.<sup>197</sup>

Luxembourg can fully dedicate itself to the Presidency, which is an advantage even over other smaller member states. It has no difficult issues to face on the whole (unlike Ireland being confronted with the Northern Ireland conflict or Belgium facing language issues); it has a high degree of consensus on Community affairs unlike Greece or Denmark, and it has a very stable coalition government unlike Ireland.

### **Leadership Abilities, Experience and Political Clout**

Leadership abilities, experience and political clout influence the effectiveness of the Presidency. The success or failure of a Presidency depends to a large extent on its office

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<sup>195</sup> H. Wallace, 'A Critical Assessment of the Styles, Strategies and Achievements of the Two Presidencies' in E. J. Kirchner/A. Tsagkari (eds) *The EC Council Presidency. The Dutch and Luxembourg Presidencies* (UACES Proceedings 9, 1993) p. 48.

<sup>196</sup> M. Heintz/M. Hirsch, 'L'Union européenne et la présidence luxembourgeoise' p. 6.

<sup>197</sup> J. Delors, 'Le Luxembourg et ses présidences du Conseil européen' in R. Kirt, A. Meisch (eds) *Innovation-Intégration, Mélanges pour Pierre Werner* (Luxembourg, 1993) p. 327.

holders, their experience, their chairmanship, their brokerage skills and their personal commitment. Leadership qualities have to be given at every level of the Council machinery. There seems to be a close link between leadership qualities and experience: "Leadership qualities require a great deal of understanding of the partner's positions, tact in the handling of conflictual issues, and, as far as possible, a minimum of personal likes and dislikes".<sup>198</sup> To understand the motives and bargaining positions of other member states, the Presidency cannot only rely on the knowledge of the Council Secretariat which basically provides advice on procedural questions. It is necessary for the Presidency team to gain subtle intuition of how the different member states 'operate', which can be acquired as a result of a long Council experience.

As a founding member Luxembourg has gained a long Council experience as well as a long experience in the chair. The 1997 Presidency was Luxembourg's tenth. The length of office served by Luxembourg's officials and Permanent Representatives and the ensuing experience they acquire provides them with important assets when they chair Council meetings, e.g. finesse about when to call for a vote, about the timing and framing of compromise solutions, and in handling critical issues. In addition, the dedicated commitment to European integration of the Luxembourg government, the long term of office and multiple office holding of many ministers are important factors for providing leadership and chairmanship abilities.<sup>199</sup> The length of experience and the multiple office holding of some ministers - e.g. Jean-Claude Juncker is Prime Minister, Labour and Finance Minister - provides the Presidency's main actors with a continuity of experience, a wealth of contacts and information, respect and personal friendships that is crucial for providing effective chairmanship. Another factor that contributes to an effective chairmanship are the linguistic skills of Luxembourg's delegates most of whom speak German, English and French next to their mother tongue, and have a good knowledge of both French and German culture. The advantage is that the respective chairperson can communicate directly, both formally and informally, with representatives from other member states, thus making communication and consensus easier. In addition, the consensual approach or 'low controversy model' that characterises Luxembourg's government and society<sup>200</sup> places the government in an ideal situation to assume one of the most important tasks of chairmanship, that is brokering compromises and finding consensus.

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<sup>198</sup> E. J. Kirchner, Decision-making in the European Community. The Council Presidency and European Integration (Manchester, 1992) p. 110.

<sup>199</sup> This continuity of experience is exemplified by both the careers of Jean-Claude Juncker, Prime Minister and a member of the government since 1982, and Jacques Poos, Minister of Foreign Affairs and a member of the government since 1977.

<sup>200</sup> For a description of Luxembourg's consensual domestic environment see P. L. Lorenz, 'Luxembourg. New Commitments, New Assertiveness' in C. Hill (ed) The Actors in Europe's Foreign Policy (London, 1996) p. 230-3.

## Extent of Co-operation With Other Institutions

For a Presidency to be successful, there is a need to communicate effectively with other EU institutions and bodies, especially with the Council Secretariat but also with the Commission and the European Parliament. We have already shown that Luxembourg co-operates particularly closely with the Council Secretariat when it holds the Presidency. One instance of close co-operation during the 1991 Presidency was the setting up of a drafting team, responsible for the IGC on Political Union, composed of officials of the Council Secretariat and of the Luxembourg Permanent Representation.

Concerning the Commission, it can be generally assumed that it co-operates more closely with a Presidency that is strongly committed to European integration. Luxembourg has an outright positive attitude to the Commission in general so that contacts are intensified when the country holds the Presidency. Hoscheit states, however, that contacts with the Commission are less frequent and less dense than those with the Council Secretariat.<sup>201</sup> Co-operation with the Commission is indeed not always as close as the Luxembourg Presidency would have liked. During its 1991 Presidency, Luxembourg would have preferred a closer co-operation with the Commission concerning the two Intergovernmental Conferences. But compared with the 1985 IGC the role of the Commission in the 1991 IGCs has changed:

In 1985 we had a system where the Commission was associated with working groups, preparing the texts. We would have liked this formula to continue but it did not. The Commission probably wanted to be distanced from this process because they wanted to introduce proposals of their own. As a consequence, the Commission did not play the role in the IGCs which it could have done.<sup>202</sup>

Co-operation between the Commission and the Luxembourg Presidency is however particularly beneficial since both the former and the latter generally assume an important mediating and co-ordinating role. Although the Commission is considered as a more impartial mediator than any Presidency, Luxembourg's limited number of vested national interests place the country in a better position to act as a mediator. Hence it can act more often in partnership with the Commission in this respect. The 1997 Luxembourg Presidency benefited from the fact that the current President of the European Commission, Jacques Santer, is a former colleague of most members of the incumbent government in its former capacity as Prime Minister of Luxembourg. Close contacts with the Commission were helpful for the finalisation of compromises, in particular in the wake of the November Employment Council.

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<sup>201</sup> "La réunion du ministre des Affaires étrangères, futur président du Conseil, et des membres de la Commission se situe largement à un niveau protocolaire, même si un certain nombre de points concernant le programme de la présidence y sont discutés" (J. M. Hoscheit 'La Présidence du Conseil des Ministres des Communautés européennes' p. 198).

<sup>202</sup> J. Weyland, 'Strategies and Perspectives of the Luxembourg Presidency' p. 21.

By tradition Luxembourg's Presidencies maintain close relations with the European Parliament. The Stuttgart European Council of 1983 decided that the Presidency should report to the EP on the outcome of each European Council.<sup>203</sup> It has become common practice that the Foreign Minister presents the Presidency programme to the EP at the beginning of the Presidency's term and reports on what has been achieved at the end of it. Ministers also meet parliamentary committees. It is equally customary for Presidencies to liaise with MEPs from their own countries in particular. The 1991 Presidency co-operated closely with the European Parliament, especially with regard to the two IGCs. Interinstitutional conferences were held throughout the negotiating period composed of delegations from the EP but also from the Commission and the member states' Personal Representatives.

### 5.5 Neutral Co-ordinator and 'Honest Broker'

At the various levels at which the Presidency is engaged, it is a daily co-ordinator among the member states on a wide range of issues. This co-ordination function, which the Presidency often assumes together with the Council Secretariat or the Commission, consists in promoting compromise and consensus among the diverging views of the member states at the various levels of the Council meetings to ensure that Community business runs smoothly. Hayes-Renshaw and Wallace assert that "this task is always in tension with the fact that the presidency (whatever the member state) suffers from a structural bias in favour of its own government's position".<sup>204</sup> We would, however, argue that Luxembourg is less tempted to do so as it has fewer pressing national interests. Common practice has shown that Luxembourg is particularly well placed to act as a neutral co-ordinator and mediator as a strong interest in consensus and a detached stance place it in a position to find objective compromises.<sup>205</sup> Large member states may well have a greater political and economic weight to force a compromise. Their distinct interest in almost every issue makes it more difficult for them to take a neutral stance when acting as mediators. Regarding the two important IGCs that were to be handled during the 1991 Luxembourg Presidency<sup>206</sup>, Helen Wallace writes:

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<sup>203</sup> It has become customary for the head of state or government to do so.

<sup>204</sup> F. Hayes-Renshaw/H. Wallace, The Council of Ministers p. 146. This was the case during the 1991 Dutch Presidency where some ministers looked for opportunities to argue substantive national concerns (see H. Wallace, 'A Critical Assessment of the Styles, Strategies and Achievements of the Two Presidencies' p. 48).

<sup>205</sup> Kirchner shows that the mediating role is not satisfactorily fulfilled by every small member state as exemplified by the 1987 Belgian and Danish Presidencies (see E. J. Kirchner, Decision-making in the European Community p. 110).

<sup>206</sup> During the 1991 Luxembourg Presidency two important phases can be distinguished. From January until April 1991 the IGC treated all the various issues, which thus permitted the Luxembourg Presidency to submit a first draft for further negotiations (non-paper of April 17). From April until June 1991, the IGC revised article by article of the non-paper which thus served as a negotiating basis. The outcome of this exercise was the reference document of 18 June, the so-called 'Draft Treaty on European Union' which reflected the positions backed by a majority of member states during the preceding weeks. At the Luxembourg European Council of 28 and 29 June 1991 it was decided that the text presented by the



We have been lucky in the Community that the Luxembourg Presidencies have come at important moments, because it is quite clear that there would have been a problem had we had a UK Presidency, for example, at that point in the IGC process. The same would have been the case for Germany too. What was needed was a country that could be detached and balanced; this is essentially what the Luxembourg government was able to be.<sup>207</sup>

Among the many factors that contribute to the failure or the success of a Presidency, a Presidency should be able to broker compromises or present convincing concepts with which every delegation can live. One of the big successes of the 1991 Luxembourg Presidency consisted in its ability to present in a very short time (17 April 1991) a compromise paper, the so-called 'non-paper', which was a synthesis of the previous months' work. In this non-paper the Luxembourg Presidency succeeded in presenting positions backed by a majority of member states during the previous months of the IGC. To attain this goal was all the more difficult since the preparations on Political Union were lagging far behind those on EMU<sup>208</sup>, and the principle of parallelism between the two IGCs had been confirmed in a note by the Ministers of Foreign Affairs at the opening of the IGC on PU in Rome on 15 December 1990. This imposed a very tight calendar on the works of the Presidency regarding the IGC on Political Union. In order to perceive how the Luxembourg Presidency was able to achieve compromises and to submit the non-paper and later on the draft treaty, we need to understand its working methods. Cloos et al accurately describe the way the weekly meetings of the Group of Personal Representatives evolved:

Au rythme d'une réunion hebdomadaire et parfois plus, les représentants personnels parcoururent l'ensemble des thèmes identifiés préalablement en les discutant un par un. Leurs débats s'appuyaient en général sur des documents préparés par la Présidence, mais aussi sur des contributions de différentes délégations. Là où c'était possible, on essayait de travailler directement sur la base de textes de nature juridique, sous forme d'articles de traité.<sup>209</sup>

Often, however, the positions of member states were not clear enough to permit the drafting of treaty articles. In this case the Presidency proceeded to the quite innovative and productive method of questionnaires, which were prepared by the 'Friends of the Presidency'<sup>210</sup> and to which each delegation had to respond. What were the advantages of these questionnaires?

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Luxembourg Presidency was to serve as the basis for future negotiations which were to be completed at the Maastricht European Council.

<sup>207</sup> H. Wallace, 'A Critical Assessment of the Styles, Strategies and Achievements of the Two Presidencies' p 47.

<sup>208</sup> The preparations on EMU had started two years earlier (the decision to hold an IGC on EMU had been taken at the 1989 Madrid European Council) and had already entered drafting stage at this stage.

<sup>209</sup> J. Cloos et al, *Le Traité de Maastricht: genèse, analyse, commentaires* (2<sup>nd</sup> ed) (Brussels, 1994) p.77.

<sup>210</sup> Two groups of representatives played a major role in the negotiations for Political Union during the Luxembourg Presidency: the Group of Personal Representatives, chaired by Luxembourg Ambassador Joseph Weyland and the informal working group called 'Friends of the Presidency' which was composed of the assistants of the personal representatives and chaired by Jim Cloos.

La technique présentait l'avantage de mettre en jeu les administrations des Etats membres en les associant directement à la négociation. La réaction de celles-ci fut très constructive et les apports fournis furent substantiels. Les réponses étant le plus souvent orales et présentées par les représentants personnels, les Etats membres purent s'exprimer avec beaucoup de liberté, ce qui permit à la Présidence de bien sentir les sensibilités et les idées des différentes capitales et de rédiger ensuite des textes de nature juridique sous forme d'articles de traité.<sup>211</sup>

By means of these questionnaires the Presidency managed not only to integrate the national administrations into the negotiations but also induced the delegations to openly express their position.

Although subject to criticism by some for being too minimalist and because of the 'pillar approach'<sup>212</sup> the Presidency's methods had been largely acclaimed. The Presidency had opted for a realistic and pragmatic approach which consisted in fostering some basis for negotiation which would bring about consensus sooner or later.<sup>213</sup> A comparison with the final treaty version shows that the Luxembourg Presidency had made a wise choice.

Along with the consensus reached in the field of tax harmonisation and on the EU's enlargement policy, one of the major achievements of the 1997 Presidency lies in the consensus gained at the November 1997 Employment Summit.<sup>214</sup> The secret of success lay in Luxembourg's ability to communicate its aims and to canvass the views of other governments, EU institutions and European social partners on these. Ever since the first days of the Presidency Prime Minister Juncker, President of the European Council, worked without interruption to make a success of the Employment Summit. Juncker made a *tournée des capitales* in order to gain the support of other governments, to canvass their views on employment strategies and to reconcile the diverging views between and often within the different governments.<sup>215</sup> To foster an exchange of experience, he summoned his European counterparts to submit successful national examples of 'good practice' regarding their employment policies before the start of the extraordinary Employment Council. Achieving consensus was all the more difficult regarding the diverging national employment situations and the different ideological

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<sup>211</sup> J. Cloos et al, Le Traité de Maastricht: genèse, analyse, commentaires p. 77.

<sup>212</sup> The pillar structure of the future Treaty did not include CFSP and JHA into the Community structure and would thus strengthen intergovernmentalism.

<sup>213</sup> This approach had been all the more confirmed when the overwhelming majority decided to work on the basis of the Luxembourg draft after the Dutch Presidency had restructured it in the second half of the year.

<sup>214</sup> Upon a request made by the newly elected French Prime Minister Lionel Jospin at the Amsterdam European Council, an extraordinary Employment Council was held in November 1997. The criterion for success as set by the Luxembourg Presidency was to gain consensus on concrete and quantifiable results. For a detailed description of the Employment Summit and the efforts made by the Luxembourg Presidency see M. Heintz/M. Hirsch, 'L'Union européenne et la présidence luxembourgeoise' pp. 11-28.

<sup>215</sup> The divergence of opinions even within certain governments made Juncker say that he had the impression of not talking to 14 but 28 governments.

approaches in employment matters. A factor that crucially contributed to the success of the Employment Summit was the structure of Luxembourg's government. In his capacity as Labour and Finance Minister, Prime Minister Juncker's presence at the respective Councils made it possible to orchestrate the diverging views and to present a compromise inspired from the convergence criteria for EMU.

Luxembourg also proved to be a honest broker in the field of CFSP during its 1997 Presidency. Tense relations between the EU and Iran, followed by the withdrawal of EU ambassadors from Iran at the beginning of 1997, was a conflict inherited from the previous Dutch Presidency. The conflict had been triggered off in the wake of the Berlin Mykonos case where Iran was suspected of terrorist acts. Most EU member states urged the return of their ambassadors to Iran but the latter insisted the German ambassador was to enter the country last. All EU member states opposed such unequal treatment. It was the detached and objective stance of a small member like Luxembourg that made possible a solution to the conflict. Diplomatic mediating efforts could be successful because Luxembourg is primarily considered as a neutral partner and a promoter of international law on the international stage. Luxembourg has no colonial past and is devoid of hegemonic aspirations. Unlike mediating efforts made by large-state Presidencies the small state's mediation is considered as a neutral move and does not raise hegemonic suspicions.

## **5.6 The Small-State Presidency and Common Foreign and Security Policy**

There are instances where the small state's capacities for brokering compromises may be limited. Such is the case when the small-state Presidency has to handle unexpected international crises within the framework of Common Foreign and Security Policy. This is what happened during the 1991 Luxembourg Presidency. It was pure coincidence that the smallest member state held the Presidency at a time when the EU faced a host of international crises including the Gulf War, the inception of the civil war in Yugoslavia, the collapse of the USSR and tensions in the Baltic states. At the time of the Gulf crisis in December 1990 and in January 1991, the EC had been unable to take a coherent position vis-à-vis the Iraqi government nor did it act effectively as a mediator.<sup>216</sup> The Luxembourg Presidency therefore had to undergo diplomatic activities of a rare intensity.

Unexpected situations are difficult to handle for any country but their handling develops into a real adventure when a small member state with a limited range of diplomatic tools and a lack of political and diplomatic weight is holding the Presidency.

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<sup>216</sup> For an excellent analysis of the Luxembourg Presidency handling of the Gulf Crisis, see P. Juncker, 'Un miroir des Douze. Un exemple de politique étrangère luxembourgeoise: les efforts de médiation de la présidence luxembourgeoise de 1991 dans la crise du Golfe' in *Lëtzebuurger Land* 43:23 (7 June 1996).

Although the Luxembourg Presidency could rely on the support of the *troika* it had problems in responding to these international crises. The essence of the problem lies both within the nature of the EU's CFSP and Luxembourg's small-state status. Part of the problem is the fact that the EU is still a political and military dwarf. It lacks the legal basis to assume political and military competencies that would strengthen its position in international conflict solution.<sup>217</sup> This implies that the EU is still unable to resolve international conflicts without the help of a political heavyweight like the United States. Another problem lies with the prestige and leverage of the Presidency itself, which is equally limited on the international stage. Those states directly involved in an international crisis prefer to call on the mediating skills of traditional diplomatic powers like France, the UK or the US rather than on a *troika* composed of three interlocutors and headed by a medium-sized or a small member state. In addition the member states were unable to find a coherent position and speak with one voice. Efforts made by the Luxembourg Presidency to mediate during the Gulf crisis were largely unsuccessful, partly due to the divisions among EU member states themselves. The same is true for the Yugoslav crisis where there was equally undecidedness about who is competent for mediating, the Presidency, the *troika* or the world powers like France or the United Kingdom.

The weaknesses that small-state status confers on Luxembourg weakens its position in international conflict solution. Not only is it a political and economic dwarf on the international stage but it also lacks a long diplomatic tradition and adequate diplomatic tools of which access to information is particularly important. In this respect we fully agree with Pascale Junker when she confirms: "Le Luxembourg souffre donc de deux défaillances. L'une est institutionnelle - le manque de statut diplomatique du mandat qu'il occupe -, l'autre est politico-stratégique - le manque de statut diplomatique du pays lui-même".<sup>218</sup> It can therefore be argued that there was a limited degree of acceptance at international level of the Luxembourg Presidency, in particular with regard to the Gulf war. This limited acceptance became both visible in the isolated actions taken by some large EU member states and in the way other international negotiators reacted towards a small-state interlocutor representing the EU.<sup>219</sup> The fact that politically and economically more influential states have to deal with diplomatic lightweights like Luxembourg seems to influence their sensitivity for 'diplomatic

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<sup>217</sup> Ambassador Joseph Weyland of Luxembourg says: "(...) all the efforts we made were of a political nature and it would be unfair to judge the Presidency by these events, knowing perfectly well that the legal basis upon which we achieved what we did was a very limited one. This was especially true for the Gulf and Yugoslavian Crises" (J. Weyland, 'Strategies and Perspectives of the Luxembourg Presidency' p. 18). It must, however, be pointed out that the Treaty of Amsterdam will strengthen CFSP.

<sup>218</sup> P. Junker, 'Un miroir des Douze' p. 2.

<sup>219</sup> During the Gulf war, France submitted a draft declaration before the UN Security Council without consulting its EU partners and without informing the Luxembourg Presidency; by the same token, President Gorbachev only informed the four large EU members about its peace plan (see P. Junker, 'Un miroir des Douze' p. 2).

correctness'. Consider Pascale Junker's statement regarding Luxembourg's Presidency during the Gulf war:

Le fait que ce soit le Luxembourg qui préside semble avoir baissé le seuil de gêne des interlocuteurs de l'Europe. En ignorant le Grand-Duché, on ne piétine pas de grands intérêts en matière d'affaires étrangères. De plus, le Luxembourg est moins susceptible de tirer la sonnette d'alarme, puisque sa politique étrangère est dictée par la volonté de préserver l'unité communautaire.<sup>220</sup>

A French or a British Presidency seems to meet greater international acceptance since the EU is represented by traditional diplomatic powers on the international stage in such a case. This shows that the behaviour of international negotiators changes towards the Presidency depending on whether it is headed by a small or a large state and raises the issue of whether a small state would receive greater recognition by international negotiators if CFSP would have greater formal competencies. One thing is for sure: a small state has no elaborate strategy for conflict settlement at hand and cannot invent it impromptu, whether acting within the current CFSP framework or in a Union with a strong Common Foreign and Security Policy. The country's leaders were simply not able to surpass Luxembourg's traditional role of mediator and honest broker in international conflict settlement.

Although the Presidency offers undeniably an opportunity for a small state to yield a disproportionate amount of influence both at EU and at international level, it also unveils the small state's latent limitations, which were shown to be most obvious in the Presidency's initiative function and in international conflict settlement. But even if Luxembourg's activities within the current CFSP are limited to playing the role of honest broker the small state can fully identify itself with the Presidency and always acts in the name of the European Union. A large-state Presidency may have better diplomatic tools at its disposal when acting in the name of the EU on international stage but a large state may feel tempted to pursue its own goals rather than those of the EU. The Luxembourg government, knowing about its own limitations, rather adopts a pragmatic approach to the Presidency's work. Although burdened with administrative overload and limited in its initiative function, the Luxembourg Presidency is always committed to achieving great administrative and organisational work while assuming its traditional role of mediator and 'honest broker'. One of the big achievements of the Luxembourg Presidencies is that the smallest member state has always been able to make the big projects of European integration advance although the smallness of the country presents disadvantages. In this respect Luxembourg's Presidency is always a truly 'European' one.

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<sup>220</sup> P. Junker, 'Un miroir des Douze' p. 2.

## 6 What Future for Luxembourg in the Council of Ministers?

*L'Unité européenne sera une opération  
qui n'ira ni sans douleur ni sans choc.*

Joseph Bech

Until now we dealt with Luxembourg's present status in the Council of Ministers. But what will be its status in a Council comprising 25 or 27 member states? Enlargement negotiations with ten Central and Eastern European Countries (CEECs) and Cyprus have been launched on 30 March 1998 and it is optimistically envisaged that the first new members will join the Union at the beginning of the next decade. Some express fears that the European Union's institutional mechanisms, originally designed for a Community of Six, cannot cope any longer with more members and will be paralysed after the next enlargement unless reformed. Others fear that the accession of new, mostly small states will tip the balance more strongly in favour of the smaller members and lead to a loss of influence of the larger ones.

Reflections such as these started to be made when the EFTA states, all of them small states, applied for Union membership. Still at the 1992 Lisbon European Council, small states could successfully defend their institutional status quo: the Heads of State and Government decided that the EFTA enlargement would be done without any revision of the principles of majority voting and any institutional reform.<sup>221</sup> It was decided that only the six-monthly rotating Council Presidency would undergo a change as of July 1998 with the *troika* always consisting of one of the larger member states.

### 6.1 The 1996 IGC and Institutional Reform

After the last enlargement round institutional reform came to be seen as most urgent in case the efficiency of decision-making should not be harmed. Criticisms concerned all EU institutions but targeted above all the Council of Ministers, in particular the disproportionate weight of small member states in Council decision-making and rigid and inefficient decision-making caused by unanimity voting. Also subject to criticism were the Council's lengthy and sophisticated voting procedures, the cumbersome rotating Council Presidency, the proliferation of language combinations, and the lack of transparency. The 1996 Intergovernmental Conference (IGC)<sup>222</sup>, which was originally

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<sup>221</sup> Hitherto there had been a linear extrapolation of voting weights at every enlargement.

<sup>222</sup> The IGC opened on 29 March 1996 in Turin under Italian Presidency and was concluded at Amsterdam under Dutch Presidency. Luxembourg was represented at the IGC by Permanent Representative Jean-Jacques Kasel. The Turin European Council of 29 March 1996 identified the following three themes for the IGC agenda: a Union closer to its citizens; more democratic and efficient institutions in an enlarged Europe; strengthening the EU's capacity for external action. See European Commission, *The European Councils – Conclusions of the Presidency - 1996* (Luxembourg, OOPEC, 1997).

intended for revising the Maastricht Treaty<sup>223</sup>, turned out into a major debate about institutional reform. This was considered as urgent to prepare for further enlargement, but also to tackle the democratic deficit and to refine the decision-making process. The IGC was asked to examine simplifying decision-making procedures in general and widening the scope of the co-decision procedure between the Council and EP. It was equally asked to extend the scope of QMV, to redefine the threshold for QMV and member states' weighted votes, and to reform the Council Presidency. In view of the IGC reform proposals we will analyse those concerning Council decision-making and explore how they would affect Luxembourg's position within the EU's major decision-making institution in the future.

Reform proposals concerning the Council of Ministers can, however, not be viewed in isolation. Of equal importance are reform proposals concerning the composition and representativeness of the Commission, a stronger role for the EP and the question of 'enhanced co-operation' between a certain number of members states that are willing to forge ahead with integration in specific policy areas. The real challenge for reforming the institutions consists in a balance to be struck between the need for a more efficient institutional structure and an adequate representation of all states, both small and large. In the event of the IGC many institutional problems, in particular those concerning the Council, drove a wedge between the conceptions of large and small states, but also between federalist-minded states - among them Luxembourg - and those members who struggle to retain a larger degree of national sovereignty. What attitude did Luxembourg take during the IGC negotiations, which reform proposals does it favour, which oppose, and what package solutions or linkages would have been or will be acceptable from Luxembourg's point of view?<sup>224</sup>

### **Luxembourg's Attitude During IGC**

Luxembourg's overall attitude to the topics of the IGC is set out in two government memoranda one of which states the common position of the Benelux partners.<sup>225</sup> It can generally be defined as 'positive and co-operative'.<sup>226</sup> The government took a double-track bottom line for the talks: securing realistic progress towards European integration while safeguarding the country's vital interests.<sup>227</sup> This guideline recalls Luxembourg's general behaviour in the Council of Ministers: on the one hand, Luxembourg follows

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<sup>223</sup> A formal review procedure of the Maastricht Treaty was stipulated in Article N of TEU.

<sup>224</sup> Many of the items on the IGC agenda remained unsolved and are therefore still topical, in particular the reform of the Commission and the reform of the Council voting system.

<sup>225</sup> Ministère d'Etat du Luxembourg, 'Aide-mémoire du Gouvernement luxembourgeois sur la Conférence Intergouvernementale de 1996, Luxembourg, le 30 juin 1995' in Bulletin d'information et de documentation 2/1995, pp. 165-9 ('Aide-mémoire'); Ministère d'Etat du Luxembourg, 'Mémorandum de la Belgique, des Pays-Bas et du Luxembourg en vue de la CIG, le 7 mars 1996' in Bulletin d'information et de documentation 1/1996, pp. 194-7 ('Benelux Memorandum').

<sup>226</sup> Ministère d'Etat du Luxembourg, 'Déclaration de politique étrangère, le 8 février 1996' in Bulletin d'information et de documentation 1/1996 p. 126.

<sup>227</sup> Ministère d'Etat du Luxembourg, 'Aide-mémoire' p. 166.

the supranational track while fostering deeper integration, on the other hand, it is vigilant to defend and preserve areas of national sovereignty.

Institutional reform touches on two aspects of particular importance for Luxembourg: its representation in EU institutions and the weighting of votes in the Council. Hence Luxembourg's major preoccupation is to stand up for its right to participate in EU institutions as a sovereign state with equal rights. Still, the government is well aware that too defensive a stance would be detrimental. And although each member state has a veto concerning the revision of the Treaties, it is not in the interest of small states to categorically oppose any reform proposals. Luxembourg's proposals were therefore innovative and offensive rather than defensive.<sup>228</sup> The government takes the same active, solidarity-based approach it generally adopts in the Council whenever it has to defend its status quo: being prudent but actively involved in the negotiations, paying attention and understanding to other member states' problems, and hoping for a similar treatment in return according to the motto: 'If you want to gain something, you need to give signs you are willing to give something in the first place'.

Except for a few diverging points of view, Luxembourg's ideas and proposals can be considered as compatible with the more middle-of-the-road position of the Commission and the more progressive one of the EP Bourlanges-Martin Report.<sup>229</sup> Contrary to what was actually done during the IGC, the Luxembourg government strongly advocates a debate on the constitutional future of Europe before taking any decisions on institutional reforms.<sup>230</sup> Luxembourg thus considered the IGC in the first place as a forum for discussing whether the EU should become a federation of interdependent states or otherwise a loose association of sovereign and independent states based on intergovernmental co-operation.

The government considers it important to consult and co-operate with other states in bilateral talks to discuss proposals for reform. Institutional reform is one of the rare issues where small member states share a common interest: the defence of their status and representation in the EU's institutional set-up. Small members therefore recognised the need to co-operate and to find common positions.<sup>231</sup> In this respect, the Benelux trio played a particular role in co-ordinating the positions of small states and can be considered as the small-states' 'spokesperson' during the IGC.

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<sup>228</sup> Ministère des Affaires Etrangères, Débat sur la CIG de 1996 (Chambre des députés, 12 July 1995). Exposé introductif de M. Jacques F. Poos, Ministre des Affaires Etrangères p. 5. Innovative proposals consisted in giving the EU legal competence or the principle of 'unanimity minus one' for common actions and positions within CFSP.

<sup>229</sup> See European Commission, Intergovernmental Conference 1996. Commission Opinion – Reinforcing Political Union and Preparing for Enlargement (Luxembourg, OOPEC, 1996); European Parliament, Resolution on the Functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference – Implementation and Development of the Union (17 May 1995).

<sup>230</sup> Ministère des Affaires Etrangères, Débat sur la CIG de 1996 p. 2.

<sup>231</sup> In his 1995 declaration on foreign policy, Foreign Minister Poos asserted that small member states share almost identical views on the topics of the IGC. This does, however, not mean that there is a complete identity of views, as there were, for instance, different views among Benelux countries with regard to voting modes on taxation or on amendment of the Treaties.



## Principles of Importance for Luxembourg

Luxembourg clearly thinks that the principles and the balance-of-power on which the EU is founded need to be preserved. Hence the government is not willing to accept any institutional reform unless the following general principles can be met.

### The Principle of Equality of States

The Luxembourg government asserts that first and foremost the principle of equality of states, an underlying feature of the Community process, needs to be further guaranteed. It is important to make sure that small states remain on an equal footing with large member states as far as their participation in the EU's institutions and decision-making process is concerned. Luxembourg therefore strongly opposes any proposals that would lead to a marginalisation of small states and deprive them of symbolical political elements like their right to a Commissioner and to hold the Council Presidency.<sup>232</sup> Consider the following statement by Jean-Jacques Kasel:

(...) Tout aménagement institutionnel doit préserver le principe de la pleine participation de tous évitant la constitution de directoires, de majorités automatiques ou de minorités de blocage systématiques, qui toutes représentent des dérives destructrices.<sup>233</sup>

This statement by Luxembourg's former Permanent Representative shows that small states do not only request equal representation but that they also strongly oppose any proposals that would lead to the formation of a *directoire* fostering eventually their marginalisation. Such would be the effects of the introduction of a one-year Council Presidency system excluding the smaller members or one where a large member would act as President and small members as Vice-Presidents. Equal effects would have any reform of the Commission that would introduce a system of junior and senior Commissioners or one where not every member state will be represented. Similar effects would follow from the denial of the smaller states' right to a judge at the European Court of Justice.

### Full Institutional Representation

A second principle arises from the principle of equality of states: all member states should be represented in all institutions irrespective of their size. Full institutional representation should continue to guarantee the effective participation of small states in the Union's governance structures. Luxembourg does not accept any proposals that would reduce its status to passive representation. The country insists on its right of active participation, which also includes the right to voice its opinion whenever vital

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<sup>232</sup> European Commission, Note de dossier, Rencontre entre le Premier Ministre luxembourgeois, M. Juncker, et M. Oreja, le 4 avril à Luxembourg (Brussels, 7 avril 1995).

<sup>233</sup> J.J. Kasel, 'L'Europe est en réalité l'affaire d'un chacun. Rentrée au Centre universitaire de Luxembourg – le discours du représentant du Luxembourg auprès de l'Union européenne' in Die Warte/Luxemburger Wort 47:30 (10 November 1994) p. 2.

interests are at stake.<sup>234</sup> The government considers full institutional representation not least as a right derived from Luxembourg's status as a founding member of the European Communities: "Il est inconcevable, et inconcevant même, d'enlever à un pays fondateur de la Communauté le droit au chapitre, le droit par exemple d'avoir un commissaire ou un juge à la cour de justice des Communautés européennes".<sup>235</sup> Full institutional representation is considered as a prerequisite for the very functioning and deepening of the future Union, as made clear by Luxembourg's Prime Minister: "Si nous voulons, en Europe, avoir un amalgame intelligent entre le supranational et le national, il faut prendre conscience du fait qu'on ne peut pas, via traités, éliminer la représentation individuelle des Etats-membres au sein des institutions communautaires".<sup>236</sup>

### Federal-type Overrepresentation

A third principle to which Luxembourg adheres is the retention of a certain degree of overrepresentation in favour of small states, a principle which was part of the founding bargain between the original six members. A distribution of votes and seats on a strict proportional basis would effectively wipe out the influence of small states altogether. If the principle of absolute proportionality would, for instance, be applied in a European Parliament in an enlarged Union, Luxembourg's 420,000 inhabitants would be represented by no more than one MEP. Consequently the spectrum of Luxembourg's major political parties could no longer be represented.<sup>237</sup> It is therefore important to insist on a certain degree of overrepresentation and battle for the principle of degressive proportionality.

### Preventing a Small State/Large State Debate

A fourth principle consists in preventing the negotiations to develop into a small state/large state debate. The Luxembourg government (in particular Prime Minister Juncker) is against leading the debate on institutional reform along the prevailing view that a bloc or a coalition of less populated states consistently outvotes larger ones:

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<sup>234</sup> Ministère d'Etat du Luxembourg, 'Le rôle des petits pays dans la Communauté' in Bulletin d'information et de documentation 2/1992 p. 23.

<sup>235</sup> Interview with Foreign Minister J. Poos 'Un entretien avec le ministre des affaires étrangères' in Le Monde (9 December 1992). This view is taken as far as to deny Cyprus and Malta the institutional status Luxembourg holds. Prime Minister Juncker confirmed in a newspaper interview that he can imagine that acceding small states like Malta and Cyprus may have a different status within Community institutions than Luxembourg who, as a founding member of the Communities, has a right of seniority ('droit d'aînesse') (see Juncker interview 'Sur l'avenir de l'Union européenne: Jean-Claude Juncker' in Le Soir, 20 September 1995).

<sup>236</sup> Ministère d'Etat du Luxembourg, 'L'Europe à l'aube du 21e siècle' in Bulletin d'information et de documentation 4/1995 p. 248.

<sup>237</sup> The Luxembourg government therefore states in its 1995 IGC memorandum: "(...) toutes les forces politiques majeures d'un Etat membre doivent être dûment représentées au niveau des institutions européennes directement élues. A défaut, le processus de l'intégration conduira à des réactions de rejet" (Ministère d'Etat du Luxembourg, 'Aide-mémoire' p. 169).

Je n'accepte pas cette opposition, dictée par des raisons intérieures, entre grands et petits Etats. C'est inventé de toutes pièces. Je suis membre du Conseil des ministres depuis 1982 et je n'ai pas souvenir d'un débat qui aurait montré une opposition entre les quatre grands et tous les autres petits. C'est une invention.<sup>238</sup>

As a matter of fact, as has been hinted in Chapter Three and Four, the divisions in the Council of Ministers are not systematically between large and small member states but vary according to the subject being negotiated. There can be splits between net contributors and net beneficiaries, neutrals and non-neutrals, supporters of free trade and supporters of protective measures, etc. Logjams in decision-making are often caused by large states with big national interests and not because a bloc of small states is blocking legislation.

### **Between Intergovernmental and Supranational Spheres**

Institutional reform cannot be seen in isolation from other reform proposals on the IGC agenda. Institutional issues have become intrinsically linked with the issue of greater political integration. With regard to reform proposals, Luxembourg adopts the same ambiguous attitude to supranationalism that characterises its general behaviour in the Council. In general terms, the government considers the IGC as an opportunity to take further steps towards political integration, to deepen many policy fields and to strengthen the EU's supranational institutions. This integrationist attitude is, however, again not the product of a blind dedication to federal European goals but a way of self-preservation consisting in forming a rampart against too intergovernmental an institutional and decision-making framework. Any wish for more European integration can be seen as an attempt to prevent a watering down of the *acquis communautaire* in favour of power politics dictated by the larger partners. This proactive and anxious attitude of Luxembourg vis-à-vis the IGC is expressed in its concern for deepening the Union, for 'enhanced co-operation', and for the democratisation and greater efficiency of the decision-making process. It goes along with the assertion that at the current stage of integration, the small state is unwilling to lose its representation in the EU's supranational institutions, unwilling to lose its grip on those intergovernmental tools that are necessary to preserve some important areas of national sovereignty (that is unanimity) and very reluctant to lose influence in the Council of Ministers by means of a population-based voting system.

#### Deepening Before Enlarging

Luxembourg's wish for deepening the Union before enlarging it can be seen in the light of some form of equivocal supranationalism.<sup>239</sup> Small and federalist-minded states

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<sup>238</sup> Juncker interview 'Sur l'avenir de l'Union européenne', 20 September 1995.

<sup>239</sup> "(...) L'objet central de la Conférence Intergouvernementale est bien l'approfondissement de l'Union, qui doit précéder son l'élargissement et qui va redonner tout son sens à celui-ci" (Ministère d'Etat du

consider the deepening process as a consolidating measure for European integration. They think that deepening the integration process by way of stronger and better functioning institutions and by closer co-operation in more policy sectors constitutes an indispensable rampart against the forthcoming difficulties of enlargement. Although the Luxembourg government has a basically positive attitude to enlarging the Union, it fears enlargement would water down the *acquis* of European integration to a mere free-trade area or would gradually strengthen intergovernmentalism. Hence Luxembourg can be situated in the camp of those member states that see the IGC as an opportunity for deeper political integration, favouring the progressive *communitarisation* of domains of JHA and CFSP.<sup>240</sup> This is not only because Luxembourg feels that CFSP has weaknesses when it comes to its formulation, decision-making and implementation but because it fears that CFSP would otherwise remain too intergovernmental, which as a consequence would be detrimental for small states. Luxembourg equally favours military integration and wants to see WEU gradually become part of the second pillar (CFSP).<sup>241</sup>

#### 'Enhanced Co-operation'

Fear of growing intergovernmentalism made Luxembourg take a favourable, though reserved stance for 'enhanced co-operation' or 'differentiated integration' during the Intergovernmental Conference.<sup>242</sup> According to Jean-Jacques Kasel, Luxembourg has a strong interest in belonging to an inner core of member states whenever member states agree on deeper integration. The reason being that a small state can only voice its interests when sitting around the negotiating table and not by being absent from it.<sup>243</sup> This is also the reason why the country's participation in the third phase of EMU or in the Schengen co-operation was never contested. In the government's view the concept of 'enhanced co-operation' is inevitable in the event of future enlargement but should be subject to certain conditions. In order to prevent the concept to foster the creation of a *directoire* of states it was important to ensure that the principles and objectives for 'enhanced co-operation' be agreed by *all* member states *at the same time*. Another condition is that the concept of flexibility should not become a universal panacea. It should only be used as a last resort, the EU being based on the principle of solidarity. For the same reason Luxembourg distances itself from the concept of a 'Europe à la carte', which would only lead to disintegration. Instead it views differentiated integration in the light of the 1976 Tindemans report, which states: "Il ne s'agit pas ici

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Luxembourg, 'L'Europe à l'aube du 21e siècle' p. 246).

<sup>240</sup> Asylum and immigration policy, police cooperation and social policy are domains from JHA Luxembourg wants to see transferred to the first pillar.

<sup>241</sup> See 'Benelux Memorandum'.

<sup>242</sup> See 'Benelux Memorandum'.

<sup>243</sup> Information provided during a personal interview.

d'une Europe à la carte: l'accord de tous sur le but final à atteindre en commun lie chacun, ce n'est que l'exécution qui est échelonnée dans le temps".<sup>244</sup>

### Greater Democratisation and a More Efficient Decision-making Process

Luxembourg's goal to achieve a greater democratisation, transparency and efficiency of the decision-making process equally mirrors some equivocal supranationalism and needs to be nuanced. Luxembourg is in favour of a stronger Commission and wants to see the role of the latter strengthened in CFSP and JHA. A stronger Commission that retains its independence and its exclusive right of initiative (in the first pillar) while gaining new responsibilities is in the interest of small states. This is not only because strong supranational institutions are a safeguard against intergovernmental bargaining but also because the Commission is traditionally considered as a protector of small-state interests (see Chapter One).

The government's stance to greater decision-making power for the European Parliament is equally ambiguous. Many commentators have viewed the EP as the real winner of the Amsterdam Treaty as its legislative powers have been considerably strengthened. Luxembourg was in favour of simplifying and reducing the decision-making procedures to three (co-decision, assent and consultation). It equally favoured an extension of co-decision to policy domains where the Council of Ministers decides by QMV. Although the government favoured a strengthening of the EP's powers there is a certain off-the-record awareness that a major transfer of decision-making power to a European Parliament where Luxembourg is represented by only six MEPs is unbeneficial.<sup>245</sup>

Concerning the Council's lack of transparency, Luxembourg is generally in favour of publishing the voting results and their explanation. Contrary to the Scandinavian idea of transparency, Luxembourg's leaders think it is no good making Council meetings accessible to the public on the grounds that the presence of a camera in the Council meeting room would destroy the informality in which ministers negotiate, thus forcing them to take positions in front of their domestic voters which are otherwise needless to take.<sup>246</sup>

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<sup>244</sup> Ministère d'Etat du Luxembourg, 'Aide-mémoire' p. 168.

<sup>245</sup> European Commission, Note de dossier (Brussels, 7 avril 1995); Ministère d'Etat du Luxembourg, 'L'Europe à l'aube du 21e siècle' p. 247. In 1990 Luxembourg's then Prime Minister Jacques Santer declared: "Honestly I do not think that a major increase of the competence of the EP would be very favourable for small countries. The four biggest member states have a majority of the voting right in this forum. A country like Luxembourg can only count on six Parliamentarians out of 518 [today 626]. Their influence is close to nothing. Even the seven small member states taken together cannot count on much more than a quarter of the votes" (Ministère d'Etat du Luxembourg, 'The Role of Small Countries in the Emerging European House' in Bulletin de Documentation 6/1990 p.42).

<sup>246</sup> Consider Prime Minister Juncker's statement: "Je suis contre l'idée de rendre publiques les séances du Conseil des ministres. Ce serait la fin de tout. (...) Je vous dis mon opinion: c'est ridicule. C'est un débat ridicule que de croire que la transparence des travaux du Conseil pourrait être améliorée en faisant pénétrer les caméras dans le bâtiment du Conseil des Ministres." (Ministère d'Etat du Luxembourg, 'L'Europe à l'aube du 21e siècle' p. 247); the same idea was expressed by Jean-Jacques Kasel during a personal interview.

The eleven official languages and the ensuing language combinations that are currently in use are a factor rendering efficient decision-making ever more cumbersome. Unlike other member states, Luxembourg has a very tolerant attitude to the issue of 'streamlining' the language use. The government supports the idea of reducing the use of eleven languages to three (English, French, German) within the preparatory Council machinery (Coreper and working groups) while maintaining the eleven official languages at senior Council level (Council of Ministers, European Council) for ministers' active language use.<sup>247</sup> The reason for Luxembourg's liberal attitude is that the country's major spoken language, i.e. Luxembourgish, lacks the status of an official language anyway and that the country's major administrative languages, i.e. French and German, are not at risk of being removed, especially French being one of the more important working languages. An upgrading of German would pose no practical problem for Luxembourg either.

## 6.2 Reforming the Council of Ministers

### The Voting System

Luxembourg clearly takes the intergovernmental track concerning the reform of the Council's voting system. This issue, part of which has been left unsettled at Amsterdam<sup>248</sup>, is twofold. On the one hand there is an urgent need to take measures that would foster a more efficient decision-making (e.g. extension of QMV) in order to prevent paralysis of EU decision-making. On the other hand large member states would like to reduce the voting power of small states as they fear that the next enlargement round will cause a proliferation of small states that would weaken their grip on decision-making. Large member states therefore generally favour measures like voting arrangements based on the population criterion, a reweighting of votes and also a higher threshold for QMV.

Luxembourg generally supports a more efficient decision-making procedure and can be situated in the camp of those that think that the threshold of QMV should be maintained at 70% or even be decreased in an enlarged Union.<sup>249</sup> In order to prevent paralysis of future decision-making, Luxembourg equally favours the extension of QMV to new areas. QMV is, with co-decision, a key concept of a federal European Union. Significant advances were made in the Amsterdam Treaty for the practice of QMV. Jean-Jacques Kasel confirmed that Luxembourg even could have accepted that QMV be extended to more areas than actually adopted in the Treaty of Amsterdam.<sup>250</sup>

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<sup>247</sup> Information provided by Jean-Jacques Kasel.

<sup>248</sup> In particular the issue of a population-based reweighting of votes remained unsolved (see below).

<sup>249</sup> See 'Benelux Memorandum'.

<sup>250</sup> Kasel also pointed out that Luxembourg could have accepted an extension of QMV to all the areas presented in the Dutch draft Treaty of Amsterdam, though the government would have done so with



Prime Minister Juncker thinks that QMV should be applied to the three EU pillars provided that it would contribute to a greater efficiency of decision-making and provided it is politically possible.<sup>251</sup> Generally a supporter of the principle of 'unanimity minus one' for joint action in CFSP, the Luxembourg government would even go as far as accepting a weighting of votes in CFSP that would clearly put large states in a more advantageous position, in case QMV would be extended to the second pillar. The reason being:

Cela signifierait en effet que, pour la première fois, dans un domaine essentiel de leur souveraineté, ils [large member states] accepteraient de partager leurs prérogatives avec les petits. Dès lors ils auraient droit à quelques garanties.<sup>252</sup>

This statement shows that, again, Luxembourg is willing to give up its status quo if there is a political will for deeper integration. Be it as it may, Luxembourg's supranational attitude on this issue needs to be placed in context. There are indeed domains where the application of QMV would be unacceptable for Luxembourg: the revision of the Treaties, European citizenship, new accessions, taxation and own resources. In its memorandum for the 1996 IGC, the Luxembourg government unequivocally states:

Au niveau du Conseil une extension du vote à la majorité qualifiée s'impose en principe. L'unanimité doit cependant rester d'application pour tous les domaines touchant intimement à la souveraineté des Etats et donc à celle des Parlements nationaux tels que les révisions des traités, la citoyenneté européenne, les nouvelles adhésions, la fiscalité et les ressources propres.<sup>253</sup>

These clearly are domains where Luxembourg's vital national interests are concerned. In particular taxation and the revision of the Treaties are matters that the Luxembourg government considers as an unacceptable inroad on national sovereignty.<sup>254</sup>

Luxembourg equally opposes the Belgian proposal of amending the Treaties by a  $\frac{3}{4}$  majority, wishing to maintain unanimity on the grounds that "les traités restent le contrat de base auquel nos peuples ont adhéré. Il ne peut donc être question de les modifier sans l'accord de tous".<sup>255</sup> Luxembourg is anxious that in such a case a small member state with little political impact might have to 'swallow' amendments which, if

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difficulty.

<sup>251</sup> Juncker interview: 'Europe: Jean-Claude Juncker, porte-voix des 'petits' in *Le Figaro* (6 February 1996).

<sup>252</sup> Juncker interview: 'Europe: Jean-Claude Juncker, porte-voix des 'petits'.

<sup>253</sup> Ministère d'Etat du Luxembourg, 'Aide-mémoire' p. 169.

<sup>254</sup> These are also domains where the views of the three Benelux partners differ: whereas Luxembourg and the Netherlands oppose the extension of QMV to taxation, Belgium strongly favours it. But not only Luxembourg and the Netherlands oppose any extension of QMV in the domain of taxation. Jean-Jacques Kasel, Luxembourg's Personal Representative during the IGC, once called for a vote concerning the extension of QMV to taxation. The outcome was 12:3 with 12 member states in favour of maintaining unanimity in this field (Kasel interview).

<sup>255</sup> Ministère d'Etat du Luxembourg, 'Déclaration de politique étrangère, le 16 février 1995' p. 70.

taken to the extreme, would make it unbeneficial for the small partner to stay within the Union. The predicament, however, is that there is no alternative for Luxembourg.

An issue that poses the highly sensitive political question of the balance between large and small member states is the one of (re)weighting the votes. Until now, despite four enlargements, the representational balance between small and large states has not been changed. But unless a reform takes place, the next enlargement will cause a situation where those countries that have a minority in terms of population will have a majority in terms of votes in EU decision-making. The large member states are therefore contesting the current voting system on the basis of democratic representation. Although a variety of formulae have been suggested, the issue made little progress during the IGC. The Italian Presidency, responsible for launching the IGC in 1996, discerned two camps of member states: first, those that believe that the current weighting should be maintained and extrapolated when enlargements take place on the grounds that the principle of equality of states cannot be ignored and that there is nothing like a bloc of less populated states acting collectively against the group of larger states; second, those member states that believe that it is necessary to ensure that the Union's decisions are backed by a significant proportion of the population, either by reweighting the votes (i.e. by altering the current weighting to ensure a better balance between the number of votes and population) or by introducing a system of double majority<sup>256</sup> (either in terms of votes and population, or in terms of number of states and population).<sup>257</sup> Luxembourg could initially be located in the first camp. In general terms, the Luxembourg government insists that any change in the weighted votes needs to respect the principle of federal-type overrepresentation of small states and needs to prevent the creation of automatic majorities or systematic blocking minorities. Although, as mentioned above, the Luxembourg government would accept a reweighting of votes in favour of large states for CFSP (once QMV be extended to the second pillar) such a reweighting would be unacceptable within the first pillar (Single Market). Prime Minister Juncker explains why:

J'ai une longue expérience des votes en ce domaine [first pillar] et je n'ai jamais vu les grands d'un côté et la meute des petits pays de l'autre... En remettant inlassablement ce point sur le tapis, les grands vont finir par croire aux petits qu'ils sont grands! Je n'ai pas besoin qu'on écrive dans un traité que le Luxembourg est plus petit que la France ou l'Allemagne: je le sais et me comporte en conséquence.<sup>258</sup>

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<sup>256</sup> This notion was advanced in August 1993 by Karl Lammers and Wolfgang Schäuble in a CDU/CSU paper.

<sup>257</sup> Council of the European Union, Intergovernmental Conference on the Revision of the Treaties. Italian Presidency (January-June 1996). Collected Texts (Luxembourg, OOPEC, 1997) p. 95f.

<sup>258</sup> Juncker interview: 'Europe: Jean-Claude Juncker, porte-voix des 'petits'.



This statement shows three things: first, it asserts that there is nothing like a small state/large state opposition and that the ensuing debate is artificial; secondly, in the practical world of international relations, small states are well aware that they have less political weight than their larger counterparts and behave accordingly within the Council; consequently, small states think it is futile, even humiliating, to inscribe their political inferiority within the Treaty.

Luxembourg shows the same reluctance towards the proposal of a double majority. Although the 1996 Benelux Memorandum states that the demographic criterion could be used to see whether qualified majority corresponds to a majority of EU population, the Luxembourg government was initially hostile to the idea of a double majority:

Je m'oppose à l'idée de nuancer le droit de vote en l'assortissant de critères de population. Dans toutes les constitutions fédérales, les petits Etats ont un certain degré de surreprésentation, comme au Sénat des États-Unis. Le fédéralisme c'est cela. Si nous voulons maintenir l'adhésion des petits peuples en Europe, nous ne pouvons pas leur soustraire leurs droits acquis.<sup>259</sup>

It is easy to understand why a reform of the voting system has made little significant progress during the IGC. Member states, in particular small states, are reluctant to consider any alteration of their power under a new voting system. Therefore Luxembourg and other small states are not particularly in favour of a double-majority solution: any reform in this direction would imply that Luxembourg's vote would no longer be of any consequence in an enlarged Union, which would equal a loss of influence in the Council. Still, Luxembourg's Personal Representative was given permission by the government to accept such a solution: a double majority where the adoption of a decision by the Council would require the support of a certain number of member states representing a certain percentage of the population as well as the support of a specified number of members of the Council; the blocking minority should equally consist of a specified number of member states representing a certain percentage of the population.<sup>260</sup> The failure at Amsterdam to agree to a more significant reform with regard to the weighting of votes means that the present system as set out in Article 148(2) will continue to apply.<sup>261</sup>

### **Package Solutions Acceptable for Luxembourg**

All the IGC proposals for institutional reform that continue to be topical, in particular proposals for changing the number of Commissioners and reweighting the voting rights

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<sup>259</sup> 'Le Premier Ministre défend les 'petits' pays dans la perspective de la conférence intergouvernementale de 1996' in *Agence Europe* 43:6465 (21 April 1995).

<sup>260</sup> Information provided by Luxembourg's Personal Representative Jean-Jacques Kasel. Kasel made it, however, clear that this stance was less official.

<sup>261</sup> It was all the more difficult to reach a compromise at Amsterdam since France opposed the idea of a double majority and Spain tried to broker a higher number of weighted votes in case it would lose one of its Commissioners (see A. Duff (ed) *The Treaty of Amsterdam. Text and Commentary* (London, 1997) p. 133).

among member states, threaten to upset the balance of power between large and small member states. Luxembourg is not outright opposed to most reform proposals but its support is not unconditional. The bottom line can be described as 'a loss of status quo only in return for more Europe!' The government is not willing to make any concessions unless large states are giving signs of political will for deeper integration and unless they are prepared to surrender greater parts of their sovereignty to the EU. The following statement by Luxembourg's Prime Minister can be considered as a catch phrase for Luxembourg's stance: "If the level of ambition is high, our voting rights can be small".<sup>262</sup> Before the IGC had been launched, Luxembourg's Prime Minister declared: "Si la politique communautaire évolue de plus en plus comme une politique nationale, si l'approfondissement est suffisant, les petits Etats membres se résigneront à accepter un changement de statut".<sup>263</sup> In other words, if member states decide that political legitimacy will reside essentially with the nation states, then this fact must be reflected in the relative equality of the nation states in Brussels. If, however, the small-country bias is ever to be reversed, the cost will have to be more integration. Small states fear a dilution of supranational elements of EU in favour of pure intergovernmental bargaining of the large member states. Unless they get guarantees of further integration they prefer to cling to their status quo.

Some of the conditions the Benelux countries set in return for a loss of influence in the Council is the achievement of Economic and Monetary Union by 1 January 1999, the formulation of a Common Foreign and Security Policy that deserves the name and the extension of QMV and codecision to most areas. The government, however, strictly opposes a European Commission where not every member state has the right to appoint a Commissioner.<sup>264</sup> The government equally opposes a Commission where small member states will be given 'junior' Commissioners while large states have 'senior' Commissioners.<sup>265</sup> If, however, there are visible signs for strengthening political union, small member states would accept that votes would be reweighted in favour of large member states, that is they would accept a decrease of their influence in the Council.

The outcome of the IGC as set out in the Amsterdam Treaty is a step forward towards greater political integration, but only a half-hearted one. It introduces greater flexibility in decision-making; it extends the scope of QMV and co-decision to new policy areas; some domains of CFSP will be subject to majority decisions (QMV for common

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<sup>262</sup> Quoted in B. Coleman, 'Power Broker: Luxembourg's Juncker Takes a Pivotal Role in EU's Top Projects' in *The Wall Street Journal* (30 January 1997).

<sup>263</sup> Juncker interview 'Sur l'avenir de l'Union européenne'; see also Europe Information Service, 'Vers une révolte des 'petits'? La lettre européenne No 691 (16 February 1996).

<sup>264</sup> The 1996 'Benelux Memorandum' states: "La Commission doit comprendre un ressortissant par pays" and thus strictly opposes the French technocratic view to reduce the size of the Commission having regard only to regional balance (see A. Duff, *The Treaty of Amsterdam*, p. 132).

<sup>265</sup> See B. Coleman, 'Power Broker'; Juncker interview: 'Europe: Jean-Claude Juncker, porte-voix des 'petits'".

strategies) and to a constructive abstention clause.<sup>266</sup> As far as the Presidency is concerned, the EU will be represented in a different way: as before, it will be represented by the member state holding the Presidency of the Council but the *troika* will no longer consist of the incumbent, the preceding and the successive Presidents but of the Presidency, the Commission and the Secretary of the Council who will act as the Union's High Representative for CFSP.

But no progress has been achieved on the composition of the Commission and the weighting of votes in the Council to rebalance QMV between larger and smaller states. This is because the interests of more and less populated states clashed most on these questions. This is also because these issues became intrinsically linked during the IGC negotiations so that a Protocol was inserted in the Treaty of Amsterdam stating: first, each member state will have one Commissioner; second, the condition being that the weighting of votes will have to be changed (either by reweighting the votes or by a double majority) in a manner acceptable to all member states; third, those states that give up their second Commissioner will be compensated.

(...) 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.<sup>267</sup>

In other words if the larger member states agree to giving up their second Commissioner, they will not do so without any compensation. This might consist in an increased voting weight in the Council at the expense of the smaller member states. Those will have to agree to loss of influence in the Council of Ministers as a compensation for maintaining a Commissioner. Article One of the Enlargement Protocol also shows that larger states prefer to lose influence in a supranational institution (the Commission) rather than in an intergovernmental one (the Council of Ministers).

A second article included in the Enlargement Protocol commits the EU to convening the next IGC at least one year before the EU will have 20 member states:

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.

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<sup>266</sup> The constructive abstention clause will allow one or more member states to abstain when decisions are adopted and implemented, without preventing the other member states from acting.

<sup>267</sup> Treaty of Amsterdam, Protocol on the institutions with the prospect of enlargement of the European Union, Article 1.

The prospect of another IGC on institutional reform will continue to nurture the small state/large state cleavage on institutional questions. The IGC spent much time and energy on the issue of the size of the Commission and to changing the voting system in the Council. From Luxembourg's point of view, ambitions for deeper political integration have not been high enough. This is proven by the fact that Luxembourg's Permanent Representative declared almost a year after the IGC that Luxembourg is unwilling, at the current stage of integration to give up its Commissioner.<sup>268</sup> But from an intergovernmental point of view, the Amsterdam Treaty can be considered as a success for Luxembourg concerning the defense of the principle of unanimity for areas of vital national interests and the right to keep its Commissioner.

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<sup>268</sup> Information provided during a personal interview. Jean-Jacques Kasel hinted, however, that Luxembourg would be open for a proposal of a 'distributive justice' in an enlarged Union. This would consist of a rotating system within the Commission and e.g. ECJ and would mean that a member state that has no Commissioner for a term of office would still be represented by a judge in ECJ.

## Conclusion

To overcome inherent structural weaknesses conferred on Luxembourg by its small size, the smallest member state's active participation in the European integration process is not only seen as an opportunity but as a necessity for managing smallness. Of all the benefits that European Union membership offers for Luxembourg, the principle of equality of states, supranationality and the respect of the *acquis communautaire* are most important for ensuring equal status within EU institutions, for preventing much feared intergovernmentalist bargaining and the aggressive pursuit of national interests by larger member states, which would lead to the formation of a *directoire*. As has been demonstrated, Luxembourg itself pursues its identified national interests very persistently. What Luxembourg wants to prevent is intergovernmental bargaining which would be dominated by larger states, particularly in a majority voting situation. So the small state needs to defend the unanimity rule where a national interest is at stake and may adopt approaches of alliance, conciliation, neutrality, etc. where this may produce results. By studying Luxembourg's role and influence in the Council of Ministers it could be shown that active participation in the EU's central decision-making institution is indeed an effective way for the smallest member state to carve out a special role and exert a very specific influence on the European stage. In view of its small size Luxembourg has adopted an idiosyncratic small-state behaviour in the Council of Ministers and has consequently found opportunities of action which it consistently tries to exploit.

To a certain extent Luxembourg's behaviour in the Council of Ministers and the means for defending its interests may be conditioned by its co-ordinating mechanism between the capital and the Council. The existence of an efficient national co-ordinating system contributes to a coherent negotiating stance and thus influences the role the country plays in the Council. Luxembourg's small and decentralised administration was shown to have important advantages such as short and informal communication ways and reduced hierarchical procedures thus enabling a swift, pragmatic and flexible approach to the definition of the national position. The great freedom of action that Luxembourg's polyvalent and multilingual Council representatives enjoy makes the co-ordination system, however, very actor-dependent. Too much depends on a good representation within the Council, i.e. on the personality, expertise and negotiating skills of single actors. Moreover, the absence of an institutionalised co-ordination mechanism and the technical departments' freedom of action poses the risk of incoherent bargaining positions both in horizontal and vertical Council co-ordination. As a consequence Luxembourg's Permanent Representation assumes a key role in the elaboration of the country's negotiating position, thus bypassing the formal competence of the Foreign Ministry.

Having identified the risks and benefits of Luxembourg's co-ordination system, we assessed the small state's negotiating status in the Council by distinguishing between its formal voting weight on the basis of the current voting system, and its actual political weight. Such an assessment has its limits though. Studies on formal voting weight can only be hypothetical due to a lack of valid information on member states' actual voting behaviour. An evaluation of the country's actual political weight has to rest to a large extent on the scarce information provided by those directly involved in the Council's decision-making framework. An analysis of Luxembourg's formal voting weight could, however, validate the hypothesis that the smallest member state has a disproportionately high influence in the Council with regard to its small size and the weaknesses derived from small-state status. With 2.3% of shares in the weighted Council votes and a population of only 0.1% of EU population, Luxembourg can be said to be highly overrepresented under QMV. The country also has equal status with its larger partners under unanimity and simple majority voting. In addition small states collectively enjoy a strengthened position because they outnumber large ones since the 1995 enlargement. Further, Luxembourg's potential coalition opportunities increased after the 1973, 1981 and 1995 enlargements, a phenomenon known as the 'paradox of new members'.

Things turn out to be different when analysing Luxembourg's actual political weight: only in theory is the smallest member state on equal footing with its larger partners. Empirical statements by Council participants showed that it would be naive to suggest that some member states do not carry more political weight than others. Well aware of its actual place in the Council hierarchy of political and economic weight, Luxembourg adapts its behaviour to these Realpolitik facts: its respect for the rules of the game make it act as a 'guardian of a *communautaire* spirit'; its lack of vital national interests in many policy fields and its fear of being a nuisance for others make it adopt a general low-profile approach in Council negotiations combined with a non-competitive relationship with its EU partners. It would be wrong, however, to infer that Luxembourg is limited in its opportunities of action. Paradoxically, the behaviour which small-state status forces it to adopt provides it with important opportunities of action. Based on its non-competitive relationship with other EU partners and its low-profile approach in many policy fields, Luxembourg is in the ideal position to play the role of neutral co-ordinator and mediator, and to provide 'good offices' for the Union and its members. As a self-appointed guardian of a *communautaire* spirit it works closely with the Commission to observe the rules of the game and to preserve the supranational element within the Union's institutional and decision-making framework. Increased leverage is gained by forming alliances with member states to which it feels close for historical, economic or cultural reasons rather than on the basis of small-state status alone. As a member of the Benelux 'subsystem' it has greater weight and uses this central position to act as a spokesperson for other small member states.

Once vital national interests are at stake, Luxembourg abandons its general low-profile approach and the country's leaders seem to be prepared to resort to

intergovernmental tools or strategies. Next to a strong co-operation with the Commission and the search for allies or derogations, Luxembourg's leaders do not refrain from using the treaty-based veto or from threatening with the use of it, though only as a last resort. This shows that the smallest member is determined to defend its national interests with vehemence by relying on forceful arguments, close co-operation with the Commission, some reciprocal solidarity, and if necessary resort to unanimity requirements.

Having established Luxembourg's negotiating status in the Council, Luxembourg's influence was shown to be disproportionately high when the small member holds the six-monthly rotating Council Presidency. This is because the small state has increased opportunities for influencing decision-making at all levels of the Council hierarchy. Above that it is in a leading position on the international stage and well placed for fostering European integration. The strains and pressure the job exerts on a small state with limited human, financial and logistic resources are enormous. In this respect it is all the more astonishing that Luxembourg's Presidencies were among the most successful in the past in terms of a positive influence on European integration. This is largely because of Luxembourg's overall federal-mindedness, a favourable view of the Presidency, a strong co-operation with other EU institutions, in particular the Council Secretariat, the leadership abilities and experience of its chairpersons, the advantages of a small administration, and the role of a motor played by its Permanent Representation. In addition, the Presidency's co-ordinating and mediating role fits Luxembourg perfectly: the competence of neutral co-ordinators and mediators and the polyvalence and linguistic skills of Luxembourg's chairpersons are qualities few member states can offer. There are, however, clear limits to the small-state Presidency. Limited in its initiative function, Luxembourg is rather an administrator of policy initiatives launched by larger partners. The Gulf war and other international crises also showed the weaknesses of a small state with a lack of diplomatic and political weight when handling CFSP. In the more intergovernmental framework of CFSP, the political weight of the national actors claiming to represent the EU becomes far more significant.

All this said, it is important not to generalise from Luxembourg's status in the Council to other small EU member states whose historical, economic and socio-political situation is undeniably different. Small states rarely have common interests within the EU. Small EU member states only seem to have a combined interest in their presence in the EU's governance structures and in the rules of the game. In order to develop any further analysis of the role of Luxembourg and small states in the Council of Ministers, a more elaborate research strategy would be required. This could involve an examination on decision-making, on specific issues identified as of particular interest, in order to test the tactics employed and the policy outcomes. Such an approach could help

establish both the comparative framework of small-state behaviour, and map the levels of influence and power they enjoy.

The outlook for Luxembourg's future in the Council of Ministers conveys a bleaker picture. Although small states could successfully defend their status quo during the 1996 IGC, institutional reform is pressing to adapt the European house to a larger community of members. Luxembourg may well insist on its representation in all EU institutions, including its right to hold the Presidency. But its leaders know that whatever solution will be found, the country will have to bow to a general loss of influence in the Council and in EU institutions as a whole. Any reform of the current Council voting system to one based on demographic criteria will inevitably weaken Luxembourg's favourable voting weight and hence its negotiating status. The general approach within Luxembourg's government is therefore: a loss of influence only in return for more Europe. Like other small member states, Luxembourg is unwilling at the current stage of integration to lose influence in the EU's main decision-making institution. A loss of influence does, however, not mean that there is no future for a small member in an enlarged Union. Once institutional reform has been pushed through, Luxembourg may find new roles. It may assume a strong role as defender of the rights of small states within a revitalised Benelux 'subsystem', or the concept of 'flexibility' may provide a way for having a powerful voice in the inner core of federal-minded states.



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