

Secretary of State

GERMAN UNIFICATION: TREATY BASE FOR DEROGATIONS

1. If East Germany had been acceding to the Community as an independent third country then all necessary provisions, including derogations would have been included in an Accession Treaty, with its necessary accompanying documents, protocols and annexes. All of this would have been based on Article 237 of the Treaty and would have required unanimity.

2. But East Germany is not acceding to the Community as a 13th member State, the Germans are not asking for changes to the basic Treaties (on increased weighting for their votes in the Council etc). The Treaty base of Article 237 is therefore not appropriate.

3. In these circumstances any derogations required when East Germany is incorporated in the FRG and thus in the Community will be based on the Community legislation dealing with the matter in question and the voting provisions for the derogations will follow the legal base of the Community legislation in question eg for agriculture it will be Qualified Majority voting and the same will be the case for trade policy issues but for the environment and for some aspects of the Structural Funds it will be unanimity.

4. It would not be possible to achieve what the Spaniards want - unanimity for everything - without reverting to the Accession Treaty approach. This would not seem to be in the UK interest because:

(i) It would tempt the Germans to open up the difficult institutional issues such as the weighting of votes in the Council.

(ii) It would cut across the overall approach to German unification via Article 23 of the FRG Constitution.

(iii) It is unnecessary because it is very unlikely that we will be in a minority^{majority} over derogations, our interests being close to those of the large majority of other member States (on namely that the derogations should be kept short and be time limited).

(iv) It would be undesirable because it would give the Germans themselves a veto over the derogations.

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