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they will have completed their task of preparation for EU membership once they have put into place the myriad of requirements, measures and mechanisms stipulated by the *acquis communautaire*. Even if no new regulation or directive were adopted in Brussels, the new members would still have to adjust, calibrate and improve the functioning of their domestic arrangements for the implementation of the *acquis*. They have to establish mechanisms which are capable of learning, adjusting and resisting political interference; in other words, of acting like the "national guardians of the Treaties".

While the candidates clearly have the responsibility to establish such mechanisms, the task of the EU in this respect should be to define the criteria by which it will judge the results of their efforts. These criteria have to be transparent and objective so that the candidates will know the benchmark against which they will be judged. So far the EU has progressed in a piecemeal way. Its criteria will have to become more systematic and coherent. Otherwise there is a serious risk that the negotiations will in the end stumble over conflicting interpretations and assessments of the performance of the candidates.

Edward Best*

The European Union after Nice: Ready or Not, Here They Come!

The Intergovernmental Conference (IGC) which concluded in Nice in December 2000 was convoked to agree institutional reforms required to prepare the EU for enlargement to 27 Members. The agenda focused on the three issues "left over" from Amsterdam – size and composition of the Commission, weighting of votes in the Council and possible extension of qualified majority voting (QMV) – as well as "other necessary amendments to the Treaties arising as regards the European institutions in connection with the above issues and in implementing the Treaty of Amsterdam". The Feira European Council in June 2000 agreed that the new provisions on closer cooperation should also be considered.

Despite fears that no deal would be possible, given the depth of the differences and sensitivities, some agreement was reached in most areas. The way was thus cleared for enlargement to proceed, but life in the the enlarged European future may not have been made easier. Moreover, the negotiations were so long and difficult that there was widespread feeling that this is not an effective way to decide new steps in European integration. This contribution assesses the results of the IGC in each of the main issue areas, and offers some early reflections about the impact of Nice for the future.

The only specific agreement regarding the size and composition of the Commission was that the five largest countries will lose their right to name two Commissioners: as of 1 January 2005, the Commission will include "one national of each of the Member States".¹ Further changes will take place "[w]hen the Union consists of 27 Member States". The maximum number of Commissioners in EU27 is not fixed: the *Protocol on the Enlargement of the European Union* only states that the number "shall be less than the number of Member States" and will be agreed by the Council, acting unanimously. Finally, a future "rotation system based on the principle of equality" is agreed, but the implementing arrangements are to be adopted by the Council, by unanimity, only after signing the treaty of accession of the 27th Member State of the EU.

The smaller countries were thus successful, at least for the medium term, in defending their position. They continue to believe that a strong and independent Commission, like a strong legal system, is an essential guarantee of their interests in the face of the larger countries. The presence of a national of each country is seen as reassurance that all interests will really be taken into account (although others argue that such a Commission would be an intergovernmental body less able to defend small countries' interests), as well

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¹ This and all other quotes from the treaty refer to the provisional text approved at Nice (SN 533/00).

as being felt to increase public acceptance of the institutions.

Since a Commission of 20 to 27 Members clearly requires stronger "organisation", it was agreed that the President "shall decide on its internal organisation in order to ensure that it acts consistently, efficiently and on the basis of collective responsibility", as well as allocate and reshuffle responsibilities among Members. The President will be able to oblige a Member to resign, "after obtaining the collective approval of the Commission", and "shall appoint Vice-Presidents".

The Weighting of Votes and Threshold for Qualified Majority Voting

A generally accepted aim of re-weighting was to ensure that any winning coalition under QMV will represent a reasonable majority of the population, and that decisions cannot be blocked by too small a minority. At present, the minimum share of EU population represented by a possible winning coalition is around 58% (down from over 70% in EC9); the minimum share represented by a possible blocking minority is around 13%. Extrapolation of the present system would mean that a winning coalition in EU27 could represent barely 50% of the population, while a coalition representing a large majority could be blocked by one representing 10%.

There were also more particular concerns regarding the relative position of the larger Member States. From the 1950s until 1986, only one of the big states could be out-voted. In EC12 and EU15, two big countries could be outvoted, while the Big Five together could not out-vote the rest (although they accounted for around 80% of the total population in EU15). Would it now be accepted that *three* of the big countries would let themselves be out-voted?

The instruments available were an indirect recognition of relative population through a reweighting of votes in favour of the larger countries and/or the addition of a dual key in the sense of also directly checking that a winning coalition, however it is weighted, represents a specific percentage of total population.

Many problems would not have arisen had there been acceptance of the *double simple majority*. Under this system, each Member State would have one vote. Decisions would require a majority of the states, so long as this also reflected a majority of the EU population.² This system would most clearly reflect the dual

nature of the EU as a union of states and of citizens. It would have been simple to understand and relatively easy to manage. It would, by far, do most to increase ease of decision-making. It would be a once-off decision which would not require complex and repeated calculations as enlargement proceeds. And it would have made demographic weight count while avoiding differentiation between pairs of countries which had so far, despite having different populations, enjoyed equal voting rights.

However, the big countries generally preferred a re-weighting of votes to any system of dual majority, usually on grounds of greater simplicity. In addition, those Member States which "renounced" their second Commissioner felt, some more strongly than others, that they had to be directly "compensated". Moreover, it may never have been completely realistic to imagine placing Germany or France on the same standing qua states as Luxembourg or Malta. Other "objective" keys aiming to provide a simple principle which could be extended without re-negotiation (such as the Swedish ideas based on square roots of population) were also rejected.

The result was a triple threshold for qualified majority decisions, with an even greater degree of complexity than the present arrangements:

- ☐ a threshold of votes of well over 70%;
- ☐ a majority of Member States; and, if requested,
- ☐ verification that this represents at least 62% of the EU population.

The weighting: The future system of weighting is basically derived from proposals by which the present Member States would all receive an increased number of votes (so that "all would have prizes") but in different proportions. There had also been some prior agreement that it would help to double the numbers anyway, in order to increase the scope for differentiation in the votes attributed to new Member States. Beyond this, the negotiations were strongly shaped by President Chirac's resisting Chancellor Schröder's demand that Germany should now have more votes than France in view of the difference in population of 22 million – while at the same time proposing, as EU Presidency, that differentiation should apply between other countries.

This led to renewed sensitivity between Belgium and the Netherlands. The Belgian position in the run-up to the IGC had been to accept a "decoupling" but only if the French also accepted having fewer votes than Germany. In the end, Belgium only agreed to

² The population threshold could be higher, perhaps 60%, without losing the advantages of the system.

Table 1
Shares of Population, Council Votes and European Parliament Seats in EU 27, as Agreed at Nice

| | Population | | Present Votes | | Future Votes | | Present Seats | | Future Seats | |
|-------------|------------|-------|---------------|-------|--------------|------|---------------|-------|--------------|-------|
| Germany | 82.0 | 17.0% | 10 | 11.5% | 29 | 8.4% | 99 | 15.8% | 99 | 13.5% |
| UK | 59.2 | 12.3% | 10 | 11.5% | 29 | 8.4% | 87 | 13.9% | 72 | 9.8% |
| France | 59.0 | 12.3% | 10 | 11.5% | 29 | 8.4% | 87 | 13.9% | 72 | 9.8% |
| Italy | 57.6 | 12.0% | 10 | 11.5% | 29 | 8.4% | 87 | 13.9% | 72 | 9.8% |
| Spain | 39.4 | 8.2% | 8 | 9.2% | 27 | 7.8% | 64 | 10.2% | 50 | 6.8% |
| Poland | 38.7 | 8.0% | | | 27 | 7.8% | | | 50 | 6.8% |
| Romania | 22.5 | 4.7% | | | 14 | 4.1% | | | 33 | 4.5% |
| Netherlands | 15.8 | 3.3% | 5 | 5.7% | 13 | 3.8% | 31 | 5.0% | 25 | 3.4% |
| Greece | 10.5 | 2.2% | 5 | 5.7% | 12 | 3.5% | 25 | 4.0% | 22 | 3.0% |
| Czech Rep. | 10.3 | 2.1% | | | 12 | 3.5% | | | 20 | 2.7% |
| Belgium | 10.2 | 2.1% | 5 | 5.7% | 12 | 3.5% | 25 | 4.0% | 22 | 3.0% |
| Hungary | 10.1 | 2.1% | | | 12 | 3.5% | | | 20 | 2.7% |
| Portugal | 10.0 | 2.1% | 5 | 5.7% | 12 | 3.5% | 25 | 4.0% | 22 | 3.0% |
| Sweden | 8.9 | 1.8% | 4 | 4.6% | 10 | 2.9% | 22 | 3.5% | 18 | 2.5% |
| Bulgaria | 8.2 | 1.7% | | | 10 | 2.9% | | | 17 | 2.3% |
| Austria | 8.1 | 1.7% | 4 | 4.6% | 10 | 2.9% | 21 | 3.4% | 17 | 2.3% |
| Slovakia | 5.4 | 1.1% | | | 7 | 2.0% | | | 13 | 1.8% |
| Denmark | 5.3 | 1.1% | 3 | 3.4% | 7 | 2.0% | 16 | 2.6% | 13 | 1.8% |
| Finland | 5.2 | 1.1% | 3 | 3.4% | 7 | 2.0% | 16 | 2.6% | 13 | 1.8% |
| Ireland | 3.7 | 0.8% | 3 | 3.4% | 7 | 2.0% | 15 | 2.4% | 12 | 1.6% |
| Lithuania | 3.7 | 0.8% | | | 7 | 2.0% | | | 12 | 1.6% |
| Latvia | 2.4 | 0.5% | | | 4 | 1.2% | | | 8 | 1.1% |
| Slovenia | 2.0 | 0.4% | | | 4 | 1.2% | | | 7 | 1.0% |
| Estonia | 1.4 | 0.3% | | | 4 | 1.2% | | | 6 | 0.8% |
| Cyprus | 0.8 | 0.2% | | | 4 | 1.2% | | | 6 | 0.8% |
| Luxembourg | 0.4 | 0.1% | 2 | 2.3% | 4 | 1.2% | 6 | 1.0% | 6 | 0.8% |
| Malta | 0.4 | 0.1% | | | 3 | 0.9% | | | 5 | 0.7% |
| TOTAL | 481.2 | | 87 | | 345 | — | 626 | | 732 | |

such a decoupling without Franco-German differentiation in return for having 12 votes compared to the Netherlands' 13, rather than the 11 originally proposed, and for an increase from 20 to 22 in the number of Belgian MEPs after enlargement. Spain continued to press its "special position" as a medium-to-big country which had, on accession, accepted eight votes to the big countries' ten in exchange for two Commissioners. In the run-up to Nice, the Spanish Government also argued that it would only agree to continue having less votes than France, Italy and the UK if the Germans were to have more. Although Spain did not succeed in its stated goal of obtaining the same influence in blocking decisions as the large countries, it did receive the greatest proportional increase in votes. This, however, contributed to sensitivities with Portugal, which, having had five votes compared to Spain's eight, was now offered 11 compared to 28 in the first proposals. The result was to give Portugal 12 compared to Spain's 27, as well as two more MEPs.

There was also a clear belief that applicant countries did not merit the same treatment as present Member States. In the first Presidency proposals at Nice, Poland was given fewer votes than Spain, Lithuania five votes compared to Ireland's seven, and

Malta three to Luxembourg's four, although these three pairs of countries have nearly identical population sizes. Romania was to be offered the same number of votes as the Netherlands despite having a population which is 40% larger. The Polish situation was rapidly sorted out. Only in the final phases, however, was Lithuania given equal treatment with Ireland and Romania a slight increase compared to the Netherlands (14 to 13). Malta was left in its peculiarly disadvantaged position in both Council and Parliament.³ The distribution which was finally agreed is shown in Table 1.

The threshold of votes: In the aftermath of Nice there was confusion even over what had actually been agreed concerning the threshold of votes for decisions under QMV. First, the *Protocol on the Enlargement of the European Union*, which deals with the Commission and the present Member States, states that as of 1 January 2005 the present Member States will have the number of votes indicated in Table 1. For

³ Questioned about the Maltese case, President Chirac was reported as stating that "traditionally, the countries that have the longest history benefit from an advantage" as "they have greatly contributed to the European building process". (Agence Europe, 11-12 December 2000 p. 4).

EU15 the threshold indicated in the first provisional text was 170 votes out of 237. This, however, would be 71.7%, somewhat higher than the current level of 71.3% (62 out of 87). To stay at the current level, 169 would have been the obvious figure. Second, that threshold is to be adjusted proportionately with every accession on the condition that the qualified majority threshold expressed in votes does not exceed the threshold resulting from the table in the *Declaration on the Enlargement of the European Union* (as in Table 1), which stipulates the common position of the Member States in the accession conferences. This indicates a threshold of 258 votes out of 345, which would represent an increase in the percentage of votes required to 74.8%. Finally, a separate *Declaration on the qualified majority threshold and the number of votes for a blocking minority* stated not only that the maximum percentage for a qualified majority would rise to 73.4% but also that the blocking minority is to rise from 88 to 91 when all candidate countries will have joined. This would mean reducing the voting threshold to 255, giving yet another figure of 73.9%.

A revised Provisional Text dated 22 December reduces the threshold for EU15 from 170 to 169, but confirms both the figure of 258 in the Declaration on the Enlargement and the agreement in the *Declaration on the qualified majority threshold* to raise the blocking minority to 91. The question may have to be resolved finally at the next IGC.

The majority of states: Reweighting faces an inherent tension between the representation of states and the representation of citizens. At present a winning coalition necessarily has a majority of Member States – no combination of seven countries can reach the threshold of votes required for a qualified majority. The further one goes in making the weighting of votes more directly proportional to population, the easier it is for a qualified majority of votes to be reached by a minority of Member States. To deal with this part of this problem, there was preliminary agreement before Nice that, whatever the eventual weightings, a qualified majority would have to represent a majority of Member States.

The threshold of 258 out of 345 happens to be just the right number needed to ensure that a qualified

majority of votes always represents a majority of States,⁴ in which case the second majority condition would only be relevant during the transition from EU 15 to EU 27. A blocking minority of 91, however, would change this.

The 62% of population: With a threshold of 258 or 255, the minimum share of total population represented by a winning coalition would be around 58% – more or less what it is today.⁵ However, as part of the negotiations for a reweighting of votes in which France retained parity with Germany, a third condition was added by which any Member State may request verification that the qualified majority comprises at least 62% of the population. This means in practice that Germany and any two of the other three largest countries (UK, France, Italy) – such a trio together accounting for over 40% – will still be able jointly to block any decision, whatever happens in terms of votes cast. Equally important, perhaps, is the very fact that relative demographic weight is now explicitly stated for the first time as a condition for decision-making.

Qualified Majority Voting

Little change occurred in the end concerning the “possible extension” of QMV. There had already been consensus by June 2000 that “a number of constitutional and quasi-constitutional issues intrinsically call for unanimity”.⁶ The French Presidency in its Revised Summary of 23 November listed nearly 50 provisions which could be changed to QMV. Whereas a few Member States (e.g. Italy, Belgium, Netherlands, Finland) had virtually no objection to making QMV the rule, almost all others opposed some part of the list and either vetoed any change or succeeded in introducing delays and conditions.

The British Government, with some support, defended its “red line” areas of taxation and social security. The French Government agreed to extend QMV to trade in services, but not to cultural and audiovisual services. Spain put off any change affecting the structural funds and the cohesion fund until 2007, and even then only on the condition that

⁴ That is, working “downwards” from the largest country in order to reach the highest number of votes with the lowest number of countries, the votes of the 13 most populous countries together total 257.

⁵ That is, working “upwards” from the least populous country in order to reach the most votes with the least population, it is only possible to reach 258 votes by including all Member States except France, the UK and Germany. This coalition would represent 281 million citizens out of a total of 481 million, equivalent to 58.4%.

⁶ These included four categories: provisions expressly to be adopted by the Member States in accordance with their respective constitutional rules (e.g. treaty revision, new accessions etc.); “quasi-constitutional” provisions (e.g. number of Commissioners, Judges and Advocates-General; amendment of Commission proposals; committee procedure etc.); “provisions allowing derogations from normal Treaty rules” (e.g. measures constituting a step back in movement of capital or in transport); and “provisions in respect of which the rule of unanimity ensures consistency between internal and external decisions”. See Annex 3.7 to the Portuguese Presidency’s Report to the Feira European Council, CONFER 4750/00, 14 June 2000.

the 2007-2013 financial perspective will previously have been adopted. Germany blocked QMV in some areas concerning free movement of persons, while much of asylum and immigration policy is only to move to QMV in 2004, and, in the case of conditions of entry and residence, only provided that the Council had previously adopted the common rules and basic principles by unanimity.

The provisions in which QMV is to be introduced are therefore largely limited to procedural questions,⁷ certain kinds of international agreement,⁸ several areas of Justice and Home Affairs (JHA), albeit in the future and with conditions, and a few other policy decisions.⁹ Co-decision only applies in JHA and a few other cases.

The European Parliament

The European Parliament was affected by two kinds of decision at Nice: the distribution of seats in the light of the ceiling of 700 agreed at Amsterdam; and the evolution of its institutional role in the EU system.

Franco-German differentiation had been implemented in the Parliament since 1992. This differentiation was in fact increased as part of the overall packet in which France retained parity of votes in the Council. Germany retained 99 representatives while France, Italy and the UK each dropped from 81 to 72. Moreover, Belgium, Portugal and Greece also received extra seats at the end as compensation for the voting arrangements in the Council – the Czech Republic and Hungary, despite similar populations, did not, a situation which they later angrily vowed to fight. The consequence of all this was to exceed the ceiling of 700. A new limit was set at 732 – thus somewhat weakening the credibility of other target figures and commitments.

⁷ Appointment of the Secretary-General/High Representative and Deputy Secretary-General of the Council, CFSP Special Representatives, Court of Auditors, Economic and Social Committee, Committee of the Regions; nomination of the intended President of the Commission, appointment of the Commission following approval by the Parliament, and appointment of a new Member of the Commission to fill a vacancy; approval of the Statute for MEPs, and regulations governing political parties at European level; approval of the Rules of Procedure of the Court of Justice, Court of First Instance and Court of Auditors.

⁸ International agreements in CFSP or JHA where a qualified majority is required for internal decisions; representation of the EC in the sphere of economic and monetary union; trade in services and commercial aspects of intellectual property, with exceptions; economic, financial and technical cooperation with third countries.

⁹ Rules applicable to the structural funds and the cohesion fund after 1 January 2007; specific actions for economic and social cohesion outside the structural funds; rapid introduction of the ECU; incentive measures for anti-discrimination; financial assistance to a Member State in severe difficulties; support measures in the industrial sphere; financial regulations.

With regard to Parliament's institutional role, the decisions were mixed, even contradictory. Parliament was finally placed on an equal footing as the Commission, the Council and the Member States with regard to the right to bring actions for judicial review of Community acts by the Court of Justice. However, co-decision was not recognised as a necessary corollary of qualified majority voting in the Council. A further step was made in recognising the importance of political parties at European level in creating a European political debate, and thus boosting public interest in the European Parliament. Regulations governing such parties are now to be adopted, "in particular the rules regarding their funding". Yet at the same time, the distribution of seats was not only being negotiated very much in terms of national representation. It tended to be treated as a means to compensate changes in the Council voting weights, and was agreed without any consultation of the European Parliament itself.

Enhanced Cooperation

Important changes were introduced in the provisions on enhanced (or "closer") cooperation, by which deeper integration can be pursued in particular areas without the participation of all countries. The main changes have been to relax the "enabling clauses" introduced at Amsterdam – that is, the general conditions and procedures contained in the Treaty on European Union, and the specific provisions included for the European Community and in Police and Judicial Cooperation in Criminal Matters (the new "Third Pillar"). First, the simple right of veto has been removed. At present the Council may decide by qualified majority to authorise closer cooperation. However, if any Member State declares that it opposes the authorisation "for important and stated reasons of national policy", the Council may by qualified majority refer the proposal to the European Council for a unanimous decision. This "emergency brake" has been taken away, or at least made less explicit – the Nice text indicates that in the EC and the Third Pillar a matter may still be referred to the European Council before a decision is taken, although there is no mention of unanimity. Second, the minimum number of States participating in an arrangement has been changed from a majority of Member States to an absolute figure of eight.

Further changes are made in the Third Pillar. Authorising procedures are brought closer to those in the European Community: the Commission is now given the near-exclusive right of initiative,¹⁰ and the "emer-

gency brake" is similarly removed (or disguised). The Court of Justice is also given jurisdiction.

Enhanced cooperation is introduced in the Second Pillar – although not, due in particular to UK opposition, in matters having military or defence implications. In this case, there is no formal threshold for participation and authorisation is granted by the Council, subject to an "emergency brake".

Conclusions

The results of Nice in the longer term are unclear. Efficiency in the sense of ease of decision-making will not be much improved: the qualified-majority threshold has been raised and complicated, while important policy areas remain subject to unanimity. Enhanced cooperation has been made formally easier, but its actual use and consequences remain uncertain. Transparency has actually suffered: the decision-making system has been made yet more difficult for people to understand.

More broadly, the IGC has not helped create a (re)new(ed) common vision of European integration. On the contrary, in the course of 2000, speeches by national leaders highlighted the differences in approach. Moreover, beneath the rather confused debate of "intergovernmentalism" versus the "Community method", there was clear tension between larger countries wishing to ensure their relative weight was respected and small countries anxious to avoid a "directorship" of the Great Powers. In this respect, the power-balancing wranglings at Nice in 2000 were only the final blows in arguments worthy of the Congress of Vienna in 1815.

It can be argued that all this has been a necessary, even salutary, exercise. From one perspective, the fact that the EU has been kept as an "unidentified political object" may have been one factor in its success so far, but the time seems to be up for fudging. As we move beyond a single currency, there has to be some political definition which countries consciously assume (or do not), and the issue of relative national weights simply cannot be dodged. From another, it seems to be time to accept that the "Community method" is now only one part of a bigger equation in which the nation states – especially the bigger ones – play a new kind of leading role. And in all events, the IGC has only drawn attention to the tectonic shift which has taken place in Europe in the last 10 years

and which no amount of denial can reverse: Germany is now by far the largest country in the EU and the centre of the Union has moved east.

These are fundamental constitutional and geopolitical questions which require sensitive treatment, however, and at least in the short term Nice has probably had a negative impact on solidarity. Arguments over relative national weight predominated over a Community perspective; tensions were exacerbated about the balance between big and small states; and the IGC caused positive harm to relationships between some countries. Strains between France and Germany were so strong that a summit had to be arranged for January 2001 to try to soothe the wounds. Benelux was seriously bruised, while the weighting game led to some sensitivities on the Iberian peninsula.

It is in this context, nevertheless, that the European Union is to set off once more on the road to a new IGC. The Conference agreed a *Declaration on the Future of the Union* which calls for a deeper and wider debate about the future development of the EU. Following "wide-ranging discussions with all interested parties", a new IGC is to be convened in 2004 to consider a more precise delimitation of competencies between the European Union and the Member States; the status of the Charter of Fundamental Rights; simplification of the Treaties; and the role of national parliaments.

The emphasis on national parliaments is significant. Even as this new IGC was agreed (largely in response to German pressure, as part of the overall deal), widespread dissatisfaction with the IGC process itself was being expressed. After 10 months of meetings and more of preparation, the Nice conference lasted four days and ended in the early hours in confusion and conflict. Unsurprisingly, there is mounting interest in exploring other ways of deliberating on constitutional changes, and in involving other key actors. In particular, attention is drawn to the experience of the Convention on Fundamental Rights, which brought together representatives not only of the national governments but also of national parliaments, as well as the European Parliament and European Commission.

The IGC 2000 has made it possible for the EU to proceed with enlargement. It has not made it certain that the EU can succeed with enlargement. That still requires new ways of thinking about European governance and managing change. If nothing else, this last ICG has clearly demonstrated that there must be better ways of going about it.

¹⁰ Again a semi-brake is left, in that, if the Commission does not submit a proposal as requested, the Member States concerned "may then submit an initiative to the Council designed to obtain authorisation for the cooperation concerned." (Clause 0).