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# Decision-making process after the Treaty of Nice

The Intergovernmental Conference {IGC} concluded its work on 11 December, 2000 in Nice with an agreement on the institutional issues which had not been settled in Amsterdam and which had to be resolved before enlargement, and on a series of other points not directly connected with enlargement. The Treaty was officially signed on 26 February 2001 and before it can come into force it will have to be ratified by the Member States.

# Introduction

The Intergovernmental Conference {IGC} concluded its work on 11 December, 2000 in Nice with an agreement on the institutional issues which had not been settled in Amsterdam and which had to be resolved before enlargement, and on a series of other points not directly connected with enlargement.  The Treaty was officially signed on 26 February 2001 and before it can come into force it will have to be ratified by the Member States.

Enlargement will effect not only the operation and composition of each institution but also the decision-making process of the Union. Already today, the decision-making process of the Union is not always very efficient. The present provisions are the result of successive amendments to the treaties, but are not always very coherent. Rationalisation has become a necessity.

This rationalisation has been even more important in the perspective of enlargement. Decision-making in a Union of 27 members is clearly not the same thing as decision-making in a Union of 15. The Union will inevitably become less homogenous; the economic, cultural and political differences between the Member States will be more pronounced then ever before in the history of European integration. In the perspective of a Union of 27 Member States it was therefore essential to adjust not only the composition of each institution {especially the size of the Commission} but also the decision-making process {the weighting of votes in the Council and the extension of qualified-majority voting related to the co-decision procedure} of the Union.

In spite of the fact that the scope of qualified-majority voting has been progressively extended with each successive enlargement of the Union, this evolution, however, has never followed any predetermined logic. This was true of the framing of the Treaty on European Union and the Treaty of Amsterdam. The Dutch Presidency tried to introduce logical criteria in Amsterdam, but the debate rapidly degenerated into a case by case approach. The results were neither fully coherent nor suited to the needs of an effective Union.

The Treaty of Amsterdam {came into force 1 May 1999} was not able to resolve the above mentioned {see par. 3} major issues and left this unfinished business to the Treaty of Nice which extends the Treaty of Amsterdam in areas where the latter should have offered appropriate solutions but failed to do so.

I would like to focus on and describe the changes that have been brought by the Treaty of Nice

concerning the decision-making process.  Within the framework of this process we can distinguish the four main decision-making procedures in the EU, i.e. consultation {art. 250 E.C.}, co-operation procedure {art. 252 E.C.}, co-decision procedure {art. 251 E.C.} and assent procedure. Since the topic itself is very broad and I have only a limited space, I would like to concentrate on co-decision procedure.

I will also pay attention to the changes in the weighting of votes in the Council as well as in qualified-majority voting since they play an important role in the decision-making process. New provisions on enhanced {closer} co-operation will also be mentioned.

# 1. The Treaty of Nice

Before analysing the changes in the decision-making process brought by the Treaty of Nice, I would briefly like to pay attention to some general information concerning the Treaty.

First of all, as it is not yet known exactly when and in what order the applicant countries will join the Union, the new distribution of seats in the European Parliament, the new composition of the Commission and the new definition of qualified majority within the Council are determined by the Treaty of Nice for a Union of 15 Member States. The Treaty restricts itself to setting out the principles and methods for changing this system as the Union grows.

These principles and methods are listed in the *protocol on enlargement* and *attached declarations* – particularly the declaration on the enlargement of the European Union which establishes the "common position" to be adopted by current member States during the accession negotiations with the applicant countries. The Number of seats in the European Parliament for the new Member States, the number of votes allocated to them within the Council and particularly the qualified majority threshold applicable in the future, will thus be legally determined in the accession treaties. This protocol on enlargement and the relevant declarations take account only of the {twelve} applicant countries with which accession negotiations have actually begun.

The changes brought by the Treaty of Nice to the composition of the commission and the weighting of votes will be applicable only as from 2005 and the new composition of the European Parliament will apply as from elections in 2004.

# 2. The role of the European Parliament in the decision-making process

The European Parliament has become an integral body in the framework of the decision-making process. The responsibilities of the European Parliament have been extended by expanding the scope of the co-decision {see chapter 4} and by the assent required to establish enhanced co-operation {see chapter 5} in an area covered by the co-decision process. The European Parliament will also be called upon to state its opinion when the Council intends to declare that a clear danger exists of a series breach of fundamental rights occurring[1].

# 3. Qualified majority and weighting of votes in the Council

Since the demographic realities of the member States differ, the Treaty of Rome established the qualified majority by allocating votes on the basis of the population, weighted in favour of less-populated countries. This system was modified with successive enlargements, but the fundamental assumption remained [2].

Successive enlargements to include countries with a small or medium-sized population have already increased the relative weight of the member States with smaller populations to the detriment of those with larger populations. This situation became unacceptable in terms of the next enlargement. In extreme cases the extrapolation of the present system might lead to a situation in which a group of Member States representing only 10% of the total population of the EU could block a decision, thus preventing a group of Member Sates representing a large majority of the EU's population from proceeding further with the decision-making process.

In order to restore the representativeness of the initial qualified majority, the relative weight of the votes of the more heavily populated countries had to be increased. This change, introduced by the Treaty of Nice, is, as explained above, very important for decision-making process in an enlarged EU.

The decision-making system by qualified majority will be changed as from 1 January 2005. In the future, a qualified majority will be obtained if:

the decision receives at least *a specified number of votes* {the qualified majority threshold} and

the decision is approved by *a majority of Member States*

The number of votes allocated to each Member State has been changed. While the number of votes has been increased for all Member States, the increase is higher for the most populated Member States. The five biggest Member States' population-wise will in the 15-strong European Union have 60% of votes compared with 55% at present [3].

The qualified majority threshold was at the centre of debates during the closing stages of the IGC. The final compromise is complex. This notwithstanding, the qualified majority threshold will be fixed in the successive accession treaties on the basis of principles determined by the Treaty of Nice, particularly by the declaration on the qualified majority threshold[4].

The Treaty also provides for the possibility for a member of the Council to request verification that the Member States constituting the qualified majority represent at least 62% of the total population of the Union. If that condition is shown not to have been met, the decision in question shall not be adopted.  However, this condition applies only if verification is requested.

# 4. Qualified majority-voting and co-decision procedure

***4.1 The present system***

The original Treaty of Rome {1957} provided for a decision to be taken by unanimity in the Council for most of the areas covered. Nevertheless, a few provisions were already subject to qualified-majority voting, and the Treaty foresaw the introduction of a majority voting in many cases after the end of the transitional period in 1966. This led to famous crisis, when France under General de Gaulle rejected a series of Commission proposals, blocking their adoption in the Council and refusing to move towards majority voting. France's "empty chair" policy was resolved by the Luxembourg compromise in January 1966, when the Council stated in its conclusions that "where very important interests of one or more partners are at stake, the members of the Council will endeavour, within a reasonable time, to reach solutions which can be adopted by all {of them}".

This event led to the development of a "veto culture" which severely hampered the progress of European integration for many years. Although majority voting was in fact introduced in several areas in line with the provisions of the Treaty, the working assumption remained that if objections were raised, the veto would apply.

Qualified-majority voting was seen as a necessary corollary to successive enlargements of the EU and, coupled with the co-decision procedure, was considered the main way of reducing the democratic deficit of the European institutions. Qualified-majority voting already applied to a large range of policies; however, several important and sensitive issues remained subject to the unanimity rule. The Treaty of Amsterdam did not succeed in transferring enough policy areas to qualified-majority voting in order to free up the decision-making process looking ahead to a Union of 27 Member States.

According to Article 205 E.C., the Council shall act by a {simple} majority of its members. Thus, the simple majority is the rule, and qualified majority and unanimity the exceptions. In practice, however, the balance has been reversed and we are now moving towards a system, introduced by the Treaty of Nice {see chapter 4.2}, where qualified-majority voting will be the rule, whereas unanimity and simple majority the exceptions.

The co-decision procedure requires consensus between the Council and the European Parliament for the adoption of the provisions in question. This procedure was introduced by the Maastricht Treaty and further expanded and simplified by the Treaty of Amsterdam {Article 251, former Article 189b}. It was intended to strengthen the powers of the European Parliament which now shares legislative authority with the Council, giving the European institutional framework a bicameral dimension. The Commission rightly pointed out the inconsistency of combining unanimity in the Council with the co-decision procedure and consequently proposed the alignment of qualified-majority voting and the co-decision procedure. In Treaty of Nice the applicability of co-decision procedure has been extended {see chapter 4.2}.

***4.2 Changes introduced by the Treaty of Nice***

The Treaty of Nice to some extent widens the scope of decision-making by qualified majority. In the end, qualified majority-voting was introduced in only 27 provisions – of varying degrees of significance – out of the 50 initially proposed by the Commission and the 75 cases where the unanimity rule still prevailed in the Treaties.

The most important provisions {within the first pillar}, which change over completely or partly from unanimity to qualified-majority voting as soon as the Treaty of Nice enters into force, are:

measures to *facilitate freedom of movement for the citizens* of the Union {Article 18 E.C.};

*judicial co-operation in civil matters* {Article 65 E.C.};

the conclusion of *international agreements* in the area of trade *in services* and the commercial aspects of *intellectual property* {Article 133 E.C.}, with exceptions {see below};

*industrial policy* {Article 157 E.C.};

*economic, financial and technical co-operation with third countries* {Article 181a E.C., new provision to adopt measures so far based on Article 388 E.C.};

approval of the regulations and general conditions governing the performance of the duties of *members of the European Parliament* {Article 190 E.C.}, with the exception of matters relating to the fiscal regime;

the statute of the *political parties at European level* {Article 191 E.C., new provision};

the approval of the *rules of procedure* of the Court of Justice and the Court of First Instance {Articles 223 and 224 E.C.}

It is also important to mention that the *appointment* of members of certain institutions or bodies will henceforth be done by qualified majority {members of Commission, of the Court of Auditors, of the Economic and social Committee and of the Committee of the Regions etc.}.

The changeover to qualified-majority voting has been deferred until 2007 for the *Structural Funds and the Cohesion Funds* {Article 161 E.C.}, and for the adoption of the *financial regulations* {Article 279 E.C.}.

Lastly, for the provisions of Title IV of the EC Treaty {*visas, asylum, immigration* and other policies linked to the free movement of persons}, the IGC has agreed on a *partial and deferred switch to qualified-majority voting* by means of different instruments {amendment of Article 67 E.C., protocol or political declaration} and subject to different conditions {either from 1 May 2004, or after the adoption of Community legislation setting out the common rules and essential principles}.

The overall compromise appears in the five areas which have been identified by the Commission as key areas:

*taxation* {Articles 93,94 and 175 E.C.}: maintenance of unanimity for all measures;

*social policy* {Articles 42 and 137 E.C.}: maintenance of the status quo. However, the Council, acting in unanimity, can make the co-decision procedure applicable to those areas of social policy which are currently still subject to the rule of unanimity. This "bridge" cannot, however, be used for social security;

*cohesion policy* {Article 161 E.C.}: it has been decided to switch to qualified-majority voting but this will not apply until after the adoption of the multi-annual financial perspectives applicable as from 1 January 2007;

*policy on asylum and immigration* {Articles 62 and 63 E.C.}: application of the qualified majority rule has been postponed {2004} and will not concern the central elements of these policies, e.g. the "sharing of the burden" {Article 63{2}b E.C.} or the conditions for entry and residence of nationals from third countries {Article 63{3}a};

*common commercial policy* {Article 133 E.C.}: this henceforth includes the negotiation and conclusion of international agreements in the area of trade in services and the commercial aspects of intellectual property. These agreements are concluded by qualified majority, except when the

agreement includes provisions for which unanimity is required for the adoption of internal rules or when the agreement concerns an area on which the Community has not yet exercised its responsibilities. In addition, the agreements concerning the harmonisation of cultural and audio-visual services, education services, social services and health services continue to be the subject of responsibility shared with the Member States.

As far as the co-decision procedure is concerned, the Treaty of Nice leaves this procedure untouched, in the form in which it results from the Treaty of Amsterdam[5]. Though, the Treaty of Nice has extended the scope of co-decision. This procedure will be applicable for seven provisions which change over from unanimity to qualified-majority voting {Articles 13, 62, 63, 65, 157, 159, and 191 E.C.; for Article 161 E.C., the Treaty stipulates assent}. Accordingly, most of the legislative measures which, after the Treaty of Nice, require a decision from the Council acting by qualified majority will be decided via the co-decision procedure. The IGC has not, however, extended the co-decision procedure to legislative measures which already come under the qualified majority rule {e.g. in agricultural policy or trade policy}.

# 5. Enhanced co-operation

This issue was the one where most progress was made during the negotiations. The IGC has comprehensively overhauled the provisions on enhanced co-operation {Articles 40 and 43-45 TEU} particularly by listing in a single provision {new Article 43 of the TEU} the ten conditions necessary to establish enhanced co-operation. While the essential characteristics of this instrument are largely unchanged {such as the principle whereby enhanced co-operation can be undertaken only as a last resort and must be open to all Member States}, substantial changes have nevertheless been agreed.

The minimum number of member States required to establish enhanced co-operation is now set at 8, whereas the Treaty currently stipulates that the majority of member States is needed. Consequently the minimum number of states needed to establish enhanced co-operation will fall, with the successive enlargements, to under one-third of the members of the Union {as had been proposed by the Commission}.

In the Treaty establishing the European Community {first pillar} the possibility of opposing enhanced co-operation {the “veto”} has been removed. It has been replaced by the possibility for a member State to take the matter up with the European Council. In such an event, Council may nevertheless act by qualified majority on any proposal for enhanced co-operation. Furthermore, when enhanced co-operation concerns an area which comes under the co-decision process, the assent of the European Parliament is required.

The Treaty of Nice has introduced the possibility of establishing enhanced co-operation in the area of *common foreign and security policy* {second pillar}, for the *implementation of joint action or a common policy.* Enhanced co-operation of this kind cannot be used for issues which have military implications or which affect defence matters. The Council gives the authorisation for enhanced co-operation after receiving the opinion of the Commission, particularly on the consistency of this enhanced co-operation with the Union’s policies. The Council will decide by qualified majority, but each Member State may ask that the matter be referred to the European Council, for the purposes of a unanimous decision {“emergency brake”}.

For *police and judicial co-operation in criminal matters* {third pillar}, the possibility of the “veto” has been removed in line what is meant for enhanced co-operation for the first pillar.

In the end, the “enhanced co-operation package” appears to be fairly well-balanced. It ensures that

the EU will not stagnate by, on the one hand, allowing Member States who so wish to advance, subject to certain conditions, while guaranteeing the others the right to be able to join the leading group. By preserving the Community framework and the cohesion effort, the enhanced co-operation mechanisms appear capable of keeping Europe on track towards ever-tighter integration, while allowing each country to go along this route according to its own rhythm and special needs. On the other hand it is true that the enhanced co-operation mechanisms will contribute to what has previously been termed a two-speed or "variable geometry" Europe. But in any event, given the political necessity of eastward enlargement and doubts over the long-term goals of European integration, enhanced co-operation appears as a more reasonable and calculated risk than as a retrograde step in that process.

**References**


European Law Journal, vol. 7, issue 3, September 2001, *Xenophon A. Yataganas: The Treaty of Nice: The Sharing of Power and the Institutional Balance in the European Union – A Continental Perspective;*

European Law Review, vol. 26, No. 3, June 2001, *Alan Dashwood: The Constitution of the European Union after Nice: law-making procedures*

Commission of the European Communities: Memorandum to the Members of the Commission – Summary of the Treaty of Nice, January 2001


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[1] Pursuant to Article 7 of the TEU, the European Council can declare the existence of a serious and persistent breach of fundamental rights. If this occurs, the Council may suspend certain of the rights of the country concerned. The Treaty of Nice has supplemented this procedure with a *preventive instrument*. Upon a proposal of one-third of the Member States, the Parliament or the Commission, the Council, acting by a four-fifths majority of its members and with the assent of the European Parliament, can declare that a clear danger exists of a Member State committing a serious breach of fundamental rights and address to that Member State appropriate recommendations.

[2] Today, when the Council acts by qualified majority, the votes of the member States are counted as follows: Germany, France, Italy, UK, 10 votes each; Spain, 8 votes; Belgium, Greece, The Netherlands, and Portugal, 5 votes each; Austria and Sweden, 4 votes each; Denmark, Ireland, and Finland, 3 votes each; and Luxembourg, 2 votes. The Council can act by qualified majority when 62 votes out of a total of 87 are in favour of a decision, 26 votes constituting the so-called blocking minority.

[3] In terms of figures, the situation before enlargement is as follows: Germany, UK, Italy and France 29 votes each, Spain 27, The Netherlands 13, Belgium, Greece and Portugal 12 each, Sweden and Austria 10 each, Denmark, Finland and Ireland 7 each, and Luxembourg 4. After enlargement the total number of votes will be 345 and the newcomers will have the following representation: Poland 27, Romania 14, Czech Republic and Hungary 12 each, Bulgaria 10, Slovakia and Lithuania 7 each, Latvia, Slovenia, Estonia and Cyprus 4 each, Malta 3. Out of a total of 345 votes, the qualified majority is set at 258/255 votes and the blocking minority at 88, rising to 91 with the accession of the 27$^{th}$ Member State.

[4] The threshold has been fixed for the 15-member EU at 169 votes out of 237 {i.e. 71.31%, slightly above the current percentage of 71.26%}. Subsequently, the threshold will change depending on the pace of succession, starting at a percentage lower than the current one {71.26%} and up to a maximum of 73.4%. The threshold for the 27-member EU should be fixed at 258 out of 345 votes {i.e. the qualified majority threshold will rise to 73.91% of the votes}.

[5] That was to be expected, in view of the generally positive assessment of the functioning of the procedure under the May 1999 arrangements, which is given by the politicians and civil servants professionally engaged in the law-making process of Brussels and Luxembourg.



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