

The Treaty of Nice – A Deadlock for Europe?

The institutions of an EU-25 after the failed constitutional summit in Brussels

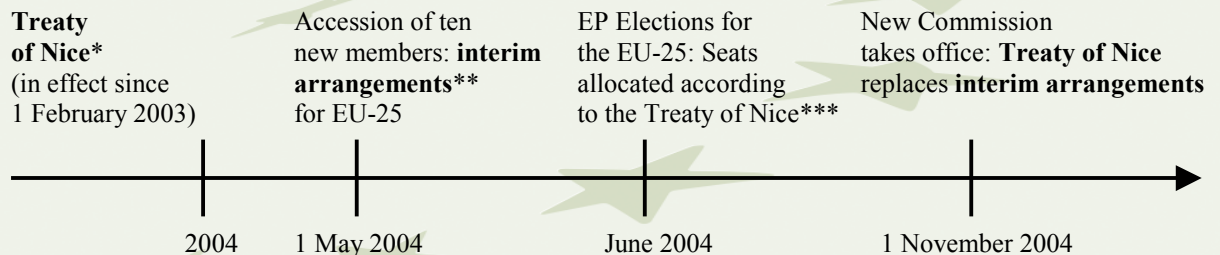
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The European Constitution, the first substantial common project of the EU-25, has suffered a tremendous setback. The summit in Brussels on 12-13 December 2003 showed a growing European Union at odds with itself, unable to seize a historic moment and put national interests aside. Although the substantial institutional and procedural progress contained in the Convention's draft have by no means been dropped from negotiations, these advances will remain unrealized for the moment. One immediate consequence is that considerable uncertainty has arisen about whether the Union's treaty-based foundation has the strength and resilience to carry the enlarged EU forward, if the constitution-making process should ultimately fail. What does it mean for an EU of 25 or more members if Europe does not enact a new constitutional order and must carry on with the Treaty of Nice?

Since the IGC's failure in Brussels, the public debate gave the impression that not only the EU's ability to complete enlargement is under question, but the Union is also facing a legal vacuum. However, on the eve of enlargement, the Union is not without a treaty-based legal foundation. Technically speaking, since the summit in Nice in 2000, the Union was prepared for the biggest enlargement in its history. The treaty changes agreed upon in Nice entered into force on 1 February 2003. For a transition period scheduled to last six months – from the new members' accession on 1 May 2004 until the new Commission takes office on 1 November 2004 – agreements from the European Councils of Brussels (24-25 October 2002) and Copenhagen (12-13 December 2002) also apply. Essentially, during this interim period the methods currently in use for the EU-15 will be extrapolated to cover an EU-25 for the division of votes in the Council and for other institutional allocation formulas within the Union.

This interim solution became necessary not least because 2004 will be a turbulent year for European politics. The accession of ten new member states will fundamentally change the size and composition of the institutions. Nevertheless, they have to be ready to take up the EU-25's daily business from the day of accession in May. This remains true, although the elections in the member states for the European Parliament do not take place until June and the first "enlarged" Commission will not take office until autumn.

Treaty of Nice and interim arrangements in 2004



* The provisions for taking decisions in the Council of the enlarged EU enter into force on 1 January 2005, according to the Treaty of Nice. These provisions were superseded by the decisions of the summits in Brussels and Copenhagen. According to the summit decisions, the respective provisions of the Treaty of Nice will take effect from 1 November 2004.

** Extrapolation of the current allocation of votes in the Council to an EU-25; 10 new Commissioners without portfolio.

*** Since 2003, 162 observers from the accession countries have already taken part, with seats divided according to the formula in the Treaty of Nice.

The lack of simultaneity between completing the current round of enlargement and appointing institutions for the EU-25, as legitimated by the upcoming European elections, brings about even greater complexity in the political system than already inherent in the Treaty of Nice. To shed some light on the subject, the following pages describe the key regulations and interim arrangements for the enlarged Union's Council, Parliament and Commission. The analysis will show that the prevailing provisions from the Treaty of Nice – measured in terms of either the Union's ability to act or democratic legitimacy – lag far behind respective provisions in the Convention's draft for a European Constitution.

1. The Council of Ministers and its voting procedures - easier blocking minorities

To provide for enlargement, the Treaty of Nice (Art. 3, Enlargement Protocol) establishes a new weighting of votes in the Council, effective 1 January 2005. Because accession has been completed more quickly than expected, the time frame has been adjusted accordingly to allow the integration of new members from the moment of their accession. For this reason, at the December 2002 summit in Copenhagen it was decided to apply the new weighting, as set out at Nice, from the new Commission's assumption of office on 1 November 2004.

For the transition period between accession on 1 May 2004 and the new Commission's assumption of office, it was agreed that the current range of votes in the EU-15 would be temporarily retained for the new members; that is, they will receive between two and 10 votes. At the same time, the level of the qualified majority will be raised. Instead of the current 62 of 87 votes, or 71.26 percent, in the EU-25 between May and the end of

October, 88 of 124 votes, or 70.97 percent will be required for a shaping majority. Conversely, during this time a blocking minority will require 37 votes, instead of the current 26 votes in the EU-15.

Following this transition period, on 1 November 2004, the new weighting of votes from the Treaty of Nice, with a range from three to 29 votes, will enter into force. At the same time, the number of votes required for a majority will be raised. In an EU-25, a qualified majority will require 232 of 321 votes, raising the threshold to a daunting 72.27 percent. In an EU-27, following the foreseeable accession of Romania and Bulgaria in 2007, the hurdle for a qualified majority will stand even higher: 255 of 345 votes, or 73.91 percent of the weighted votes. This change will, however, make little difference in the number of votes required for a blocking minority compared to the situation in an EU-25. In the EU-27, a blocking minority would require 91 rather than 90 votes.

The current procedural logic which clearly favours hindering decisions rather than creating shaping majorities will thus be strengthened. As if that were not enough, from 1 November 2004, the “triple majority” requirement from the Treaty of Nice will also enter into force. According to this rule, majority decisions must not only, as previously, reach the threshold of weighted votes and win a majority of the member states, but at a member state’s request they must also represent at least 62 percent of the Union’s population.

Although the provisions of Nice, Brussels and Copenhagen guarantee the enlarged EU’s ability to make decisions, the Union’s ability to take action will certainly remain limited. Compared to the double majority provided for in the Convention’s draft (more than half of the member states and more than 60 percent of the population), these provisions for decisions in the Council allow much greater room for blocking minorities. Whether an EU-25 will remain governable on this basis appears questionable. No other point shows more clearly the value that the new Constitution would bring to an enlarged Europe’s ability to make policy. Even if the resistance of individual member states, such as Spain and Poland, against the double majority can only be overcome by raising the population threshold, such a compromise solution would be clearly preferable to the provisions in the Treaty of Nice.

2. The European Parliament - the new neighbors have already moved in

At present the European Parliament is composed of 626 representatives, and the formula for allocating seats among the member states yields a range of six to 99 seats. Following the signing of the Accession Treaties for the ten new members on 16 April 2003, their national parliaments named observers who take part in the sittings of the

European Parliament through the end of the current session. The composition of these 162 observers was set by the allocation formulas in the Treaty of Nice and thus corresponds to the MEPs that the new member states will have in the coming 2004-2009 session. Because the formula from Nice was based on an EU-27, the 50 seats that will be allocated to Bulgaria and Romania upon their accession were prorated among the EU-25. At this point, the Nice formula was also corrected. Hungary and the Czech Republic have thus each received two additional seats, while under the Treaty of Nice they would have had fewer representatives than comparably populated countries such as Belgium, Greece and Portugal. In the Parliament to be elected in 2004, they will have the same number of seats as these old members. Hence, in the following session, each of these countries will have 24 representatives.

Until the elections in June 2004, Parliament thus includes 788 full representatives and observers. In the following five-year session, the upper limit of 732 that Nice prescribes for an EU-27 will be fully applied. If Bulgaria and Romania join the Union during the next session of Parliament, the number of deputies will temporarily rise to 786 (18 for Bulgaria, 36 for Romania), and then sink again to 736 along the lines of the seat allocation provided for by Nice for an EU-27. The increased number of seats for Hungary and the Czech Republic will be retained over the long term, so that the upper boundary from EP elections in 2009 onwards stand at 736 instead of 732.

In the Convention's draft, the upper limit on the number of seats in Parliament was already raised appropriately beginning in 2009. In addition, the draft provides that the maximum of 736 seats be divided degressively proportional according to the member states' populations. In this area, too, the Convention's draft is a clear improvement over the Treaty of Nice because its formula for allocating seats brings the EU at least somewhat closer to the democratic ideal of giving each citizen's vote an equal weight.

3. The European Commission according to Nice – better than the Convention's draft?

The European Commission currently has 20 members, one for each of the small and medium-sized member states, two each for the large ones: Germany, France, United Kingdom, Italy and Spain. With the accessions in May, 10 additional Commissioners from the new member states will join, so that the Commission will have 30 members. Between 1 May 2004 and the beginning of the Commission's next term of office on 1 November 2004, the current 20 Commissioners from the EU-15 will retain their portfolios, and the 10 new Commissioners will initially be without portfolios. They will be assigned to "old" Commissioners and should also have opportunities to rotate, in terms of two to three months. During this time, the 10 new Commissioners will enjoy full voting rights within the Commission.

From 1 November 2004, the provisions of Nice will take effect for the first “real” Commission for the EU-25, which will be confirmed by the newly elected Parliament. Under these provisions, up through an EU-27, every member state will appoint a Commissioner, with the larger states giving up their second Commissioner. The body will thus have 25 members. The formula, “one Commissioner per member state,” will, however, not last very long. The Treaty of Nice provides that once the EU reaches 27 members, the number of Commissioners must be less than the number of member states, with the Council obliged to agree unanimously on the criteria for equitable rotation.

Because an EU-27 will be reached with the accession of Bulgaria and Romania, probably in 2007, the details of this “reduced Commission” need to be clarified right after signing the Accession Treaties. Provided that this actually succeeds, the Nice model is preferable to the Convention’s draft. The draft retains the principle of one Commissioner per member state, while providing for a division of the Commission into 15 voting members and non-voting members up through the total number of member states.

Whether the Treaty of Nice continues in use or the new Constitution is enacted, however, neither case makes certain that the current provisions for the future composition of the Commission will remain unchanged. As the recent IGC showed, the right to a seat on the Commission with full voting rights remains a key question of power, particularly for the smaller and the new member states.

Given this background, even if the Treaty of Nice is retained it will be difficult for the Council to achieve consensus on the details of regulations for future rotation of Commissioners in an EU-27. It is more likely for the foreseeable future that each member state will appoint a single Commissioner with full voting rights. But the growth in the Commission’s size will not necessarily lead to a loss of efficiency. This development can best be avoided by strengthening the authority of the future President of the Commission in matters of general policy, thus giving him the ability to divide tasks and portfolios based on contents within the Commission.

Conclusion: Nice is an unsatisfying solution

Technically speaking, with the Treaty of Nice the EU has a framework that enables enlargement. No more and no less. In key institutional questions, the Draft Constitution would offer considerable progress for a European Union with 25 or more members that intends to remain politically manageable and to live up to the standards of democratic governance. Consideration of the Convention’s institutional innovations makes this particularly clear. The creation of an elected Presidency for the European Council, the

office of the European Foreign Minister and the realignment of the chairmanship in the Ministerial Councils increase both the personalization and the continuity of European policy. In addition, the Convention's draft extends the areas in which decisions are taken by qualified majority and introduces co-decision by the European Parliament as the standard legislative procedure. If an enlarged European Union is to remain capable of making decisions and taking action over the long term, and if it wants to live up to the expectations that citizens have of its abilities, the Union must tread the path that the Constitution has marked out. Over the next few months, the enlarged EU will come to see this clearly, as it takes up the daily business of European policy with the enlarged institutions and the new procedures of an EU-25. The pressure for change will increase, and with it the odds that the European Constitution will be enacted.

Even if the Constitution passes, the Union's work will remain a long way from completion. Key constitutional provisions, such as the double majority for decisions in the Council, the more strongly representative division of seats in the European Parliament, and the new composition of the Commission would only take effect beginning in 2009. In these areas at least, we must temporarily continue to live with the structure set out at Nice. Nevertheless, in a long-term perspective, the current treaty structure offers at best an unsatisfactory solution.

Furthermore, even after an agreement on the Convention's constitutional draft, the EU would still be far from reaching its final form. Examining the draft, it is clear that there are many areas that would benefit from further reform (see "Light and Shade: An Evaluation of the Convention's Proposals," Convention Spotlight, August 2003). These include strengthening authority in matters of political leadership of the Commission's President, the President's election by the European Parliament, a clearer differentiation between the tasks of the European Foreign Minister and those of the President of the European Council, generalized majority voting in the Council of Ministers and development of a two-chamber system for legislation, i.e., clear separation between the legislative and executive functions of the Council of Ministers. Compared to the Treaty of Nice, however, the Draft Constitution would shift the enlarged European Union to a higher level of integration.