

## Answering the Question of Power from a European Perspective

### A Comparison Between the Voting Procedures of Nice and the Convention's Draft Constitution

Janis A. Emmanouilidis and Thomas Fischer

#### Key Points:

In the Intergovernmental Conference controversies focus on the new voting procedures for the Council. Member states are primarily interested in preserving national power. Due to the impending EU enlargement, however, it is high time to change the perspective.

- Any comparative assessment between the Nice rules and the Convention's proposal for a double majority (majority of states and EU population) should be based on the criteria of transparency and the enlarged EU's capacity to act efficiently.
- Deleting the system of weighted votes as provided for in the Convention's draft Constitution simplifies the voting procedure within the Council and enhances the transparency of decision-making on the EU level.
- The model proposed by the Convention is perfectly in line with the Union's systemic rationale: it directly reflects the EU's dual basis of legitimacy as a Union of States and a Union of Citizens.
- As a comparison between potential coalitions within an EU 25+ shows, the model of a double majority improves the Union's decision-making capability. On the one hand it facilitates the formation of shaping majorities, on the other it considerably reduces the number of possible blocking minorities within the Council.
- Altogether the new voting rules proposed in the draft Constitution strengthen the Union's capability to act as well as the democratic foundations of European governance. For that reason, the Intergovernmental Conference should adhere to the Convention's proposal.
- If this proposal must be changed due to the ongoing resistance from the side of certain member states there could be a certain leeway for manoeuvre with regard to raising the level of population required, i.e. currently 60 per cent.
- Only if an agreement on the basic principle of a double majority seems impossible, the alternative of modifying the Nice voting system should be taken into consideration. In this case the current quorum should be lowered to at least a two thirds majority of the weighted votes. Otherwise, greater Europe is threatened by complete deadlock due to its insufficient capability to act.

The traditional logic of negotiations, which mainly aims to preserve national power is again making headway in the course of the Intergovernmental Conference. The new voting procedures for the Council proposed in the draft Constitution are the focal point of the controversies on the future distribution of power among member states. Since they fear a substantial loss of influence, Spain and Poland – supported by Austria and Finland – strongly oppose the Convention's proposal and instead pledge in favor of retaining the specific provisions of the Nice Treaty.

But what exactly lies behind this key question of power, which has considerably hampered progress in the Intergovernmental Conference during the past couple of weeks?

According to the *Nice Treaty*, a qualified majority vote in the Council currently requires

- a fixed quorum of weighted votes (71.3 percent in the current EU-15, 72.3 percent in the future EU-25),
- a majority of member states,
- and in addition – at the request of a member state – also more than 62 percent of the EU's population.

The *Convention's draft* calls for the simplification of this triple threshold. The draft proposes that from 1 November 2009 qualified majorities in the Council must

- represent a majority of member states,
- which represent at least three fifths [60 percent] of the Union's population (Art. I-24, Draft European Constitution).

If a decision is not based on an initiative from the Commission or, in certain cases, the EU foreign minister, the necessary majority rises to two thirds of the member states representing at least three fifths of the population.

As for the assessment of the Convention's proposal, its outcome completely depends on the reform criteria applied. The current Intergovernmental Conference is dominated by an approach which sticks to long-standing patterns of intergovernmental negotiations by focusing on the preservation of national power. However, since the limits of this logic already came to the fore in Nice, it appears doubtful whether this kind of thinking is still appropriate for an EU with 25 and more member states. Is it not time to change the perspective? Rather than to overemphasize national interests, more weight should be added to the criteria of transparency and efficiency. Actually member states' political influence and political power can only be guaranteed by an EU-25+ which is comprehensible for its citizens and capable to act efficiently. Hence, when evaluating the voting procedures of Nice and those in the Convention draft, the main criterion should be whether they are able to answer the power question from a European point of view, and not only along the lines of national interests.

## Comparing the Voting Procedures of Nice and the Draft Constitution

### *1. Transparency*

The inherent complexity of the Nice voting procedure of a triple majority makes it difficult to convey the current voting formula to EU citizens. Introducing a double majority as proposed by the Convention and abolishing the system of weighted votes in this way would simplify the voting procedures in the Council and enhance the transparency of decision-making at the European level. This argument in favor of the double-majority model is further reinforced by the fact that for the European citizens population quotas are much more plausible than the past practice of distributing votes among member states. The system of weighted votes in the Council becomes even more complicated as the distribution of votes needs to be adapted successively to the growing number of EU members. Finally and in more general terms, one should point out that the double majority model (states and population) proposed in the draft Constitution is more consistent with the Union's systemic rationale: it directly reflects the EU's dual basis of legitimacy as a Union of States and a Union of Citizens.

### *2. Improving Decision Making in an Enlarged EU*

Another key criterion for the new voting procedures in the Council is the question of how they influence the EU's ability to take action even after enlargement to 25 and more member states. In concrete terms, one needs to examine the extent to which the proposed new Council voting procedures improve the EU's ability to form majorities that are able to take decisions and shape policies (shaping majorities), and to what extent they contribute to reducing the danger of blocking coalitions.

#### Facilitating the Formation of Shaping Majorities

The abolition of weighted votes as a majority criterion simplifies the formation of shaping majorities. This is because the larger member states (Germany, United Kingdom, France, Italy, Spain, Poland and perhaps eventually Turkey) will find it easier to form majority coalitions with smaller and medium-sized EU countries under the new rules of the draft Constitution. According to the Treaty of Nice, in an EU of 25 or 27 members, the larger countries need six or eight small or medium-sized coalition partners. However, to reach the required number of weighted votes for a majority in the Council, the large states need the six or eight partners with the greatest number of weighted votes.

Based on the draft Constitution, the six large countries would need seven coalition partners in an EU of 25 members, and eight in an EU-27. However, the introduction of the Convention's double-majority model, which includes the abolition of the criterion of weighted votes, would make it irrelevant to the large EU countries whether their coalition partners come from the ranks of small and medium-sized member states. As a coalition of the big EU members represents a sufficient majority of the Union's

population and thus fulfils one of the two criteria proposed by the Convention's draft, the adoption of a decision in the Council would merely require the support of a sufficient number of additional smaller member states irrespective of who these countries are. Turning the argument around, the abolition of the system of weighted votes is also advantageous from the small member states' point of view, since the draft Constitution's new provisions would also improve their relative weight compared to the middle-sized EU countries.

In addition to the general conclusion that it would become easier to obtain shaping majorities under the Convention's new voting rules, the draft Constitution improves the concrete scope of action for a number of potential coalitions in the Council of an enlarged EU:

- In the area of economic and monetary policy, the draft Constitution makes it easier for the 12 countries of the Eurozone to form a majority in the Council. The Eurozone countries will need fewer coalition partners and can draw their allies freely from among the smaller or medium-sized member states. This would apply even more if further states joined the Eurozone.
- In the area of foreign, security and defense policy, it is important to note that the NATO members within the EU enjoy a very comfortable majority in the Council under both the Nice rules and the Convention's draft. This majority could, if necessary, also overcome the hurdle of a "super-qualified" majority in the Council.
- From the old member states' point of view, one particularly interesting result of the draft Constitution is that the "EU-15" would continue to command a necessary majority, which, under the Nice regulations, they would have lost in an EU-27 due to an insufficient number of weighted votes.

### Reduction of Blocking Coalitions

Although it will be easier to forge shaping majorities in the Council under the draft Constitution, it is just as important for European politics to analyze possible blocking coalitions in the Council. Even after a reform along the lines of the draft Constitution, the current logic of EU decision making would stay in place in as far as the construction of blocking minorities would remain easier than forming shaping majorities.

Nevertheless, the draft Constitution also makes considerable progress in this area. By reducing the number of potential blocking coalitions within the Council, the draft improves the EU's capability to act. Firstly, reducing the number of potential blocking coalitions simplifies decision making within the Union because it will become much more difficult for opposing minorities to cause a gridlock. Secondly, decisions would less frequently mirror the smallest common denominator among member states. Instead they would correspond much more to the effective needs for political action. Particular national interests of certain states or group of states would thus lose substance. Certain

blocking constellations would cease to exist with the introduction of the double majority model proposed by the Convention:

- Under the draft Constitution, the coalition of the old net contributors (Austria, Belgium, Germany, Luxembourg, Netherlands, Sweden, United Kingdom) would have a blocking minority in the Council of the EU until its enlargement to 27 member states. The continuation of the Nice regulations would, on the other hand, allow the net contributors to command a blocking minority even after enlargement to 27 or 28 EU members.
- Under the Nice Treaty the countries receiving cohesion funds (Greece, Ireland, Portugal, Spain, the members from Central and Eastern Europe, and in an EU-28 also Turkey) would already form a blocking minority in an EU-25. Under the draft constitution, however, they would only form a blocking minority after an EU enlargement to 27 member states.
- Under the draft Constitution, Rumsfeld's "old Europe" and the neutral states would lose their blocking minority in the Council after enlargement to 25 members. If the provisions of the Nice Treaty continue to rule the voting procedures in the Council even after enlargement, "old Europe" plus the neutrals would command a blocking minority in an EU with 25, 27 or 28 members.
- Under the Nice rules, the Baltic Sea countries would command a blocking minority up to an EU-28. Under the new rules in the draft Constitution, this coalition of states would have a blocking minority neither in an EU-25, EU-27 or EU-28.
- In contrast to the Nice regulations, under the Convention draft the group of Mediterranean countries (Cyprus, France, Greece, Italy, Malta, Portugal, Spain) would lose its blocking minority in an EU of 25 or 27 members. Only after an accession of Turkey, and the corresponding increase in the share of population, the Mediterranean group could block decisions in the Council.
- Under the Nice rules, the new member states form a blocking minority in an EU-27 and an EU-28. By contrast, under the new regulations in the draft Constitution, the new members would not form a blocking minority in an EU of 25, 27 or 28 member states.

This list exemplifies that all member states – irrespective of whether they are "rich" or "poor", old or new, big or small – would somehow lose blocking potentials in the event of an introduction of the double majority rule. In that case and seen from a national perspective, no member state would solely profit or lose from reforming the Council's voting procedures. From a European point of view, however, the proposed reform is definitely a positive step. The simplified formation of shaping majorities and the reduction of the number of potential blocking coalitions benefit the enlarged EU's ability to act.

### *3. Relative Shift of Power Among Member States*

The new voting modalities in the Council would change the individual weight of member states. The double-majority model provided for in the draft Constitution favors the most populous member states, Germany, Britain, France and Italy.

If the population component should actually become the decisive factor instead of the weighted votes, Poland and Spain – who, according to the Nice regulations, each hold 27 votes and thus only two votes less than France and Germany – fear a loss of their relative influence. In an EU with 27 member states the absolute weight of Poland and Spain would hardly change, given that their populations of around 40 million would account for roughly over 8 percent of the EU total, while their 27 votes would each account for only 7.8 percent of the total of 345 votes. In an EU-27 Poland and Spain would thus, in terms of absolute numbers, even gain from a reform along the lines of the Convention's draft Constitution.

In comparison with other large member states, however, both countries would lose influence when it comes to taking decisions or – maybe even more important with regard to the prevalent logic of voting – to blocking decisions. In more concrete terms, in an EU-27, Germany would comprise roughly 17, Great Britain, France and Italy around 12 percent of the Union's total population. On the basis of the Nice regulations the 29 votes attributed to each of these four big member states only account for 8.4 percent of the total number of votes. In the framework of the Intergovernmental Conference, Poland and Spain are strongly opposing the adoption of the Convention's new voting proposal, even though the compromise agreed to in Nice already includes that any member state can demand that the votes for a majority decision in the Council must represent at least 62 percent of the EU's total population.

### **Recommendations for the Intergovernmental Conference**

The new voting procedures proposed in the draft Constitution constitute a substantial progress as they strengthen both the Union's capability to act and democratic governance in Europe. As a consequence, the Intergovernmental Conference should adopt the Convention's proposals.

In case the Convention's draft must nonetheless be changed due to the ongoing resistance of certain member states, the final compromise should at least maintain the new model of a double majority. The basic principle according to which a decision in the Council must be supported by both a majority of states and a majority of citizens should not be dropped. Leeway for manoeuvre could exist, however, with regard to the level of population majority required, i.e. currently 60 percent. Such a modification of the Convention's model should be an acceptable compromise for the four largest member states as well as for Spain and Poland. An increase of the population quorum would still be better than raising the quorum of member states from 50 to for example 60 percent.

Indeed, this second option of increasing the state quorum would make it far more difficult to shape majorities in the Council.

If, due to a continuing reluctance of some EU countries, the member states cannot agree on introducing a double majority at all, then the current Nice provisions should be reformed with regard to one crucial point. In case the triple-majority system is retained, there should at least be a decreased and definitely fixed quorum of weighted votes. Thus, one might lower the current threshold of more than 71 percent to 60 percent or to a two-thirds majority of votes in the Council. Obviously, this alternative is inferior to the double majority model proposed by the Convention as concerns transparency and decision-making efficiency. Nevertheless, this “third best” solution would also substantially reduce the number of potential blocking coalitions in the Council and after all strengthen the capability to act of the enlarged Europe.

### Potential Coalitions According to Nice

	EU-25 according to Nice				EU-27 according to Nice				EU-28 according to Nice			
	Number of votes	Votes in %	Population %	Number of countries	Number of votes	Votes in %	Population %	Number of countries	Number of votes	Votes in %	Population %	Number of countries
Number of votes in the Council	321				345				374 (?)			
Qualified majority at least	232	72,3	62,0 %	13	255	73,9 %	62,0 %	14	276	73,9 %	62,0 %	15
Blocking minority	>89	>27,7 %	>38,0 %	>12	>90	>26,1 %	>38,0 %	>13	>98	>26,1 %	>38,0 %	>14
<b>Potential coalitions</b>												
The Euro-12	191	59,5 %	67,0 %	12	191	55,4 %	62,7 %	12	191	51,0 %	55,3 %	12
The EEC-founders (BEL, GER, F, I, L, NL)	116	36,1 %	50,0 %	6	116	33,6 %	46,8 %	6	116	31,0 %	41,3 %	6
The "big" (GER, GB, F, I, SP, PL)	170	52,96 %	74,6 %	6	170	49,3 %	69,8 %	6				
The "big" plus Turkey (TR)									199	53,2 %	73,4 %	7
The "big" plus the 7 (EU-25) or the 8 (EU-28) smallest states	200	62,3 %	77,0 %	13	207	60,0 %	72,9 %					
The "small" (all but the big)	151	47,0 %	25,4 %	19	175	50,7 %	30,2 %	21	175	46,8 %	26,6 %	21
The "old" (EU-15)	237	73,8 %	83,3 %	15	237	68,7 %	78,0 %	15	237	73,4	68,8 %	15
The "new" (EU without EU-15)	84	26,2%	16,7 %	10	108	31,3 %	22,0 %	12	137	36,6 %	31,2%	13
The CEEC (8 in EU-25, 10 in EU-27)	77	24,0 %	16,4 %	8	101	29,3 %	21,8%	10	101	27,0 %	19,2 %	10
The Mediterranean countries (CY, SP, F, GR, I, P, MAL; TR in EU-28)	116	36,1 %	39,4 %	7	116	33,6 %	36,9 %	7	145	38,8 %	44,4 %	8
The Baltic Sea countries (DK, GER, EST, LT, LV, PL, SF, S)	95	29,6 %	32,8 %	8	95	27,5 %	30,7 %	8	95	25,4 %	27,0 %	8

	EU-25 according to Nice				EU-27 according to Nice				EU-28 according to Nice			
	Number of votes	Votes in %	Population %	Number of countries	Number of votes	Votes in %	Population %	Number of countries	Number of votes	Votes in %	Population %	Number of countries
Number of votes in the Council	321				345				374 (?)			
Qualified majority at least	232	72,3	62,0 %	13	255	73,9 %	62,0 %	14	276	73,9 %	62,0 %	15
Blocking minority	>89	>27,7 %	>38,0 %	>12	>90	>26,1 %	>38,0 %	>13	>98	>26,1 %	>38,0 %	>14
<b>Potential coalitions</b>												
The cohesion countries (SP, GR, P, IRL plus CEEC-states plus Turkey)	135	42,8 %	30,6 %	12	159	46,1 %	35,0 %	14	188	50,3 %	42,7 %	15
The transfer coalition of the EU-15 (A, BEL, GER, GB, L, NL, S)	107	33,3 %	41,0 %	7	107	31,0 %	38,4 %	7	107	28,6 %	33,8 %	7
The NATO-countries (11 out of the EU-15 plus CZ, EST, H, LT, LV, PL, SK, SLO, plus BUL, ROM)	280	87,2 %	94,0 %	19	304	88,4 %	94,4 %	21	333	89,0 %	95,0 %	22
The "old Europe" (BEL, D, F) plus the neutrals (A, IRL, SF, S)	104	32,4 %	38,5 %	7	104	30,1 %	36,0 %	7	104	27,8 %	31,8 %	7

**EU-15:** Austria, Belgium, Denmark, Finland, France, Germany, Great Britain, Greece, Luxemburg, Netherlands, Italy, Ireland, Portugal, Spain, Sweden.

**EU-25:** EU-15 plus Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia

**EU-27:** EU-25 plus Bulgaria and Romania

**EU-28:** EU-27 plus Turkey

**Country abbreviations:** A: Austria; BEL: Belgium; BUL: Bulgaria; CEEC: Central and Eastern European Countries; CY: Cyprus; CZ: Czech Republic; DK: Denmark; EST: Estonia; F: France; GER: Germany; GR: Greece; H: Hungary; IRL: Ireland; I: Italy; L: Luxemburg; LT: Lithuania; MAL: Malta; NL: Netherlands; S: Sweden; SF: Finland; PL: Poland; P: Portugal; ROM: Romania; SK: Slovakia; SLO: Slovenia; SP: Spain; TR: Turkey.

© Janis A. Emmanouilidis, Thomas Fischer, Almut Metz

### Potential Coalitions According to the Convention's Draft Constitution

	EU-25 according to draft Constitution			EU-27 according to draft Constitution			EU-28 according to draft Constitution		
	Number of countries	Number of countries (without initiative COM/Foreign Minister)	Population in %	Number of countries	Number of countries (without initiative COM/Foreign Minister)	Population in %	Number of countries	number of countries (without initiative COM / Foreign Minister)	Population in %
Majority	13	17	60,0 %	14	18	60,0 %	15	19	60,0 %
Blocking minority	>12	>8	> 40 %	>13	>9	> 40 %	>13	>9	> 40 %
<i>Potential coalitions</i>									
The Euro-12		12	67,0 %		12	62,7 %		12	55,34 %
The EEC-founders (BEL, GER, F, I, L, NL)		6	50,0 %		6	46,8 %		6	41,25 %
The "big" (GER, GB, F, I, SP, PL)		6	74,6 %		6	69,8 %			
The "big" plus Turkey (TR)								7	73,4 %
The "big" plus the 7 (EU-25) or the 8 (EU-28) smallest states		13	77,0 %		14	72,9 %			
The "small" (all but the big)		19	25,4 %		21	30,2 %		21	26,6 %
The "old" (EU-15)		15	83,3 %		15	78,0 %		15	68,8 %
The "new" (EU without EU-15)		10	16,7 %		12	22,0 %		13	31,2 %
The CEEC (8 in EU-25, 10 in EU-27)		8	16,4 %		10	21,8 %		10	19,2 %
The Mediterranean countries (CY, SP, F, GR, I, P, MAL; TR in EU-28)		7	39,4 %		7	36,9 %		8	44,4 %

	EU-25 according to draft Constitution			EU-27 according to draft Constitution			EU-28 according to draft Constitution		
	Number of countries	Number of countries (without initiative COM/Foreign Minister)	Population in %	Number of countries	Number of countries (without initiative COM/Foreign Minister)	Population in %	Number of countries	number of countries (without initiative COM / Foreign Minister)	Population in %
Majority	13	17	60,0 %	14	18	60,0 %	15	19	60,0 %
Blocking minority	>12	>8	> 40 %	>13	>9	> 40 %	>13	>9	> 40 %
<b>Potential coalitions</b>									
The Baltic Sea countries (DK, GER, EST, LT, LV, PL, SF, S)		8	32,8 %		8	30,7 %		8	27,0 %
The cohesion countries (SP, GR, P, IRL plus CEEC-states plus Turkey)		12	30,6 %		14	35,0 %		15	42,7 %
The transfer coalition of the EU-15 (A, BEL, GER, GB, L, NL, S)		7	41,0 %		7	38,4 %		7	33,8 %
The NATO-countries (11 out of the EU-15 plus CZ, EST, H, LT, LV, PL, SK, SLO, plus BUL, ROM)		19	94,0 %		21	94,4 %		22	95,0 %
The "old Europe" (BEL, GER, F) plus the neutrals (A, IRL, SF, S)		7	38,5 %		7	36,0 %		7	31,8 %

**EU-15:** Austria, Belgium, Denmark, Finland, France, Germany, Great Britain, Greece, Luxemburg, Netherlands, Italy, Ireland, Portugal, Spain, Sweden.

**EU-25:** EU-15 plus Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia

**EU-27:** EU-25 plus Bulgaria and Romania

**EU-28:** EU-27 plus Turkey

**Country abbreviations:** A: Austria; BEL: Belgium; BUL: Bulgaria; CEEC: Central and Eastern European Countries; CY: Cyprus; CZ: Czech Republic; DK: Denmark; EST: Estonia; F: France; GER: Germany; GR: Greece; H: Hungary; IRL: Ireland; I: Italy; L: Luxemburg; LT: Lithuania; MAL: Malta; NL: Netherlands; S: Sweden; SF: Finland; PL: Poland; P: Portugal; ROM: Romania; SK: Slovakia; SLO: Slovenia; SP: Spain; TR: Turkey.