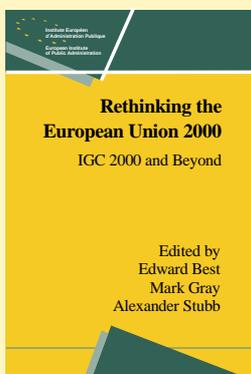


# The Treaty of Nice: Not Beautiful but It'll Do<sup>1</sup>

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## *Summary*

After long and difficult negotiation, a Treaty was agreed at Nice in December 2000, concluding the Intergovernmental Conference convened to deal with the 'left-overs' from Amsterdam. There were criticisms of the conduct and tone of the discussions. Yet the basic goal was achieved: the possible institutional obstacles to enlargement were removed. There was an agreement to have one Commissioner per Member State as of 2005 and a reduction to an unspecified number less than that of the Member States once there are 27 countries in the EU; a complex system of reweighting of votes with a triple threshold for qualified majority; a limited extension of qualified-majority voting; and some relaxation of the conditions for 'enhanced cooperation'. It is not possible to foresee exactly how the new arrangements may work, and they may be modified before they come into force. Nonetheless, there are concerns that decision-making will not be easier while transparency may suffer; that attention has been distracted from non-treaty reforms and other issues of policy management; and that solidarity may have been weakened. The limited scope and particular nature of this agenda made it inevitable that bargaining should often seem zero-sum, while national positions proved unusually difficult to change. Any EU Presidency would have had great difficulty in managing these questions. For the future, improvements to the way in which Intergovernmental Conferences are structured and managed can be envisaged. Equally important will be how effectively diplomacy can be prepared and accompanied by other forms of European public deliberation.

The Treaty of Nice which was signed on 26 February should mark the end of a prolonged phase of adjustment for the European Union. The EU has been trying for the last ten years to adapt to the end of the Cold War division of Europe and, more recently, to prepare itself positively for a massive expansion to 27 members or more. The Intergovernmental Conference (IGC) which concluded in Amsterdam in 1997 was something of a false summit with regard to the institutional reforms which are essential before enlargement can proceed. A new IGC was thus held in 2000, focusing 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 (now 'enhanced') cooperation should also be considered.

The IGC 2000 opened in Portugal on Valentine's Day. After nearly ten months of preparatory work, and four days of most unromantic wrangling, the Conference came to a rather tearful conclusion in Nice in the early hours of 11 December 2000. Tough words were heard as tired leaders departed, and an unprecedented degree of bad temper was rapidly reported as having characterised parts of the meeting.

Many immediate comments were critical. The content of the draft treaty was seen by some as failing to take the

firm steps essential to avoid future problems but rather introducing new complexities in the decision-making process. EU negotiations seemed to have been reduced to bargaining over relative power, instead of constructive compromise in the common interest, with particular criticism directed at the way in which the French Presidency had handled things. And the whole IGC process had apparently ended only in conflict and confusion.

Where reactions were more favourable, the underlying feeling seemed to be basically one of relief that there was a Treaty at all. One of the main obstacles to enlargement had been removed, and that was what mattered most. Indeed, in this light, Nice could be presented as a positive triumph. In the face of an urgent need to reach agreement, the Member States had managed to reach a compromise even over some of the most sensitive issues at stake so far in the integration process.

This article aims to give a balanced evaluation of what was agreed – and how. It first looks at the results of the IGC in each of the main issue areas and then offers some thoughts about the problems and achievements of the IGC 2000, the implications of the Nice Treaty for the future, and the steps which are now to be taken on the road to .... yet another IGC.

## **Size and Composition of the Commission**

The only specific agreement in this case 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'. 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. The basic principle is defined to be that 'the difference between the total number of terms of office held by nationals of any given pair of Member States may never be more than one', but with the intriguing qualification that 'each successive college shall be so composed as to reflect satisfactorily the demographic and geographical range of all the Member States of the Union'. However, the implementing arrangements are to be adopted by the Council, by unanimity, only after signing the treaty of accession of the 27<sup>th</sup> Member State of the Union.

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 not only felt to increase public acceptance of the institutions. It is also seen as reassurance both that all interests will really be taken into account within the Commission and that the political role of the Commission will not be weakened. The argument that a smaller Commission would be a more effective and more managerial body free of national ties and thus better able to defend small countries' interests is still outweighed by the belief – which seemed to be confirmed at Biarritz in October 2000 – that at least some of the larger countries saw the reduction in the number of Commissioners as a means to reduce the role of the Commission to that of a purely administrative body.

Since a Commission of 20 to 27 Members clearly requires stronger 'organisation', however, 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 collegiality'; as well as allocate and reshuffle responsibilities among Members. The President will be able to oblige a Member to resign, 'after obtaining the approval of the Commission', and 'shall appoint Vice-Presidents'.<sup>2</sup>

### **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 outvoted. In EC12 and EU15, two big countries could be outvoted, while the Big Five together could not outvote 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 outvoted?

The instruments available were an indirect recognition of relative population through a re-weighting 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.<sup>3</sup> 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,

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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 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.<sup>4</sup> The distribution which was finally agreed is shown in Table 1.

*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%
<b>TOTAL</b>	<b>481.2</b>		<b>87</b>		<b>345</b>		<b>626</b>		<b>732</b>	

#### *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 the table above. For 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, 168 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 reduced the threshold for EU15 from 170 to 169; but confirmed 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*

Re-weighting 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,<sup>5</sup> 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.<sup>6</sup>

However, as part of the negotiations for a re-weighting 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’.<sup>7</sup> 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 the financial perspective after 2007 will previously have been adopted. Germany blocked QMV in some areas in Justice and Home Affairs; while asylum policy is only to move to QMV provided that the

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Council has previously adopted the common rules and basic principles by unanimity, and most of immigration and other areas only in 2004.

The provisions in which QMV is to be introduced are therefore largely limited to procedural questions,<sup>8</sup> certain kinds of international agreement,<sup>9</sup> asylum and immigration and a few other policy decisions.<sup>10</sup> Of these, co-decision only applies in some 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 at Nice 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 – although 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.

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<sup>11</sup> 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.<sup>12</sup> 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,<sup>13</sup> and the 'emergency brake'

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

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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 first conclusion must be that Nice, seen in the long-term perspective of European integration, was a success if only because it did not fail, despite the depth of the differences and the sensitivities involved. The main goal was achieved, which was to remove the institutional obstacles which could be used to prevent enlargement.

The more specific stated objectives were to ensure ease of decision-making in an enlarged Union; to adjust the relative influence of the Member States in future Council voting arrangements so as to reflect demographic weight more fairly; to adapt the size and composition of the Commission so as to ensure future efficiency and legitimacy of that institution; and, most broadly, to welcome the new Members while guaranteeing that enlargement will not weaken the integration process.

Measured against these aims, however, the results are certainly not ideal, although some important qualifications are still called for. In the first place, despite the strength of the initial criticisms of the Nice Treaty, almost no-one actually claims that the outcome of the IGC is completely negative. Some of the less publicised results are in fact rather positive: notably the reforms to the Statute of the Court of Justice, the fact that the European Parliament has at last been given full standing to challenge Community acts before the Court, and the strengthening of the Commission’s internal organisation and of the role of its President. Moreover, it must be recognised that we do not know how the new arrangements may work in practice, and it is far from certain that the Nice agreements will even remain exactly as they are by the time they are supposed to come into effect. The 700

ceiling for MEPs set at Amsterdam was fairly casually forgotten at Nice. In the next few years, the Intergovernmental Conference to be convened in 2004 and the accession conferences will make it equally possible to change some of the conclusions of Nice.

Nonetheless, it is hard to believe that there will be any improvement in *efficiency*, understood as the ease of decision-making. The qualified-majority threshold has been raised and complicated, while important policy areas remain subject to unanimity. There is also the risk that all this fuss about the relative percentages of votes and majority thresholds may distract attention from the important non-treaty reforms which need to be

implemented to improve real *effectiveness*, and from the challenges posed by the fact that new policies are increasingly not being managed through legislative instruments adopted under the classic Community method.<sup>14</sup>

It is not clear what Nice will mean for legitimacy. *Transparency* has actually suffered, in that the decision-making system has been made yet more difficult for people to understand. 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. Moreover, the image given in the candidate countries was hardly the most favourable – both in terms of the apparent discrimination against them vis-à-vis the present Member States in the distribution of votes and seats, and in terms of the vision created of the EU as a system based mainly on national interest and relative power.

It is tempting to ask whether the process and the results could have been any ‘better’ – meaning, if nothing else, whether compromises could have been more easily found and bad feeling avoided. Was there a lack of adequate leadership? France and Germany, far from serving as a tandem leading Europe forwards, were directly at odds. The European Commission, which on at least some previous occasions had played an important

role of brokerage, exercised comparatively little influence at Nice. And the French Government was in a particularly difficult situation which made it all the harder to fulfil the role expected of the Presidency.

The criticisms made of the French Presidency, however, must be

taken with care. Not everything was in fact managed in a way which attracted criticism. The French handling of enhanced cooperation, for example, has been considered rather effective. Most important, any Member State holding the Presidency would have had to deal with an exceptionally difficult agenda. The IGC was not only limited in *scope*, thus more or less precluding any kind of broad package deal in which Member States could feel that their losses in one issue area were compensated elsewhere. The *nature* of the issues was such that the negotiations were predictably going to be less ‘integrative’ than ‘distributive’ in character. The agenda did not include any broad policy issues in which the

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result – even if national preferences were not completely satisfied – could still be presented as an overall gain for the Union as a whole. On the contrary, the issues focused precisely on questions of relative national representation and influence which all too easily seemed to be a zero-sum game in which one country's gain was inevitably another one's loss. Moreover, the *context* was, already beforehand, one of an unusual tension between larger and smaller countries.

As luck had it, the Council Presidency which had to conclude such an IGC fell to a large country. Among the larger countries, it had to be precisely that large country which was most sensitive about the impact of German unification and EU enlargement on its own relative weight in European integration. And, just to make things even tougher, the French President was living in 'cohabitation' with a Prime Minister of an opposing party.

In another such fateful coincidence, when a compromise had to be reached over the future of the Union's finances in the first half of 1999, the Presidency happened to be held by Germany, the largest net contributor, at a time when there was strong domestic pressure on the German Government to reduce that contribution. Germany clearly (and even quantifiably) sacrificed part of what it

could have obtained had it felt able to put its full weight behind the national interest. In that case, however, the concession was a matter of degree, and the result could be presented as necessary to achieve a diffuse common goal. For France at Nice the question was simply and clearly parity or non-parity – an issue of such symbolic importance and national sensitivity that President Chirac obviously felt he could not give way.

In a broader perspective, the frictions at Nice were merely a predictable reflection of the difficult process of adjustment to the new realities of Europe. Whatever else, the IGC has 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 consensus does not seem to have been strengthened. 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.

It is in this context that the European Union is to set off once more on the road to an IGC. Can we make it any easier next time?

Improvements in the IGC process itself can be pursued. The difficulties in the IGC 2000 were (again) partly a result of structural problems. For example, there appears to be an inadequate link between the top political level and the Group of Representatives during the preparations. It was thus left to the Heads of State or Government to solve many of the difficult political problems at the last minute – and without officials. The confusions and disputes over exactly what was agreed arose largely because there is no mechanism for the Heads of State or Government to confirm precisely what they have agreed before departing.

It will be equally important to accompany intergovernmental diplomacy with broader processes of public deliberation. Although there are no 'left-overs' from Nice, as there were from Amsterdam, the Conference did adopt 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 doubly significant. On the one hand, it is a response to the various proposals which were again made in 2000 for a second (or, for some, third) chamber composed of national parliamentarians to be added to the Union's institutional system as a means to ensure respect for subsidiarity and to strengthen links between the EU and national political life. On the other hand, it reflects interest in the parallel experience in 2000 of the Convention on Fundamental Rights, which brought together representatives not only

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of the national governments but also of national parliaments, as well as the European Parliament and European Commission. While such a Convention cannot replace an IGC, it could certainly help in the future to prepare fundamental changes in the EU system on the basis of broader consensus and deeper support. There is certainly much to be done.

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## NOTES

- <sup>1</sup> An earlier version of this paper was published as 'The European Union After Nice: Ready or Not, Here They Come!' in *Intereconomics* 36:1 (January-February 2001) pp.19-24.
- <sup>2</sup> Modified Article 217 TEC.
- <sup>3</sup> The population threshold could be higher, perhaps 60%, without losing the advantages of the system.
- <sup>4</sup> 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).
- <sup>5</sup> 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.
- <sup>6</sup> 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%.
- <sup>7</sup> 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.

- <sup>8</sup> 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.
- <sup>9</sup> 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.
- <sup>10</sup> 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.
- <sup>11</sup> In the case of the European Community, the Amsterdam Treaty stipulates that the matter is referred to the Council, meeting in the composition of the Heads of State or Government. The Nice Treaty only refers to the European Council.
- <sup>12</sup> New Article 40a(2) TEU; modified Article 121 (2) TEC.
- <sup>13</sup> 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.' (new Article 40a(1) TEU).
- <sup>14</sup> See Helen Wallace, 'Some Observations on the Illusions of Institutional Balance and the Representation of States' in Edward Best, Mark Gray and Alexander Stubb (eds.) *Rethinking the European Union: IGC 2000 and Beyond*. (Maastricht: EIPA, 2000) pp. 209-218; and 'Nice Votes If You Can Get Them', *Integration*, April 2001. □