

AXEL MOBERG*

**IS THE DOUBLE MAJORITY REALLY DOUBLE? THE VOTING RULES IN THE EU
CONSTITUTIONAL AND REFORM TREATIES¹**

**THE BACKGROUND: ENLARGEMENT, BALANCE OF POWER AND
'LEGITIMACY'**

Since the establishment of the European Economic Community (EEC) in 1958, decisions by qualified majority (QMV) in the Council have been based on a system with weighted votes with over-representation of medium-sized and small states ('degressive proportionality'). The voting rules have been under constant negotiation together with other institutional issues, over the past 15 years, in the light of successive enlargements, at Inter-Governmental Conferences (IGC) on treaty changes ending at Amsterdam (1997) and Nice (2000). The voting rules were the most controversial issue in these negotiations. On the eve of enlargement to Central and East European countries, an agreement was reached at Nice on the institutional changes that were necessary for enlargement. The voting rules consist of qualified majorities of the weighted votes and the population and a majority of member states. So far the principle of degressivity was not questioned.

The discussion of voting rules in the EU must be seen in terms of the balance of power between member states. Some of the large² member states have been seriously concerned that their share of the votes has decreased through the admission of new members (as would happen

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International workshop
"Distribution of power and voting procedures in the European Union"
Natalin European Centre, Warsaw
October 12-13, 2007

in any club), and wish to restore the situation. In absolute terms the share of, say, France, has fallen from almost 25% in the original EC-6 to about 8.4% in EU27. The under-representation of the large states has also increased modestly with the increased number of small and over-represented member states. Spain has also been concerned about the balance after the 1995 'northern' enlargement. The code words for these demands have often been 'democratic legitimacy' or 'efficient institutions'. However, the share of each of the smaller countries has also fallen by the same percentage, the over-representation of all smaller countries has also decreased, and the proportions between a given large country and a given small one did not change until Nice (Moberg, 1998, 2002).

The voting rules, as well as other parts of the Nice Treaty, have been increasingly criticised in the public debate, not least by the governments – France and Germany – that once designed them. It has been argued that the rules are extremely complicated and difficult to apply, that Spain and Poland obtained too much weight compared with the big four, and that the high thresholds for a qualified majority would lead to sclerosis or paralysis in decision-making. The latter fear is largely inspired by academic voting power studies (Baldwin *et al.*, 2001; Felsenthal and Machover, 2001). There has even been the opposite fear: that the rules would lead to a directorate of large countries (*The Economist*, 2000).

There are several explanations to the criticism of the Nice rules. There was obviously some confusion at Nice and certain points had to be straightened out afterwards. Many in the public debate had not understood, or accepted, the limited mandate of the Nice IGC. More important, the large countries had been hoping to get more. Some medium-sized and small member states may have hoped to get away without any substantial re-weighting, despite

International workshop
"Distribution of power and voting procedures in the European Union"
Natolin European Centre, Warsaw
October 12-13, 2007

commitments they had made at Amsterdam. Germany had insisted on a greater weight to reflect its larger population after its reunification. France had resisted, insisting on the historical 'parity'. Netherlands and Belgium had a similar dispute, and others also had problems with the increased weight of neighbouring countries. The alleged 'inefficiency' of the system also played a role. There was a certain amount of revanchism in the air. This was the background to the proposal about the double majority.

THE PAPER'S PURPOSE AND METHODS

The purpose of this paper is to study the double majority under the Constitutional and Reform treaties, and their effects on the balance of power between member states. It does this largely by a comparison with the voting rules under the Nice Treaty, which was the main alternative in the negotiations. Most studies agree that the double majority would entail a substantial change in the balance, in favour of the large states, and some scholars have expressed concern over this. Before the final deal on the Constitutional treaty there was even an Open Letter of almost 50 scientists against it. But available studies have hardly explained why there is a change in the balance, which this paper attempts to do. It does not aim to build upon any particular theory, but rather to confront dominating voting power studies with the political context and with what the negotiations were about.

The paper only deals with voting rules and not with other more or less related institutional issues, like the balance between the institutions, a permanent President of the European Council, a 'Foreign Minister' of the Union or the scope for a qualified majority, etc.

International workshop
"Distribution of power and voting procedures in the European Union"
Natolin European Centre, Warsaw
October 12-13, 2007

It begins with a short comment on the ideological issue: what voting rules should be about. It is followed by a short discussion of decision-making in the EU. It then continues with a short comment on voting power methods, partly in reply to Hosli's and Machover's (2004) criticism of a previous paper. The following sections, which are the core of the paper, give an overview of the negotiations that led to the Constitutional Treaty, summaries of the two main options, a discussion of the effects of these and why the double majority changes the balance. Finally, there is a short comment on a few alternative models that have figured in the discussions.

The paper is based on relatively simple calculations of the effects of the proposals that were made, on the arguments that were used in the negotiations, the objectives of the actors and how these could be achieved. There are few written records of the discussions between member states. Therefore the paper partly builds on the author's observations as a civil servant during some of the negotiations.

It does not make use of voting power calculations for reason explained below. In this paper the calculations of 'power' will be based on the member states' share of the weighted votes and on their share of the necessary blocking minority, or qualified majority, with different voting rules in a given composition of the union. To avoid confusion with voting power terminology the latter shares are referred to as a state's voting/blocking 'potential'. The ratio between a country's share of the votes and its share of the population is used as a simple measure of its over-/under-representation. Unlike other measures used at the IGCs, it offers a point of equilibrium.

EXCURSUS: WHAT IS 'DEMOCRATIC LEGITIMACY'?

This paper does not intend to solve the question of what a voting system 'should' look like. This is a political choice. However, authors have widely diverging views of what 'democratic legitimacy' means in the EU context, and whether it is at all possible or desirable in the same sense as in member states. Some seem to be unaware of other possible views. As a background, it is necessary to point out these differences and list some of the arguments.

IS IT STATES THAT ARE THE MEMBERS?

One extreme is the traditional and legally undisputable view that the EU is based of treaties between states, called member states. It is their governments that are represented in the Council. The present Treaty and the Reform Treaty have practically the same wording: 'The Council shall consist of a representative of each Member State at ministerial level, who may/authorised to commit the government of that Member State'... The Council is not meant to be like the US Congress, where the entire population is represented at the federal level, over the head of states. This could give good a priori arguments for using the traditional inter-governmental principle – one state/one vote – in the Council. But it would be utterly unrealistic. The weighted votes have existed since 1958, and the large member states have been insisting on a greater weight in the Council, where they can act.

OR IS IT CITIZENS?

The other extreme is the view (held by e.g. Emmanoulidis and Fischer, 2003) that the principle of one man/one vote should also apply in the Union, and that therefore the voting

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"Distribution of power and voting procedures in the European Union"
Natolin European Centre, Warsaw
October 12-13, 2007

weight of each government should fully reflect the number of inhabitants they represent. The double majority is often presented as if this were the purpose, and the idea of a 'double' majority with a state leg is often forgotten. It should be recalled that proportionality is not always observed in member states, where, for instance, rural regions are sometimes favoured, as for the French Senate, or small states in federal systems as in the German Bundesrat or the US Senate.

EQUAL VOTING POWER

Voting power studies have been the mainstream of academic studies on the subject for the past 15 years. They are ultimately based on Penrose's (1946) theory that each voter should have the same possibility of (indirectly) deciding the position of his government. Penrose's rather cautious conclusion, in his own words, was that 'governments representing... small nations... are likely to be more representative than governments representing relatively large groups of people'. He thought (1952) that it would be 'more equitable' if weights were proportional to the number of people each government represents, which he found to be almost the square root of the number of voters. Some of his later followers, like Hosli and Machover, are less cautious and see this as the 'correct implementation of the one person, one vote principle'. The realism of Penrose's theory can be debated. It should be possible to find out empirically whether the government of Germany is much less representative than, say, that of the Netherlands.

STATES AND CITIZENS

The Constitutional Treaty introduced a new clause: that the Union is based on both member states and citizens. There was little discussion about it in the convention. This was

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"Distribution of power and voting procedures in the European Union"
Natolin European Centre, Warsaw
October 12-13, 2007

probably a way of preparing the ground for the Presidium's proposal on the double majority and a greater weight for the large countries. In any case it is doubtful that this principle is at all relevant for decision-making in the Council, where governments are represented.

JUST A COMPROMISE?

The author is not very convinced of any of these views. A degressive voting system, such as the pre-Nice system, can be seen as just a compromise between opposite interests, which takes account of both states and population at the same time. A system where the populations are balanced somehow could probably also help to increase the legitimacy of EU decisions. It should be noted that a double majority, or a triple one like Nice, are not compromises. Each criterion can be used independently with its full weight for blocking decisions.

DECISION MAKING IN THE EU

The decision-making process in the Council has been discussed exhaustively, *inter alia*, by Hayes-Renshaw and Wallace (2006). The author only needs to highlight a few points. Decisions are normally made by consensus. Member states pursue national interests, but are also driven by a common wish to move forward, to stay in the mainstream and, above all, not to become isolated.

It has been described as 'decisions in the shadow of a vote'. The votes are only potential weapons. The threat of a majority decision is a powerful instrument to bring about consensus. So far, a vast majority has been required for a decision. No reasonably homogenous group has a majority of its own. Blocking minorities are a powerful instrument to obtain

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Natalin European Centre, Warsaw
October 12-13, 2007

concessions. They can be seen as the key to decision making. Maintaining blocking possibilities has been the underlying *leitmotif* in past negotiations on voting rules. Declaration 21 of the Nice Treaty provides a good illustration. It actually defines the qualified majority in EU27 through the blocking minority. The reason why blocking is so important is probably not that it is politically more rewarding to block undesirable decisions than to support desirable ones (as Hosli and Machover believe). It is rather that it is easier to get leverage through a blocking minority than through a majority.

Blocking minorities are a dynamic element in the process. They do not stop decision-making. If a decision is blocked, it only means there are continued negotiations until a solution – acceptable to at least a majority – is reached. Countries in the blocking minority are courted by others with compromise proposals. When it becomes clear that there is not a blocking minority, member states quickly rally around the compromise, and member states with objections have to fend for themselves. The Presidency determines whether there is support for the proposal, mostly without a vote. Member states normally only vote openly against, if they want to show domestic opinion that they fought to the end (cf. Mattila, 2004.) If no member state actively objects to the Presidency's conclusion, a decision can actually be taken with the support of a smaller majority than QMV. This can also happen in matters requiring unanimity. The important thing is whether anyone actively objects.

If it is a matter for qualified majority, there will be an agreement sooner or later. Experience shows that the overwhelming majority of proposals have led to decisions. There is hardly any evidence that more than a few decisions on QMV issues have ever been blocked indefinitely by a minority. The weights and thresholds determine the bargaining strength of

International workshop
"Distribution of power and voting procedures in the European Union"
Natolin European Centre, Warsaw
October 12-13, 2007

member states. They do not decide *whether* there will be a decision, but rather *which* decision it will be.

IS LARGE VERSUS SMALL REALLY THE ISSUE?

According to conventional wisdom small and large states are not pitted against each other in real life. It only happens in negotiations about voting rules themselves and other institutional issues. In daily decision-making some smaller states often have common interests with some of the large states. If they take the weight of potential allies into account, they could be considered to be on the 'winning' side in some respects, even if a change of voting rules favours the large countries. This could be the case i.e. with net contributors, where the large countries weigh heavily, against net receivers.

The fears of a 'directorship' of large states are exaggerated. However, the agenda-setting power should not be overlooked. There has been a clear tendency among large states over the past few years to consult closely between them and try to make deals on strategic issues. This does not necessarily mean that they have common interests. It is rather because they have opposite interests that they may be able to make deals that will stand. Once they have come to an understanding it may be difficult for other states to re-open an issue. But such deals may make it easier for the Union as a whole to reach a decision in complicated negotiations, such as a medium-term budget.

VOTING POWER

Voting power studies calculate the power given to a country by voting rules, by computing in how many of the theoretically possible coalitions a state can decide the outcome, by casting its vote for or against a proposal. Most studies are based on the *a priori* assumption that any state can take any position on an issue, or remain indifferent, and that all coalitions are equally probable (what is known as Impartial Coalition Culture).

The authors are well aware that these assumptions are not fulfilled in real life. (Whether the Impartial Anonymous Culture, where the probability of an actor's behaviour is unknown, used by Felderer *et al.* and Feix *et al.* does a better job is beyond the scope of this paper.) Hosli and Machover justify the voting power approach with the need to distinguish between *a priori* power, which is directly derived from the voting rules, and on the other hand the actual power a country wields, which depends on its position in the political environment. However, they actually also claim that member states' priorities change so much over time and that so many issues are inter-related, that the *a priori* approach is the best approximation of long-term average of real power.

Voting power methods have been criticised, among others, by Garrett and Tsebelis, for disregarding the spatial distribution of a member state's policy positions, and the effects of the institutional setting, for not being additive for members of a coalition (unlike the measures used here), and for not including member states' preferences. Albert has criticised them for not containing any 'political' science, and for disregarding existing knowledge of how member states actually behave.³

International workshop
"Distribution of power and voting procedures in the European Union"
Natolin European Centre, Warsaw
October 12-13, 2007

The author's most important objection is that the very concept of power as a member state's ability to tip the balance is dubious. This is not the issue in daily work, nor in negotiations about voting rules. As Laruelle *et al.* (2006) have pointed out, what member states are concerned with is the result of the decision making-process and to be on the winning side in a majority or a blocking minority along with other like-minded countries. The formal weight is what counts when member states try to piece together a blocking minority, or a majority. In negotiations about voting rules member states look at the effect they would have for themselves and predictable allies on predictable issues.

Moreover, simple mechanical counting of the number of coalitions, without weighting them by the importance of the issues, is a blunt instrument. The author doubts that it is possible to find a universal measure. In the end, voting potential must be seen in the light of the member states' own perception of their priorities and predictable allies. This paper only touches upon a few concrete possible coalitions (large states, net contributors or beneficiaries, old and new members, friends and opponents of CAP reform, free trade, etc.) Emmanouilidis and Fischer (2003) illustrate other coalitions.

Furthermore, voting power studies do not analyse the effects of each of the components of the voting rules, or put them in the political context. This makes them overlook important aspects and the reasons why the rules were designed the way they were. This is the case with the effects of the population criterion under Nice, the role of the 'state leg' and the disappearance of the threshold for the weighted votes.

Finally, combinatorical effects should become less interesting as the number of theoretically possible coalitions increase from just 64 originally, to 135 million in EU27, and

International workshop
"Distribution of power and voting procedures in the European Union"
Nacolin European Centre, Warsaw
October 12-13, 2007

voting power should go in roughly the same direction as weights. Effects like the ‘dummy’ situation Luxembourg⁴ was in 1958-73 should disappear. Chang *et al.* (2005) have shown that the difference between the share of votes and the Banzhaf index fades out statistically if the number of states is large and the threshold (percentage of votes required for decision) is about 50%, but warn that they increase rapidly at high thresholds because of the ‘unanimity effect’. Słomczyński and Życzkowski (2006) find that with 27 member states the difference disappears at 61.6%, and then increases again with higher thresholds. In fact, the difference is marginal also under the Nice rules. In EU27 the index (calculated by Felsenthal and Machover, 2001) diverges from the weight by just 0.07 to 0.62 percentage points for each country.

To summarise, voting power calculations may be logical and relevant to groups with a small number of actors, such as parties in a parliament, and clear-cut issues. But it is doubtful that they are really suited to the highly consensus-driven decision making in the EU, with a large number of members.

BARGAINING, NOT BINGO GAME

Many studies (Baldwin *et al.*, 2001; Felsenthal and Machover, 2001; Lane and Maeland, 2002), also use voting power methods to calculate the probability that the Union will reach a decision. They claim that the ‘effectiveness’ of decision-making decreases dramatically with higher thresholds, and with the number of member states at the same threshold as in successive probability calculations. Hosli and Machover claim that the ‘chances’ of a decision being made have already declined, since 1981, from 6:1 to 12:1, but also point to contrary

International workshop
"Distribution of power and voting procedures in the European Union"
Natolin European Centre, Warsaw
October 12-13, 2007

findings. Laruelle *et al.* (2004) have tried, as a first step, to make calculations more realistic by excluding coalitions where there is not a majority of member states.

The author's greatest objection to calculations of 'effectiveness' is that decision making in the EU is considered a bingo game, where member states cast their votes at one occasion, independently of each other, and this results in a decision or no decision. The crucial mistake is that decision making in the EU it is not a bingo game, where probabilities decide the outcome, but a bargaining process, as illustrated above.

Even if decision-making has reached deeper down into sensitive matters and moved into new fields, working methods have changed and the involvement of parliament has increased, it is doubtful that there has been a significant, if any, slow-down in recent years. It may even be the other way around. To conclude, calculations of 'effectiveness' have little to do with reality and are rather misleading.

FROM NICE TO DOUBLE MAJORITY

The weights of the new member states, according to (a declaration attached to) the Nice Treaty were integrated into the Accession Treaty, finalised in Copenhagen in December 2002. They were originally meant to enter into force on 1 January 2005. Since it was later decided that enlargement with the 10 first new members would take place on 1 May 2004, these states were provisionally inserted into the old, pre-Nice, weighting system for a transitional period up to 1 November 2004, when the Nice rules began to apply. At Nice it was also agreed to hold a new IGC in 2004 to deal with simplification of the treaties, a clearer definition of the competencies of the Union, the role of national parliaments and the status of the charter on

International workshop
"Distribution of power and voting procedures in the European Union"
Natolin European Centre, Warsaw
October 12-13, 2007

fundamental rights. The summit at Laeken in December 2001 called a 'convention' with the task to prepare the IGC, composed of representatives of national parliaments of all member and candidate countries, of the European Parliament, Heads of government and the Commission. The convention's mandate was widened to cover i.a. how to make the Union more efficient and more democratic and to consider whether a 'constitution' for the EU should be adopted.

It is significant that the Convention adopted the name 'convention for the Future of Europe'. None of the issues were directly related to enlargement, even if media and politicians rarely made that distinction. It can be debated whether the Nice issues, that had just been settled, were at all covered by the convention's mandate. There was a very general wording about greater democratic legitimacy and transparency, but none of the 57 specific questions in the document concerned the Nice issues, and it was only halfway through the Convention that it became clear that they would be on the agenda.

Since these issues are extremely sensitive there has always been little open analysis of them at the IGCs, and consequently delegations have not always been fully aware of the effects of the options. At the Convention, which was otherwise a step forward in transparency, there was rather less analysis. The Presidium did not appoint a special working group for this issue, as for other many matters, and it was only discussed in a few plenary debates at the end.

Eventually the Convention's Presidium proposed to replace the Nice rules, and the traditional system of weighted votes, with a double majority consisting of a majority of the member states, representing 60% of the total population of the EU. The proposal was controversial already in the Convention. This was included in the draft Constitutional Treaty

International workshop
"Distribution of power and voting procedures in the European Union"
Natolin European Centre, Warsaw
October 12-13, 2007

which was proposed by the Convention. Some members made it clear that they did not support the proposal on this point.

The Convention was followed by a new IGC that started in October 2003. The large member states basically supported the convention model. Spain and Poland initially argued for the Nice rules, or at least a negotiated compromise based on Nice. A number of the medium-sized and small countries had a preference for the Nice rules, while others accepted the double majority, but argued for 'parity', ie, the same percentage for the two criteria. After an unsuccessful summit in December 2003, and a new government in Spain, the tide turned in favour of a modification of the double majority. The final deal in June 2004 was a double majority from 2009, with increases in the percentages for qualified majority and some additional checks. The ratification procedure stranded after the negative outcome of the referendums in France and the Netherlands, and a 'silent no' in the UK and maybe some other countries.

Eventually the attempts to save at least parts of the Constitutional treaty converged on amendments of the present treaties, without the semi-federalist symbolism of the Constitutional Treaty. The main driving force in these attempts (apart from the huge loss of face) was undoubtedly the institutional issues, and in particular the voting rules. The German Presidency in the spring 2007 staked its prestige on solving all the political issues before a new IGC, so that the latter would only be a technical exercise. This was basically achieved at the European Council in June 2007. The main opposition to the proposal came from Poland, with the support of the Czech Republic, who proposed voting rules based on the square root. What they achieved was that the double majority was postponed until 2014, and that member states could also request the

International workshop
"Distribution of power and voting procedures in the European Union"
Natolin European Centre, Warsaw
October 12-13, 2007

application of (i.e. block in accordance with) the Nice rules until March 2017. There was also a modification of the 'Ioannina' mechanism.

THE NICE RULES ARE NOT ALL THAT COMPLICATED

The Nice/Copenhagen rules consist of three elements:

(1) Weighted votes with degressive proportionality, as in the old system. The weighting was changed moderately in favour of the large countries. The threshold for a qualified majority was increased from the traditional level of about 71% to 73.91% in EU27.

(2) A majority of member states. The old provision – that 2/3 of member states are needed when the Council is not acting on a Commission proposal – was maintained.

(3) A possibility for member states to demand that member states representing 62% of the population stand behind the decision.

For all practical purposes the only important factors are the weighted votes and the 62% population criterion. The population criterion only has one effect. It gives Germany substantially greater blocking potential than its 29 votes, and thereby greater weight than the other large countries (without being so visible). Germany alone has almost half a blocking minority. This blocking potential can only be used in coalitions with other large countries. In this way three of the large states can maintain a blocking majority in EU27 provided that Germany is among them. This was the declared objective of at least the UK. Even if this does not give the whole picture of the larger states' interest, and it is highly unlikely that these states would be alone in opposing a proposal, it is a good yardstick to the effects of different rules. It is

International workshop
"Distribution of power and voting procedures in the European Union"
Natolin European Centre, Warsaw
October 12-13, 2007

interesting to note that the models that have been accepted, have all satisfied this condition. The population criterion is only relevant when Germany is against a proposal, and can be disregarded in all other situations in EU27. The reason why this criterion was introduced was in all likelihood to accommodate German demands for a greater weight. It was not to guarantee that decisions are back by a certain share of the total population. The weighted votes alone guaranteed at least 58.4%.

The majority of member states might be symbolically important, because it would otherwise be theoretically possible, from EU25, to reach a qualified majority against a majority of member states. But in practice it could only decide an issue, if the majority of member states are standing against a group that already commands a qualified majority of votes, and 62% of the population. Simple simulations show that this can only happen if almost all the large states are standing against almost all the small⁵, i.e. if the minority is made up of all states in the upper half except, on the margin, one medium-sized. Such highly polarised situations have hardly ever occurred.

A point in the Nice rules that has been heavily criticised is that there is hardly any difference in votes, 27 against 29, between Spain/Poland and Germany, with twice the population. The population criterion largely compensates Germany for this. If it is translated into votes with the same effect, comparing apples and pears, the proportions between Germany's and Spain's blocking potentials are more like 41 to 27, which is not unreasonable in a degressive system. On the other hand, the disproportion between the weight of the UK, France and Italy, with a population up to 50% greater, and that of Spain and Poland, is evident. The population

International workshop
"Distribution of power and voting procedures in the European Union"
Natolin European Centre, Warsaw
October 12-13, 2007

criterion is only of marginal use to the former. And Spain's and Poland's weight is not unreasonable compared to that of the medium-sized and small countries.

THE DOUBLE MAJORITY IS NOT REALLY DOUBLE

The convention model is often referred to as 'the double majority'. However, it is just one version of a double majority i.e. of population and member states, which was not discussed much in the Amsterdam and Nice IGCs. At that time, Germany and several other countries were pursuing a different version, with weighted votes and population, which was basically integrated into the Nice deal.

The double majority abolishes the weighted votes, (1) above, and the over-representation of smaller countries. Only the two other criteria remain: (2) a majority of member states in the convention proposal, and in the IGC deal 55%, but at least 15 states, which is automatically reached in EU27; and, finally, (3) a requirement that it represents 60% of the population in the convention proposal, and 65% in the IGC deal. Unlike Nice, the population criterion is now a compulsory element.⁶

Again, the majority, or blocking minority, of member states will hardly ever play a role, at least with thresholds at this level. It can only do that if the group can outweigh member states with 65% of the population. Since six states account for 70% of the population, this is only possible in highly polarised situations that hardly ever occur. Simulations will show that it could normally only happen if the majority is standing against a group including three or all four of the large states. (The theoretical minimum is two). In practice, only criterion (3) remains. The weight of member states is directly proportional to the size of their population. Therefore it is a mistake

International workshop
"Distribution of power and voting procedures in the European Union"
Natołin European Centre, Warsaw
October 12-13, 2007

to believe, as many authors do, that the majority of member states offers some protection for in particular the smallest countries.

In the 2004 IGC deal there were a few additions that marred the original beauty of the formula. In the cases where the Council is not acting on a Commission proposal, the threshold is raised to 72% of member states (which means that, theoretically, a minority of eight states representing 3% of the population could block a decision, against 5% under Nice.) There is also a 'double key' saying that at least four states are required for a blocking minority. This means that the large states in principle gave up the blocking minority of three of them, although any country, however small, would do as a nominal fourth partner.

On the other hand, a special check for 'almost blocking' minorities, reminiscent of the 'Ioannina compromise' was introduced. This compromise was made in 1994 on the eve of the EFTA-enlargement. The gist of it is that member states that constituted a blocking minority before the enlargement, but not after the accession of the new states, would still have a kind of 'suspensive veto'. The compromise was linked to the pre-Nice voting rules, and has thus ceased with the Nice rules. It was re-introduced, for an undefined period, in the Constitutional Treaty and made permanent in the Reform Treaty. If countries representing 3/4 of a blocking minority in the Constitutional Treaty, or 55% of a double majority in the Reform Treaty (i.e. 19,25% of the population or 8 member states), oppose a decision, the presidency shall try to find a satisfactory solution within 'a reasonable time'. (The period can be ended by a single majority decision).

The Ioannina formula hardly played a role in decision-making pre-Nice. It remains to be seen whether it will with the new treaty. If it does, it might serve the same purpose as a blocking minority, to make other countries come around with concessions. In that case, it would

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"Distribution of power and voting procedures in the European Union"
Natalin European Centre, Warsaw
October 12-13, 2007

give small minorities greater possibilities to block – although temporarily - than the Nice rules. It would then e.g. be possible for two (nominally three) member states, like the UK and Poland, to defer a decision, and it would be a way of increasing the threshold for qualified majority, without appearing to do so.

WHY THE BALANCE CHANGES WEIGHTS

The changes in weights are simple and straightforward. The weighted votes in the Nice Treaty disappear, and are replaced by the member states' share of the population. There is no longer any degressivity. The overall effects can be seen in Table 1. Member states' gains and losses in weight, compared with Nice, are the inverted value of their former over- or under-representation. The combined weight of the four largest states increases from 34% of the votes to 54% of the population. The weight of Germany doubles and that of most large countries increases by around 40%-50%. The weights of Spain and Poland only change marginally, but with the disappearance of degressivity, the gap to the large countries increases even beyond the pre-Nice situation, which is a blow to their old ambition of being considered members of that club. The weight of the medium-sized countries is reduced to around 60%, and that of the smallest member states much more.

The combined effect is that the weight of the large states increases on average around 2.5 times against the others. For example, the proportions between Belgium and France change from around 1:2.4 to almost 1:6. Medium-sized countries gain in relation to even smaller ones, etc. All in all, the double majority eliminates the effects of the last enlargements and restores the large countries' shares to around what they were in EU12. (One caveat is necessary. If the

International workshop
"Distribution of power and voting procedures in the European Union"
 Natolin European Centre, Warsaw
 October 12-13, 2007

population criterion becomes the dominating feature under the Nice rules, it could be argued that the balance hardly changes at all.)

Table 1	Changes in voting weight and blocking potential									
EU27	Weight						Share of BM %			
	Populat.	%	Votes Nice	%	"over -rep." in DM	Change in DM	Nice by		DM	Change
							Vote	Pop.	Pop.	
QMV			255	73.91				62	65	
BM			91	26.38				38	35	
Germany	82,438	16.7	29	8.41	0.50	2.0	31.9	44.0	47.8	1.09
France	62,886	12.8	29	8.41	0.66	1.52	31.9	33.6	36.5	1.09
UK	60,422	12.3	29	8.41	0.69	1.46	31.9	32.3	35.0	1.09
Italy	58,752	11.9	29	8.41	0.71	1.42	31.9	31.4	34.1	1.07
Spain	43,758	8.9	27	7.83	0.88	1.13	29.7	23.4	25.4	0.85
Poland	38,157	7.7	27	7.83	1.01	0.99	29.7	20.4	22.1	0.75
Romania	21,610	4.4	14	4.06	0.93	1.08	15.4	11.5	12.5	0.81
Netherl.	16,334	3.3	13	3.77	1.14	0.88	14.3	8.7	9.5	0.66
Greece	11,125	2.3	12	3.48	1.54	0.65	13.2	5.9	6.4	0.49
Portugal	10,570	2.1	12	3.48	1.62	0.62	13.2	5.6	6.1	0.46
Belgium	10,511	2.1	12	3.48	1.63	0.61	13.2	5.6	6.1	0.46
Czech R.	10,251	2.1	12	3.48	1.67	0.60	13.2	5.5	5.9	0.45

International workshop
"Distribution of power and voting procedures in the European Union"
 Natolin European Centre, Warsaw
 October 12-13, 2007

Hungary	10,077	2.0	12	3.48	1.70	0.59	13.2	5.4	5.8	0.44
Sweden	9,048	1.8	10	2.90	1.58	0.63	11.0	4.8	5.2	0.48
Austria	8,266	1.7	10	2.90	1.73	0.58	11.0	4.4	4.8	0.44
Bulgaria	7,719	1.6	10	2.90	1.85	0.54	11.0	4.1	4.5	0.41
Denmark	5,428	1.1	7	2.03	1.84	0.54	7.7	2.9	3.1	0.41
Slovakia	5,389	1.1	7	2.03	1.86	0.54	7.7	2.9	3.1	0.41
Finland	5,256	1.1	7	2.03	1.90	0.53	7.7	2.8	3.0	0.40
Ireland	4,209	0.9	7	2.03	2.38	0.42	7.7	2.2	2.4	0.32
Lithuania	3,403	0.7	7	2.03	2.94	0.34	7.7	1.8	2.0	0.26
Latvia	2,295	0.5	4	1.16	2.49	0.40	4.4	1.2	1.3	0.30
Slovenia	2,003	0.4	4	1.16	2.85	0.35	4.4	1.1	1.2	0.26
Estonia	1,345	0.3	4	1.16	4.25	0.24	4.4	0.7	0.8	0.18
Cyprus	0,766	0.2	4	1.16	7.46	0.13	4.4	0.4	0.4	0.10
Luxemb.	0,459	0.1	4	1.16	12.5	0.08	4.4	0.2	0.3	0.06
Malta	0,404	0.1	3	0.87	10.6	0.09	3.3	0.2	0.2	0.07
	492,881		345							

BLOCKING MINORITIES

The blocking potential is also affected by the lowered threshold and the need for greater blocking minorities. The situation does not change dramatically for the large states. Their strongest card was the population criterion already under Nice, and the threshold for this is even raised slightly in the Reform Treaty.

International workshop
"Distribution of power and voting procedures in the European Union"
Natalin European Centre, Warsaw
October 12-13, 2007

By comparison, the commission proposal in the Nice negotiations of a 'double single majority' with 50% of states and of the population, which was unearthed at the convention, would have reduced the absolute blocking potential of the large states (and for all other states in the same proportion). In absolute terms each of the large states, with the exception of Germany, would even have had slightly less blocking potential than if the original pre-Nice system had been continued, and three large states would no longer have a blocking minority in EU27. The limit for this is around 59%. This is, in all likelihood, why the Convention proposed 60%.

However, the balance of power is relatively precarious: the blocking potential of three large member states could be maintained also after an enlargement with the remaining countries in Western Europe and the Balkans, or with Turkey, but not both (Bobay, 2004).

The medium-sized and small countries are in a different situation. Not only do they lose in weight, but the relatively high threshold for the weighted votes, which was there strongest card, also disappears and the necessary blocking minority increases. Therefore they lose another 25% of their blocking potential. Spain's and Poland's loss in blocking potential, despite a slight increase in weight, is entirely an effect of this. The combined effect of the eliminated weighting and the lowering of the threshold is that the medium-sized states' blocking potential falls to less than half compared with Nice, and to even less for the smallest member states. Luxembourg loses 94% of its potential.

MAJORITIES

In building majorities, the lowering of the threshold plays the other way and increases each state's voting potential. Germany's share more than doubles and that of the other large states

International workshop
"Distribution of power and voting procedures in the European Union"
Natolin European Centre, Warsaw
October 12-13, 2007

increases by about two-thirds. A few of the countries that would lose in blocking potential now appear as marginal winners (Spain, Poland and Romania). And it mitigates the loss in weight of the other member states.

One aspect of the double majority is that it might shift the focus of member states somewhat, from the possibilities of blocking decisions to the relatively increased possibilities of reaching a majority. Six countries are sufficient to reach 65% of the population, and then all that is needed is nine more states, out of 21 possible. Any member states would do; the votes of medium-sized states would not be so essential any more.

THRESHOLDS DO NOT CHANGE THE BALANCE

Under the double majority changes in the threshold for population only increase or decrease the blocking potential of all member states by the same percentage. A raised threshold for states only has marginal effects. Furthermore, if the population threshold is raised, the majority of member states can only be decisive if there is an even greater polarisation between large and small countries.

However, the absolute level of the threshold determines whether some coalitions can block or not. This is largely what the negotiations in the IGC 2003-2004 were about. A higher threshold increases the blocking potential for a given coalition. But it also increases the potential of other coalitions with opposite interests.

The blocking potential through the weighted votes cannot be directly translated into the population criterion. To take Spain as an example, in some cases its potential allies are large states, eg, concerning agriculture or fisheries, and then only a low threshold is needed. In other

International workshop
"Distribution of power and voting procedures in the European Union"
Natalin European Centre, Warsaw
October 12-13, 2007

cases the natural allies are among smaller countries, for example countries receiving cohesion funds, and then a very high threshold would be necessary. At 65% Spain could block with two large countries and one medium sized country, at 67% with two large and Lithuania as under the Nice rules, and at 68% with Malta.

WERE ANY OTHER OPTIONS POSSIBLE?

The large countries were resolved to get the double majority through in the IGC 2007. Germany was equally intent on gaining more weight than other large states, and probably saw the double majority as the only way. There was no wish to open a real discussion of this issue, and the Polish proposals were received coldly. However, a few other models have figured in the debate. Some of them could once have provided simple and balanced solutions, if the large countries had i.a. accepted a differentiation between Germany and the others.

MORE VOTES TO LARGE STATES

Technically it is quite easy to find a compromise, under Nice, by adding some more votes to the large states. The population criterion then becomes superfluous and could be abolished. In the 2003-4 IGC the Italian Presidency floated the idea of keeping the Nice rules with four more votes to Germany. This would have been enough to maintain a blocking minority of three large in EU27, and at the same time ensure that a majority of the votes represents at least 62% of the population. It would have been possible to go further along this road. Twelve more votes to Germany, and possibly two and one more to France and the UK would correspond to their blocking potential through the population criterion under Nice. This would, however, create

International workshop
"Distribution of power and voting procedures in the European Union"
Nacolin European Centre, Warsaw
October 12-13, 2007

dramatic discrepancies between the large states, which could be avoided with a more degressive allocation.

WHY THE SQUARE ROOT WOULDN'T FLY

Weight in proportion to the square root of the population has been suggested by several authors over the last 15 years. The realism of Penrose's theories has already been discussed. The square root would, however, ensure consistent and equal degressivity throughout the system. In the Nice negotiations the Swedish delegation made a proposal based on the square root. This was not based on Penrose's theories, but was only meant as a practical compromise (Moberg, 2002). At some point many delegations were prepared to accept it, whether for true love or tactical reasons. The model was not accepted at Nice, probably because some of the large member states were hoping to get more, and because of their qualms about a greater weight for Germany. Eventually the large states got a bit more, in particular through the population criterion. (The irony is that, in weighted votes, they got slightly less combined). The Nice allocation is, actually, quite close to the square root in absolute numbers. Poland got four votes that Germany would have had, if the Nice votes had been distributed by the square root, while Spain got three from Romania. Otherwise the difference is just about plus/minus one vote for a handful of countries.

The square root formula has been overtaken by events. Słomczynski and Życzkowski. ('the Jagiellonian model'), the signatories of the Open Letter, Plechanovová and lately the Polish government, have all suggested models based on the square root, with a substantially lower threshold, in the latter case 62%. This makes the proposals even less realistic, because it would decrease the blocking potential of the large countries dramatically. With the square root and the

International workshop
"Distribution of power and voting procedures in the European Union"
Natołin European Centre, Warsaw
October 12-13, 2007

Nice threshold, three large states, including Germany, would have 99% of a blocking minority, with the proposed threshold just 67%. The prospects might be greater if, instead, the threshold had been raised to 75% or more.

BUT THE CURVE COULD BE MADE STEEPER

It is also possible to make the curve more proportional to population than the square root, but still keep it strictly degressive. The 'H-method', as it will be called here, after Anders Hagelberg who pointed out this possibility to the author, gives a whole a range of options at different levels of proportionality (the method used by Felderer *et al.* is basically the same idea). In principle the only points to negotiate would then be the slope of the curve and the threshold.

The mathematical formula is quite simple. The square root can be defined as (weight in proportion to) the population raised to the power of 0.5. In principle any figure for power can be substituted. In popular terms one could say that the H-value (multiplied by 100) represents a percentage of proportionality. 0% is the same weight for all member states, 50% the square root, 59% closest to the maximum blocking potential of all countries under Nice, and 100% is full proportionality, as in the double majority.

A few examples, with one member state per cluster, and the 345 Nice votes redistributed with different slopes, are given in Table 2. Levels of 60% or more would automatically ensure that all decisions are backed by member states representing at least 65% of the population (with the Nice thresholds), and they would largely maintain the Nice clusters. At about 70 the large states would have about the same degree of under-representation they had in the original EEC-6.

International workshop
"Distribution of power and voting procedures in the European Union"
 Natolin European Centre, Warsaw
 October 12-13, 2007

This method could also have been used to obtain a consistent allocation of seats in the Parliament, which according to the Reform Treaty is to be 'degressive' in an undefined way.

Table 2	Votes in Nice and with equal degressivity							
EU 27	Votes							
	Nice	345 votes redistributed at different degrees of full proportionality						
		50% =sqrt	60%	65	70%	80%	90%	100%= DM
Germany	29	33	38	40	42	48	53	58
France	29	29	32	34	35	38	41	44
Spain	27	24	26	26	27	29	30	31
Romania	14	17	17	17	17	16	16	15
Netherl.	13	15	14	14	14	13	12	11
Belgium	12	12	11	10	10	9	8	7
Sweden	10	11	10	10	9	8	7	6
Denmark	7	8	7	7	6	5	5	4
Ireland	7	7	6	6	5	4	4	3
Latvia	4	5	4	4	3	3	2	2
Luxemb.	4	2	2	1	1	1	0	0

International workshop
"Distribution of power and voting procedures in the European Union"
Natolin European Centre, Warsaw
October 12-13, 2007

'DEPOPULATION'

In the prelude to the summit in June 2007, and with the Polish demands for a radically different model, some actors were reportedly toying with the idea of putting a 'ceiling' to the population of Germany, or possibly all the large states. The population would then not be taken into account, or only partially, above a certain level. This would narrow the gap between the large countries and Spain/Poland and could re-introduce some amount of degressivity, in a crude way. In fact it would be possible to levy a substantial share of the population without jeopardising at least the blocking potential they have under Nice.

THE EASIEST WAY: STATES POPULATION IN THE SAME BAG.
'OVERPOPULATION'

Another simple way would be to give a fixed number of votes to all member states irrespective of size, and then some more votes in proportion to their population (Moberg, 1998). The sum would be a member state's weight. This would actually do what the double majority claims to do, ie, take both member states and population into account at the same time. The balance between member states would depend on the proportions between the total number of 'fixed' and 'proportional' votes. Medium-sized states would lose in practically all cases, but less so than in the double majority. Unlike the state leg in the double majority the fixed number would give small states some real weight. The easiest way to achieve this is just to add X fictive millions to the population of each country in the double majority.

CONCLUSIONS

The main driving force behind the voting rules proposed by the Convention was the the large member states' wish to maintain their position, and in particular blocking power, after the enlargements.

Those member states that initially opposed the double majority had different agendas. The main objective of the more vociferous, Spain and Poland, was to remain 'almost' one of the large countries, and to maintain their blocking potential. The medium-sized and small countries, that had more to lose, had a lower profile. Most of these did not seriously pursue the Nice model, but eventually accepted the double majority, and some even pursued it actively. It may be that some did not realise the effects of the double majority. It might have been easier to present to domestic opinion, as losses of weight and differences to neighbouring states are not so evident. Furthermore, many sincerely believed in the allegations of 'ineffectiveness' in the Nice system. Some may have found other issues more important. Finally, no country wanted to be the one that torpedoed the Treaties.

The two main voting rule concepts in the IGC 2003-4 were in fact incompatible, as Nice was based on degressivity, and the double majority was not. Once the choice of a double majority of states and population had been made, a genuine compromise was no longer possible. A compromise on the *degree* of degressivity could only be found in a different framework. In the double majority the balance of power between member states is determined by the relative size of their population alone. The 'state' leg is hardly ever decisive. For all practical purposes the double majority is not double.

International workshop
"Distribution of power and voting procedures in the European Union"
Natolin European Centre, Warsaw
October 12-13, 2007

This entails a substantial shift in the balance. The long discussion about the threshold for states and population was basically a battle with windmills. The percentage of the population does not change the proportions between member states.

However, the absolute percentage is critical for some coalitions' potential to block. The negotiations at the 2003-2004 IGC focused on finding a solution that would be acceptable to Spain. The Spanish objective to maintain its blocking potential was largely achieved in the end, through an increase of the threshold for population, and possibly the provision that four states were necessary to form a blocking minority.

The motives for the Polish resistance to the double majority up to the summit in June 2007 were probably similar. What it achieved was a postponement of the double majority and the lowering of the threshold for the 'Ioannina mechanism'. Time will show whether the latter will have any practical effect. If it does, it would be equivalent to an hidden increase of the threshold for qualified majority, even beyond that in the much criticised Nice treaty.

Even if the double majority enters into force it is an open question whether it would eventually stand the test of further enlargements. With the double majority there is no need to modify the rules in future enlargements with new members, or in view of the dramatic demographic changes that are to be expected.

An accession of Turkey around 2015 would, according to population forecasts, mean that it would soon become the largest member state and the gap with other large states would continue to grow after that. This would change the balance of power with any set of voting rules, but the effects would inevitably be greatest under the double majority. The question is whether

International workshop
"Distribution of power and voting procedures in the European Union"
Natolin European Centre, Warsaw
October 12-13, 2007

the present member states are prepared to accept this, or whether there would be attempts to move back to a system with some degressivity.

¹ This is updated version of a working paper previously published on the website of Real Instituto Elcano, Madrid, N°290, 31.5.2007. The views expressed in this paper are the author's alone, and not those of his government. The author would like thank a great many colleagues and researchers for useful advice and interesting discussions, in particular Madeleine Hosli, Moshé Machover, Iain Paterson, Max Albert, Helen Wallace, Wojciech Słomczyński, Karel Žyczkowski, Annick Laruelle and Jan-Erik Lane.

² In the paper this refers to the four largest: Germany to Italy. Spain and Poland are a group to themselves. The medium-sized are Netherlands to Bulgaria. Small refers to the rest. Cf table 1.

³ Some interesting recent examples are Zimmer *et al.* and Hayes-Renshaw *et al.*

⁴ According to voting power studies, Luxembourg could never tip the balance in a decision in this period.

⁵ These and other calculations can easily be made with the author's calculation tool, which can be downloaded from the following link [VOTEdemo07a.xls](#)

<http://www.realinstitutoelcano.org/documentos/Moberg052407WP/VOTEdemo07a.xls>). The use manual can be downloaded at: [Moberg052407WPUserManual.DOC](#)

(<http://www.realinstitutoelcano.org/documentos/Moberg052407WP/Moberg052407WPUserManual.DOC>).

⁶ The continued discussion will be based on the thresholds in the Reform Treaty, EU27, and the population figures the Council has approved for 2007.

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Natalin European Centre, Warsaw
October 12-13, 2007

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