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**Is the double majority really double? The second
round in the debate of the voting rules in the EU
Constitutional Treaty**

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Summary

The voting rules in the Council of the EU have been under constant negotiation over the past 15 years, in the light of successive enlargements and ending with the Nice Treaty and the Constitutional Treaty. The latter replaced the traditional system of weighted votes, with a double majority of 55% of member states, representing 65% of the population. The discussion should be seen mainly in the perspective of the power balance between large and small states in the enlarged Union. This paper aims to explain the effects of the double majority with cruder but more realistic methods than voting power calculations, and by putting them into their political context. It shows that the heavy criticism of the Nice rules for their complexity and ineffectiveness is largely exaggerated. In the double majority under the Constitutional Treaty the balance of power between member states would in practice be determined entirely by the size of their populations. The state leg would hardly ever play a role, irrespective of the thresholds for population or states. The result is a substantial change in the balance between member states. This was the most controversial issue in the negotiations about the Constitutional Treaty, but there has been little discussion about this after it was signed. Now that the treaties are to be renegotiated the matter arises again, and Poland and possibly the Czech Republic will make proposals for a different model. Therefore, the paper also examines a few other options, if there should be a substantial discussion of the matter, and the prospects that they could bring about a compromise.

The Background: Enlargement, Balance of Power and ‘Legitimacy’

Since the establishment of the European Economic Community (EEC) in 1958, decisions by qualified majority (QMV) have been based on a system with weighted votes with over-representation of medium-sized and small states (‘degressive proportionality’). The system has been discussed intensely, together with other institutional issues, at the last enlargements and at Inter-Governmental Conferences (IGC) on treaty changes ending at Amsterdam (1997) and Nice (2000). In the perspective 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 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 EU-27. 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

¹ 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 Max Albert, Madeleine Hosli, Jan-Erik Lane, Annick Laruelle, Moshé Machover, Iain Paterson, Wojciech Słomczyński and Helen Wallace.

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.

for greater weight have often been ‘democratic legitimacy’ or ‘efficient institutions’. However, the share of each of the smaller countries has also fallen, the over-representation of all smaller countries has also decreased by the same percentage, 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, some of them emotional. 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 importantly, the large countries had been hoping to get more. Some medium-sized and small member states might have hoped to get away without any substantial re-weighting, despite 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.

Eventually the issue came up again, in the context of a complete re-shaping of the treaties at the Convention on the future of Europe that ended in 2003 and an IGC that ended in 2004, and a Treaty establishing a Constitution for Europe was adopted. The ratification procedure has been partly suspended after the negative outcome of the referendums in France and the Netherlands, and a ‘silent no’ in the UK and maybe some other countries. The German Presidency is now trying to restart negotiations on a new treaty. The institutional issues, and in particular the voting rules, will in all likelihood become the driving force in these negotiations. The other parts of the Constitutional Treaty can largely be seen as a recycling of the old treaties.

The Paper’s Purpose and Methods

The purpose of this paper is to study the voting rules under the Constitutional Treaty, and its 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 in the last IGC 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 really 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.

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 at least 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 actual 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.

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.

1. Excursus: What is 'Democratic Legitimacy'?

Authors have widely ideologically-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 take their view for granted and seem to be unaware of others. This paper is in no way normative and does not intend to solve the question of what a voting system 'should' look like. This is a political choice. However, as a background, it is necessary to point out these differences and list some of the arguments.

States

One extreme is the traditional and legal view that the EU is a union of states, and that their governments are represented in the Council. The present Treaty and the Constitutional Treaty have practically the same wording: 'The Council shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State...'. The Council is not meant to be like the US Administration, where the entire population is represented at the federal level, over the head of states. However, few have drawn the conclusions of this and suggested that the traditional inter-governmental principle –one state/one vote– should be used in the Council. This 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.

Citizens

The other extreme is the view (held by, eg, Emmanoulidis and Fischer, 2003) that the principle of one man/one vote should also apply in the Union, and that therefore the voting 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 state leg is often forgotten. It should be recalled that this is not always the case in member states, where, for instance, rural regions are sometimes favoured, or in federal systems like the German Bundesrat or the US Senate.

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

Just a Compromise?

A degressive voting system, such as the pre-Nice system, can be considered a compromise that takes account of both states and population at the same time. Moreover, a system where the populations are balanced could somehow 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.

2. 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 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 EU-27 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, as shown by most empirical studies on the matter.

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 fight for their interests as best they can. 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 be taken with the support of a smaller majority than QMV, or even a minority. This can in fact 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 vast majority of proposals have led to decisions. There is hardly any evidence that more

than only a few decisions on QMV issues have ever been blocked indefinitely by a minority. This does not mean that the process does not take up time, cost money and try the nerves of everybody involved. The weights and thresholds determine the bargaining strength of 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 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 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 the financial perspective.

3. Voting Power

This paper does not make use of voting power methods. These methods tend to miss some important aspects. In one respect, effectiveness, they have rather been misleading.

These studies calculate the power given to a country by voting rules, by computing in how many of the millions of theoretically possible coalitions a state can decide the outcome, by casting its vote for or against a proposal. Most studies are based on the prior 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, among other reasons, for not containing any 'political' science, and for disregarding existing knowledge of how member states actually behave.³

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

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

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. Empirically these are relatively stable (Elgström *et al.*, 2001).

Simple, mechanical counting of the number of coalitions, without any weighting, is a blunt instrument for measuring power. The author even 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, among others, 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, combinatorial effects should become less interesting as the number of theoretically possible coalitions increase from just 64 originally, to 135 million in EU27. Effects like the 'dummy' situation Luxembourg⁴ was in 1958-73 should disappear, and voting power should go in roughly the same direction as weights. 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 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 EU-27 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 can be logical and relevant to groups with a small number of actors 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' (or efficiency) 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 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. This approach illustrates that these probability calculations are at least wildly exaggerated. If it is equally probable that member states take any position on each issue, there simply cannot be even a simple majority of population, or states, or votes, in more than about half the cases.

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

However, the author's greatest objection to calculations of 'effectiveness' is that decision making in the EU is considered a game of bingo, 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 game, where probabilities decide the outcome, but a bargaining process, as illustrated above.

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

4. From Nice to Double Majority

The weights of the new member states, according to (actually a declaration attached to) the Nice Treaty were integrated into the Accession Treaty, finalised in Copenhagen in December 2002. They were meant to enter into force on 1 January 2005. Since enlargement with the 10 first new members was to 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 the 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 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 how to simplify the treaties, 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. This was included in the proposal for a Constitutional Treaty. The proposal was controversial already in 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 based on the double majority from 2009, with changes in the percentages for qualified majority and some additional checks.

5. 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 is changed moderately in favour of the large countries. The threshold for a qualified majority is increased to 73.91% in EU-27.
- (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– is 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. So, this criterion is only relevant when Germany is against a proposal, and can be disregarded in all other situations. The reason why this criterion was introduced was in all likelihood to accommodate German demands for a greater weight. It was not to guarantee a certain share of the population. The weighted votes alone guaranteed that states with at least 58.4% of the total population would stand behind decisions.

The majority of member states might be symbolically important, because it would otherwise be theoretically possible, from EU-25, 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 all the small,⁵ ie, if the minority is made up of all states in the upper half except, on the margin, one medium-sized in terms of votes, and two of the large states in terms of population. Such highly polarised situations have probably never 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 criterion is only of marginal

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

use to the former. But Spain's and Poland's weight is not unreasonably great in comparison with the medium-sized and small countries.

6. 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, ie, 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 EU-27; 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. Therefore the majority of member states is not a balancing element, and would not give medium-sized and small states a real say in decision making. In practice, only criterion (3) remains. The weight of member states is directly proportional to the size of their population.

In the 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 (this 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' of 1994 is introduced.⁷ If 3/4 of a blocking minority by number of member states, or by population (in EU-27 26.3% of the population or 10 member states) oppose a decision, the presidency will try to find a satisfactory solution within 'a reasonable time'. This rule is to be in force until at least 2014. In some cases this gives small minorities the same or an even slightly greater possibility to block –although temporarily– than the Nice rules.

7. 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%. Spain and Poland gain marginally, but with the disappearance of degressivity, the gap with 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.

⁶ The continued discussion will be based on the IGC thresholds, the situation in EU-27, and the population figures the Council has approved for 2007.

⁷ For an explanation see Galloway (2002).

The combined effect is that the weight of the large states increases 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 should eliminate the effects of the last enlargements and restore the large countries' shares to around what they were in EU-12.

Table 1 Changes in voting weight and blocking potential

EU-27	Weight						Share of BM %			
	Population	% Votes	% 'over-rep.'		Change in CT	Nice by		CT Change		
			Nice	73.91		Vote	Pop.			
QMV			255	73.91				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
Netherlands	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 Republic	10,251	2.1	12	3.48	1.67	0.60	13.2	5.5	5.9	0.45
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
Luxembourg	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

Under the Nice rules, three of the large states can maintain a blocking majority in EU-27, through the 62% population criterion, provided that Germany is among them. This is a crucial element, and it was the declared objective of at least the UK. Even if it is highly unlikely that these states would be alone in opposing a proposal, and even if it does not give the whole picture of the larger states' interest, it is a good yardstick to the effects of different rules.

Under the double majority the situation does not change dramatically for the large states. In this context their weight was the population already under Nice. They already had a high threshold for their blocking minority, and it was lowered slightly in the IGC deal. The 'double single majority' with 50% of states and of the population, which was proposed by the commission at Nice and 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 EU-27. The limit for this is around 59%. This is in all likelihood why the Convention proposed 60%.

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 also disappears and the necessary blocking minority increases. Therefore they lose another 25% of their blocking potential. Spain's loss in potential, despite the 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.

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 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.

An interesting 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

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 were about. A higher threshold increases the chances. But it also increases the blocking potential of other coalitions with opposite interests.

8. Are There Any Other Options?

The large countries seem to be resolved to get the double majority through. Germany is equally intent on gaining more weight than other large states, and probably sees the double majority as the only way. It remains to be seen whether there will be a wish to open a real discussion of this issue in the coming IGC. If there is, a number of other simple and balanced solutions can be imagined, provided that the large countries can accept a differentiation between Germany and the others.

Why the Square Root Won't Fly

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, however, not based on Penrose's theories, and 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 is another question. 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 most of them got one more individually, but one 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.

Table 2. Votes in Nice and with equal degressivity

EU 27	Votes							
	Nice	345 votes redistributed at different degrees of full proportionality (population figures for 2007)						
		50% = sqrt	60%	65	70%	80%	90%	100% = CT
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
Netherlands	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
Luxembourg	4	2	2	1	1	1	0	0

The square root formula has been overtaken by events. Słomczynski *et al.* ('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 Nice threshold, three large states, including Germany, would have 99% of a blocking minority, with the proposed threshold just 67% of the blocking minority. The prospects might be greater if, instead, the threshold were raised slightly.

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.³

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 simple 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 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.

This method could also be used to obtain a consistent allocation of seats in the Parliament, which according to the Constitutional Treaty is to be 'degressive' in an undefined way. The allocation of seats in the Nice deal is halfway between the square root and full proportionality, with an H-value at about 77.

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. At the summit in December 2003 it was suggested to give four more votes to Germany, which would have been enough to maintain its blocking minority in EU-27, and at the same time ensure that a majority of the votes represents at least 62% of the population. This proposal was turned down. It would be possible to go further along this road. Twelve more votes to Germany, and possibly one more to France and the UK would correspond to their blocking potential through the population criterion under Nice. This would, however, create dramatic discrepancies between these states, which could be avoided with a more degressive allocation, like six to Germany and three each to others, or more.

The Easiest Way: States and Population in the Same Bag

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. Unlike the double majority the fixed number would give some real weight to small states. 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. The easiest way to achieve this is just to add X millions to the population of each country in the double majority. With any figure below 13 million the large states gain compared to Nice. At around 8 million the degree of under-representation they originally had in EEC-6 is restored. At 5 million or more the smallest state would get the same weight as under Nice.

Conclusions

The main driving force behind the voting rules proposed by the Convention was the wish of the large member states 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, which have little to do with reality. Some may have found other issues more important. Finally, no country wanted to be the one that torpedoed the Constitutional Treaty.

The two main voting rule concepts in the IGC 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. The long discussions about the threshold for states and population was basically a battle with windmills. 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 percentage of the population does not change the proportions between member states. This implies a substantial shift in the balance. For all practical purposes the double majority is not double.

However, the absolute percentage is critical for some coalitions' potential to block. The negotiations at the IGC focused on finding a solution that would be acceptable to Spain. Spain's blocking potential through the weighted votes cannot be directly translated into the population criterion. In some cases Spain's potential allies are large states, eg, concerning agriculture or fisheries, and then only a low threshold is needed. In other 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. 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.

Even if the double majority should enter into force, in a revised version of the Constitutional Treaty or some other package, 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. 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 possible 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 the present member states are prepared to accept this, or whether there would be attempts to move back to a system where all the large member states would have, at least in appearance, the same weight.

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