

Not Nice at all revisited:
A preliminary analysis of the Nice Treaty.
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This *European Foundation Working Paper*² presents a brief and preliminary analysis of the Nice Treaty. I have used the latest available documents released over the internet by the European Union – the Provisional Text of the Intergovernmental Conference on Institutional Reform³ as well as the Presidency Conclusions⁴. Unfortunately, this provisional text will still have to “undergo legal and linguistic editing”, according to the authorities in Brussels, a process that could easily take months. Although this means that the wording of the final Treaty will invariably change slightly, I am convinced that a proper analysis of Nice cannot be delayed any further. This working paper follows on from my earlier publication *Not Nice at All*⁵ and I am currently working on a much longer and more comprehensive analysis which the European Foundation is planning to publish in January 2001.

The loss of 39 vetoes

National governments will lose their veto in 39 areas and Qualified Majority Voting (QMV) will be introduced in areas which will include the appointment of Common Foreign and Security Policy special representatives, international Common Foreign Policy and justice and home affairs agreements, representation of the Union at international level in the economic and monetary union sphere, trade in some services and intellectual property, financial and technical co-operation with third countries, various internal rules of procedure, actions for economic and social cohesion outside the Structural Funds, financial assistance to member states in the case of severe economic problems, industrial policy and competitiveness, aspects of environmental policy, social exclusion, anti-discrimination law, aspects of immigration and asylum policy, and several other areas previously covered by unanimity voting. The Preliminary Text also contains proposals relating to the creation of a two-speed Europe – rebranded as “enhanced flexibility”.

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² *European Foundation Working Papers* are a new series launched earlier in 2000 by the Foundation to provide short briefs on topical issues.

³ *Treaty of Nice : Provisional text approved by the Intergovernmental Conference on institutional reform* (OR.fr), 12 December 2000 (14.12) Nice : Conference of the Representatives of the Governments of the Member States.

⁴ Presidency Conclusions : Nice European Council Meeting (SN 400/00), 7, 8 and 9 December 2000. Nice : French Presidency of the EU.

⁵ *Not Nice at All*, William Cash, MP, 2000, European Foundation Working Paper 1. London : European Foundation.

The standard justification for the proposed massive extension of QMV at the Nice IGC is that the veto would “imperil the single market” in an enlarged EU. It seems in reality that the “single market” has come – quite conveniently, from Brussels’ perspective – to be understood as including virtually every aspect of EU business. The removal of barriers to trade and obstacles to the free movement of people has become a convenient excuse to centralise more and more powers at EU level.

A brief glance at the Preliminary Text is enough to make one realise that the Nice Treaty itself will be firmly rooted in the treaties of Maastricht and Amsterdam. This latest Treaty consists primarily in a set of amendments and modifications to existing articles – we are essentially renegotiating the Amsterdam Treaty, albeit in the direction of ever-closer union. The remainder of this *Working Paper* reproduces and comments upon elements of the new Treaty. Changes to the existing treaties are shown in bold and references to the “Council” should be understood to refer to the Council of Ministers.

British influence on the wane

The table below summarises the long-planned changes to the weighting of votes in the Council of Ministers and in the European Parliament.

Member States and Applicants	Weighted Votes in the Council of Ministers [Previous number]	Seats in the European Parliament [Previous number]
Germany	29 [10]	99 [99]
United Kingdom	29 [10]	72 [87]
France	29 [10]	72 [87]
Italy	29 [10]	72 [87]
Spain	27 [8]	50 [64]
Poland	27	50
Romania	14	33
Netherlands	13 [5]	25 [31]
Greece	12 [5]	22 [25]
Czech Republic	12	20
Belgium	12 [5]	22 [25]
Hungary	12	20
Portugal	12 [5]	22 [25]
Sweden	10 [4]	18 [22]
Bulgaria	10	17
Austria	10 [4]	17 [21]
Slovakia	7	13
Denmark	7 [3]	13 [16]
Finland	7 [3]	13 [16]
Ireland	7 [3]	12 [15]
Lithuania	7	12
Latvia	4	8
Slovenia	4	7
Estonia	4	6
Cyprus	4	6
Luxembourg	4 [2]	6 [6]
Malta	3	5

TOTAL	345 [87]	732 [626]
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It is not true that Britain's influence has somehow been increased in the European Parliament and the Council, as the British government has repeatedly claimed. Basic arithmetic is sufficient to demonstrate the absurdity of this claim. In the Council of Ministers, Britain's share of the votes has fallen from 10/87 – equivalent to 11.5% of the votes – to 29/345, equivalent to 8.4% of the votes. In the European Parliament, Britain's share has declined from 87/626 – equivalent to 13.9% of the votes – to 74/732, which comes to a paltry 10.1%. Furthermore, Britain will lose a Commissioner. (Each member state will appoint one commissioner until there are the number of members reaches 27. After that, some countries will have to take it in turns to have a commissioner.)

Germany's elite increases its control

A new voting system was introduced at Nice which will especially benefit the German government. 'Double majority' voting requires two conditions to be met for a decision to be adopted. *First*, a proposal must garner 258/345 or 74.78% of the votes in the Council of Ministers. *Second*, the proposal must be backed by countries representing 62% of the EU's population. Thanks to this second clause, Germany and two other large countries – such as France or Italy – will be able to block anything they do not like, whereas Britain will need more than two other countries to vote with her to oppose undesirable decisions. The blocking minority is 88 votes in the Council, which means that Germany would not have been able to block decisions so easily in the absence of the population requirement. As the *European Foundation Intelligence Digest* reported recently 'the two key initiatives which Nice took – to draw up a European constitution in 2004 and to have the hard core (known as 'enhanced cooperation') of states around Germany – mean that, in the words of one German diplomat, 'the direction of European policy for the coming years will be based on two ideas which were originally very German.' On the sensitive issue of double majority, which allows Germany and Germany alone to block EU policies, Mr Schroder said sarcastically 'One could speak of double majority – but one does not have to.' Consequently, many EU observers are calling Schroder the 'victor of Nice'. This success was, says one paper, due to German tactic of calling for things instead of standing against them. The French, British and Spanish were all determined to defend positions: the Germans, by contrast, stood for change. This allowed the other states to be cornered, because their positions seemed self interested, while the Germans could stand quietly by as the positions of the others were demolished. [*Die Welt*, 12th December 2000]⁶

⁶ *European Foundation Intelligence Digest*, Issue Number 109, 1st December – 14th December 2000. London: European Foundation.

Defence issues

When the Progress Report on the Nice Treaty was released in November 2000, it seemed at the time that a strategic decision had been taken by the French Presidency to leave security matters to the next Treaty. Although this remains broadly the case, there have been some unexpected inclusions in the final Treaty. Current moves towards a “rapid reaction force” following the summits at Feira, St Malo and Cologne do not require any treaty modifications – Maastricht and Amsterdam provide a perfectly adequate treaty base. The Declaration annexed to the Final Act of the Intergovernmental Conference, concerning the European security and defence policy, makes this abundantly clear.

In accordance with the texts approved by the European Council in Nice concerning the European security and defence policy (Presidency report, plus annexes), the objective for the European Union is to become operational quickly. A decision to that end will be taken by the European Council as soon as possible in 2001 and no later than at its meeting in Laeeken/Brussels, on the basis of the existing Treaty provisions. Consequently, the ratification of the revised Treaty does not constitute a precondition. [Declaration attached to Article 25 TEU in the Provisional Text]

As I have repeatedly argued, the issue of the “rapid reaction force” is entirely separate from that of Nice and the Council has now officially confirmed this. Nevertheless, there is at least one important change. The modified Article 23 of the TEU now provides for the extension of Qualified Majority Voting “when appointing a special representative” (currently Javier Solana) and also when appointing his deputy. This will further reduce the Reaction Force’s accountability and reinforce its autonomy.

“Eurojust”: towards an EU police force

One particularly worrying aspect of the Treaty is the further moves it details towards the creation of an EU police force. It is widely recognised that the core functions of a state include defence and law and order. As the European Union gradually turns itself into a fully-fledged state, it is quite naturally seeking to take on these functions and squeeze out member states. This is what the Treaty has to say about the new “European Judicial Cooperation Unit”, also known – somewhat strangely – as “Eurojust”.

The Council shall promote cooperation through Eurojust by:

- a) **enabling Eurojust to facilitate proper coordination between Member States’ national prosecuting authorities;**
- b) **promoting support by Eurojust for criminal investigations in cases of serious cross-border crime, particularly organised crime, taking account, in particular, of analyses carried out by Europol;**
- c) **facilitating close cooperation between Eurojust and the European Judicial Network, in particular, in order to facilitate the execution of letters rogatory and extradition requests.**

The Treaty makes it quite clear that there will be “proper coordination” (euro speak for harmonisation) between different judicial and police systems. It also states quite clearly that there will be a new body which will be “detached from

each member state”. Once again, much of the treaty base already exists and dates back to Amsterdam. A declaration included in the Final Act of the Conference explains:

The decision to set up a unit composed of national prosecutors and magistrates (or police officers of equivalent competence) detached from each Member State (Eurojust), having the task of facilitating proper coordination between national prosecuting authorities and of supporting criminal investigations in organised crime cases was provided for in the Presidency conclusions of the European Council in Tampere on 15 and 16 October 1999.

EU-wide Political Parties

This is what the Provisional Text is proposing for Article 191:

Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union.

The Council, acting in accordance with the procedure referred to in article 251, shall lay down the regulations governing political parties at European level and in particular the rules regarding their funding.

The following caveats have been inserted (they were not included in the earlier Draft Treaty)

The Conference recalls that the provisions of Article 191 do not imply any transfer of competence to the European Community and do not affect the application of the relevant national constitutional rules.

The funding for political parties at European level provided out of the community budget may not be used to fund, either directly or indirectly, political parties at national level.

The provisions on the funding for political parties shall apply on the same basis to all the political forces represented in the European Parliament.

Despite the reassurances provided in the three paragraphs above, this article appears to mean that there will be some restrictions on how political parties will be funded, potentially jeopardising free speech. The article (“regulations governing political parties”) might also conceivably be interpreted as giving the Council the powers to ban political parties it dislikes. Furthermore, the Treaty fails to define what is really meant by “political parties at European level”. Is the Conservative Party “a European” party because it fields candidates at European elections? Why bother to make these additions to the Treaties if “the provisions of [the new] Article 191 do not imply any transfer of competence to the European Community”? Although it is intended to reassure those concerned with democratic accountability, the section which explains how “the funding for political parties at European level provided out of the community budget may not be used to fund, either directly or indirectly, political parties at national level” may potentially make matters worse. The section implicitly reinforces call for pan-EU parties that are totally separate from national parties – there would be a Europe wide Christian Democratic party funded by the EU

and the UK Conservatives would be potentially cut out of the European Parliament altogether.

Towards Cabinet-style government for Europe

The President of the Commission – currently Italy’s Romano Prodi – has gained extensive new powers over its Commissioners. The entire article deserves to be reproduced in full.

Organising the Commission and increasing its president’s powers.

1. The Commission shall work under the political guidance of its President, who **shall decide on its internal organisation in order to ensure that it acts consistently, efficiently and on the basis of collective responsibility.**
2. **The responsibilities incumbent upon the Commission shall be structured and allocated among its Members by its President. The President may reshuffle the allocation of those responsibilities during the Commission’s term of office. The Members of the Commission shall carry out the duties devolved upon them by the President under his authority.**
3. **After obtaining the collective approval of the Commission, the President shall appoint Vice-Presidents from among its Members.**
4. **A Member of the Commission shall resign if the President so requests, after obtaining the collective approval of the Commission.** [Article 217 TEC]

This article gives the President the right to choose what job each commissioner will do – just like Tony Blair, he will be allowed to reshuffle his cabinet – although Romano Prodi will not be able to fire Commissioners altogether without the “collective approval” of the Commission. It is not clear at this stage what decision-making mechanism is meant by “collective approval” (unanimity? plurality?).

Furthermore, the President of the Commission will now be elected by Qualified Majority Voting. A member state will no longer have the right to veto an appointment it dislikes (as John Major once did).

Enhanced Cooperation

This is a fancy new name for a two-speed Europe – “a certain number of countries will have to get together to show the others the way”, as Jacques Chirac neatly summarised the proposal – otherwise also known as “flexibility”. A subset of member states that wishes to proceed with further integration and to create “an inner core” will be allowed to do so. Other countries will be “relegated” to an “outer core”. Enhanced co-operation is:

- **Aimed at furthering the objectives of the Union and the Community, at protecting and serving its interests and at reinforcing its process of integration [Clause A (a)]**
- **Respects the *acquis communautaire* and the measures adopted under the other provisions of the Treaties [Clause A (c)]**

These two sub clauses rule out “reverse integration” and confirm once and for all that “flexibility” is the antithesis of what some British Eurorealists hoped it would come to mean. Enhanced Co-operation also:

- **Involves a minimum of eight Member States [Clause A (f)]**
- **Does not affect the competences, rights and obligations of those Member States which do not participate therein. [Clause A (h)]**
- **Enhanced cooperation may be engaged in only as a last resort, when it has been established within the Council that the objectives of such co-operation cannot be attained within a reasonable period by applying the relevant provisions of the Treaties. [Last Resort Clause (Clause B)]**

The importance of enhanced co-operation can be grasped by reading the following sections of the proposal:

1. **Member States which intend to establish co-operation between themselves in one of the areas referred to in the Treaty establishing the European Community shall address a request to the Commission, which may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.**
2. **Authorisation to establish the enhanced co-operation referred to in paragraph 1 shall be granted by the Council [...], acting by a qualified majority on a proposal from the Commission after consulting the European Parliament [...]** [Clause G]

This section clearly indicates that individual nation-states will possess no “emergency brake” or veto to prevent other states from going ahead with further integration.

Punishing “bad behaviour”.

The modification to Article 7 proposed in the Progress Report is particularly worrying in that it potentially involves sanctions being imposed by Qualified Majority Voting on another EU member. This is the new article’s suggested first section:

1. **On a reasoned proposal by one-third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four fifths of its members after obtaining the assent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the principles mentioned in Article 6(1), and address appropriate recommendations to that State. Before making such a determination, the Council shall hear the Member State concerned and, acting in accordance with the same procedure, may call on independent persons to submit within a reasonable time limit a report on the situation in the Member State in question. The Council shall regularly verify that the grounds for that situation continue to apply. [Article 7 Treaty of EU]**

Significantly, the proposal talks of “a serious risk of a serious breach” rather than of “a serious breach”. Article 6(1) states that:

The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.

This article could arguably prove to be the worst of the lot. It seems to allow states to gang up on another. Victims may be forced to modify their legislation

in virtually any area of public policy. The situation is made even graver by the likelihood that the Charter of Fundamental Rights will be used to identify whether or not a member state shows “respect for human rights”—regardless of the official legal status of that document. The European Court of Justice is certainly not afraid to use judicial activism to promote centralisation, and there is no reason why the situation would be any different this time round. The vacuous and legally unclear language of the Charter will no doubt be twisted to suit the purposes of qualified majorities in the Council of Ministers. Far from simply dealing with “Amsterdam leftovers”, the proposed Nice treaty will surely have devastating consequences for the future of democracy and individual liberty in Europe.