

Observatoire social européen

**THE INSTITUTIONAL CHALLENGES
OF ENLARGEMENT**

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Introduction

The enlargement process to incorporate twelve candidate countries into the European Union poses a considerable challenge to the structures put in place in the aftermath of the Second World War through the Treaties constituting the European Community (Treaty of Paris for the European Coal and Steel Community; Treaty of Rome for the European Economic Community and Euratom). These Treaties were modified at the time of the various accessions but especially on the occasion of Treaty reforms, the pace of which has accelerated over the past ten years since the conclusion of the Treaty on European Union (Maastricht Treaty, 1992), followed by the Treaties of Amsterdam (1997) and Nice (2000).

Whatever criticism - justified or otherwise - may be levelled at it, the Treaty of Nice, signed on 26 February 2001, meets its prime objective, namely to allow for enlargement of the Union. The decisions and commitments made to this end send out a positive signal to the candidate countries. It is now known what common position will be defended by the Fifteen when the institutional chapter of the accession negotiations is tackled. At a time when the support of public opinion around Europe is far from certain - within the European Union fewer than three people out of ten consider enlargement to be a priority for the Union (1) -, people had also been expecting the Nice European Council to shed light on potential scenarios for accession. Proposals made by the Commission on 8 November last year had set out a "road map" detailing the priorities of the accession negotiations for the next eighteen months (2).

It emerges from this document that the chapter on institutional provisions will not be opened before the first half of 2002, along with the final budgetary issues and other unresolved matters. For this reason it appears unlikely that those candidate countries hoping to accede to the Union in 2003 will achieve their aim, since the process of ratifying the accession agreements may take between eighteen and twenty-four months. The lack of a cut-off date for actual accession is one of the principal difficulties confronting the governments of these countries, due to the cost of incorporating the *acquis communautaire* into their economic, legal and political systems. The Treaty of Nice sheds some light here too, in particular by envisaging that the candidate countries will participate in the next European elections in 2004.

Another major challenge needing to be resolved before the forthcoming accessions can become effective is the budgetary aspects of enlargement and their repercussions on other EU policies, above all the common agricultural policy and the Structural Funds. The budgetary framework for the period 2000-2006, adopted at the Berlin European Council in March 1999, provides a general guide: no additional resources are earmarked to finance enlargement. Nevertheless, the limitations of these budgetary perspectives are all the more apparent in the aftermath of the Kosovo crisis which highlighted the pressing need for economic aid in the stabilisation of the Balkans. This is even more true after the decision to extend the accession negotiations to include all the candidate countries, which ultimately paves the way to a Europe of 27 members, thereby calling into question the financial framework designed for a European Union of 21. Official acts will need to be drawn up, and there can be no certainty that the Treaty of Nice sets out the requisite conditions for the adjustment of a financial framework: after all, deferring the decision does not in itself constitute a decision.

Finally, the Treaty negotiators themselves implicitly acknowledged the shortcomings in the text which they had just adopted, by deciding to launch a brainstorming process on the

1. Eurobarometer 53, European Commission, 24 July 2000.

2. Strategy document on enlargement. Progress report for candidate countries moving towards accession, 8 November 2000.

'future' of the Union, which is to be concluded at another IGC in 2004. The debate on Europe's future could culminate in the drafting of a Constitution. This process will have to include the countries currently conducting negotiations, whereas future candidates will be involved in the process via the European Conference.

1. From one Treaty to another

By initialling the Amsterdam Treaty in June 1997, the Heads of State and Government fulfilled the obligations they had undertaken when ratifying the Maastricht Treaty. The latter stipulated that an Intergovernmental Conference should be convened in 1996 and enumerated certain points for revision. Yet none of the leaders were ready for this exercise, especially in respect of institutional matters.

The accession negotiations concerning the candidates coming from the European Free Trade Association (EFTA) had for their part demonstrated the impossibility of resolving institutional issues in the context of accession negotiations. The signing of the Ioannina compromise in 1994 proves the point (3).

Nonetheless, the 1996-1997 IGC completed its work without any clear response having been given to the major problems raised by the prospect of a new enlargement on a quite different scale: how should the Union's institutional mechanisms be adjusted to prevent enlargement automatically having the effect of paralysing the decision-making procedures? How can the coherence and the deepening of integration be reconciled?

The essential issues of the composition and size of the Commission, the weighting of votes in the Council, as well as the possible extension of qualified majority voting (QMV) in the Council, had not been resolved. The only outcome was the adoption of a protocol to the Treaty specifying that these issues should be settled "*at least one year before the membership of the European Union exceeds twenty*". In the meantime, on the entry into force of the first enlargement of the Union, "*the Commission shall comprise one national of each of the Member States, provided that, by that date, the weighting of the votes in the Council has been modified, whether by reweighting of the votes or by dual majority, in a manner acceptable to all Member States, taking into account all relevant elements, notably compensating those Member States which give up the possibility of nominating a second member of the Commission*".

This approach aroused sufficient concern for Belgium to propose appending to the Treaty a declaration stating that the institutional issues, including a significant extension of recourse to QMV, must be settled *in advance* of any further enlargement. France and Italy backed this demand.

3. The qualified majority threshold is currently set at 62 votes out of 87 (71% of the votes). The votes are weighted as follows: Germany, France, Italy and the UK 10 votes; Spain 8 votes; Belgium, Greece, Netherlands and Portugal 5 votes; Austria and Sweden 4 votes; Denmark, Ireland and Finland 3 votes; Luxembourg 2 votes. The blocking minority threshold is currently 26 votes. The Ioannina compromise states that "*if members of the Council representing between 23 and 25 votes indicate their intention to oppose the taking of a decision by the Council acting by a qualified majority, the Council shall do everything within its power to achieve, within a reasonable period of time, a satisfactory solution which may be adopted by 65 votes at least*". See Agence Europe, EUROPE DOCUMENTS series, No. 1879, 14 April 1994, p. 1-3. A declaration appended to the Amsterdam Treaty extends this compromise until the entry into force of the next enlargement.

Remit of the 2000 IGC

In conformity with decisions taken at the Cologne and Helsinki European Councils (June 1999 and December 1999), the task of the Intergovernmental Conference was to resolve the institutional issues left pending at Amsterdam. Its work was in addition intended to cover *“other necessary amendments to the Treaties arising as regards the European institutions in connection with the above issues and in implementing the Treaty of Amsterdam”*. As well as enhanced co-operation, this agenda naturally encompassed other issues such as the individual accountability of Commissioners, following the collective resignation of the Commission in March 1999. The IGC likewise addressed itself to other institutional matters such as reform of the Court of Justice and limiting the number of members of certain European institutions and bodies. Furthermore, following the coming to power of an extremist party in Austria, there was also the issue of establishing a procedure to monitor respect for democracy and human rights, enabling the EU to react, should these democratic principles be infringed. In practice, this meant envisaging the possibility of setting up an early-warning system.

The European institutions' opinions on the IGC prior to its launch

In accordance with the European Treaties, the Commission must give its opinion in advance of any institutional reform (Article 48 of the Treaty on European Union). This opinion was adopted on 26 January 2000, a few days before the Intergovernmental Conference began its work (on 14 February). The document is in two parts: one on the functioning of the European institutions in the enlarged Union, the other on the effectiveness of the decision-making procedures (4). In addition to certain proposals for new Treaty articles, it contains three annexes: a list of decisions which, for sound reasons, would continue to require the unanimous agreement of all Member States; provisions which could henceforth be adopted by a qualified majority; and the representation of Member States in the EU institutions, based on an extrapolation of the present system.

After having delivered a positive opinion in February on the convening of the IGC (5), the European Parliament adopted in April 2000 a lengthy resolution detailing its approach for each individual institution and body, as well as on the decision-making procedures (6).

Finally, on 14 February, the General Affairs Council gave the green light for the convening of the IGC, which opened in Brussels on that same day in the presence of Nicole Fontaine, President of the European Parliament and two other MEPs as observers, Elmar Brok and Dimitris Tsatsos. Every ministerial session, plus every meeting at Heads of State and Government level, was preceded by an exchange of views with the President of Parliament assisted by her two representatives. Ten such ministerial meetings were held before the IGC was concluded in Nice at the longest European Council in the history of the European Community.

At the official signing of the Treaty of Nice, on 26 February 2001, by the Foreign Ministers of the Fifteen, several people spoke out in favour of completing the ratification procedure by the end of 2002. One must recall here that the opinion of the European Parliament is a political necessity but not a legal obligation. By contrast, the accession treaties negotiated between the European Union and each of the candidate countries must receive its assent.

4. Adapting the institutions to make a success of enlargement. Commission Opinion in accordance with Article 48 of the Treaty on European Union on the calling of a Conference of Representatives of the Governments of the Member States to amend the Treaties, COM (2000)34 of 26 January 2000. The Commission has furthermore adopted several additional contributions on the Reform of the Community courts, COM (2000)109 of 1 March 2000; on Qualified majority voting for Single Market aspects in the taxation and social security fields, COM (2000)114 of 14 March 2000; and on the Regulations governing European political parties, COM (2000)444 of 14 July 2000.
5. European Parliament Resolution A5-0018/2000 of 3 February 2000 on the convening of the Intergovernmental Conference.
6. European Parliament Resolution A5-0086/2000 containing its proposals for the IGC, 13 April 2000.

Pressure of enlargement

This pressure intensified with the presentation in October 1999 of the report by a “Group of Wise Men” established by the President of the European Commission, Romano Prodi (7). It was clearly no accident that this report was circulated on 18 October, just a few days after the Commission recommended that the accession negotiations be extended to all the candidate countries, a recommendation subsequently backed by the Helsinki European Council in the following December. According to the report by the three Wise Men, enlargement meant on the one hand making it feasible for the Union to operate flexibly and, on the other, separating the Treaties. It was in fact only after heated discussion that the Feira European Council finally decided to extend the IGC’s mandate to include enhanced co-operation. As to the second proposal, objections were raised to separating the texts on the grounds that the “basic treaty” would smack too much of a Constitution.

The pressure of enlargement now weighed more heavily than ever on the Intergovernmental Conference. Indeed, in keeping with the conclusions adopted at Helsinki by the Heads of State and Government, “*after ratification of the results of that Conference the Union should be in a position to welcome new Member States from the end of 2002 as soon as they have demonstrated their ability to assume the obligations of membership and once the negotiating process has been successfully completed*”. This no doubt explains the cautious attitude of the candidate countries towards the IGC (see IGC Info No. 4).

It is worth noting that the Nice European Council reiterated its support for the European Conference, which represents “*a useful framework for dialogue between the Union’s Member States and the countries in line for membership*”. And, following the Zagreb summit held at the end of November 2000 between the EU countries and the Western Balkan countries with which stabilisation and association agreements are in place (Albania, Former Yugoslav Republic of Macedonia, Bosnia Herzegovina, Croatia and the Federal Republic of Yugoslavia), the European Council proposed that the “*countries covered by the stabilisation and association process and the EFTA countries be invited to attend as prospective members*”. The inclusion of the Western Balkan countries in the European Conference confirms the terms of the stabilisation agreements which hold out the prospect of EU accession for these countries.

2. Results of the 2000 IGC

The negotiators of the Treaty of Nice had not set out to expand the Union’s fields of activity. The task of the Intergovernmental Conference was in fact to resolve eminently political issues, namely subjects related to power-sharing among the EU institutions and allowing little scope for the kind of bargaining which normally accompanies such negotiations. The proof is that, in the final moments of the negotiations, Germany relinquished its demand for an increased share of the votes under the new weighting system for the Council, whereas Belgium on the other hand agreed to being given one vote less than the Netherlands. It would appear that, by way of “compensation”, Belgium and Germany obtained larger numbers of seats in the European Parliament; this is to the detriment of the extension of QMV and the simultaneous extension of co-decision in the legislative sphere. The climate in which these deals were done also resulted in a rather surprising alteration in the number and distribution of votes allocated to the candidate countries and to their representation in the EP. These figures appear in a declaration containing the position to be defended by the Fifteen once the institutional chapter of the accession negotiations comes up for negotiation. It remains to be seen what room for manoeuvre this will leave the candidate countries, but as

7. *The institutional implications of enlargement*, Jean-Luc Dehaene, Richard von Weizsäcker and David Simon, Report presented to the Commission on 18 October 1999.

implied in the declaration on the qualified majority threshold in a Union of 27 members, the definitive figures will only become known once the final accession agreements are signed.

■ **Size and composition of the Commission**

The Protocol on the enlargement of the European Union, annexed to the Treaty of Nice, confirms that the large countries will lose their second Commissioner as from 1 January 2005, *“with effect from when the first Commission following that date takes up its duties”* and assures the candidate countries that they will be individually represented within the Commission.

This will be the case until such time as the European Commission has 27 members. Once the next European Commission following the accession of the 27th Member State takes up its duties, the number of Commissioners will be “less than the number of Member States”. No mechanism has been laid down for the appointment of Commissioners, whose number has not been established for the time when not all countries will be represented any longer. It will be up to the Council to lay down the number, once the treaty of accession has been signed with the twenty-seventh State. The Council will also have to take a decision on the rules for a “fair rotation” in accordance with two principles: the absolute equality of Member States when determining the order of appointment of Members of the Commission and the duration of their mandates; and respect for the demographic and geographical features of all the EU Member States.

In the final stages of the negotiations, it was agreed that the President of the European Commission would be appointed by a qualified majority. The same applies to the list of other Members of the Commission, and to the replacement of a Member who has resigned or died.

The re-wording of Article 217 of the EC Treaty reflects the “lex Prodi”, namely the role of the President in organising the College, allocating and where necessary reshuffling responsibilities, and his authority over the Commission. The resignation of a Commissioner at the behest of the President must however be approved by the College, which reduces the political impact of this provision.

■ **Weighting of votes in the Council**

The number of votes required to achieve a qualified majority underwent some last-minute corrections at the end of December. According to the definitive version of the Treaty of Nice, the qualified majority threshold prior to enlargement is set at 169 votes out of 237, which represents 71.3% of the votes. Whereas this is comparable with the current situation (62 votes out of 87, or 71.26% of the votes), the Treaty introduces one significant change: in addition to 169 votes, the qualified majority must express votes in favour cast by at least a majority of the Member States if the decision is based on a Commission proposal and at least two thirds of members in other cases. In all cases, if, following a request for verification from a member of the Council, the decision proves not to represent at least 62% of the votes (democratic threshold), that decision is not adopted. Therefore a total of three thresholds are now in place: a qualified majority of the votes, a majority of States and 62% of Europe’s population. Finally, as concerns the demographic safety-net, we would point out that, by joining forces with just two large countries (France, the UK or Italy), Germany will be able to block any decisions which it finds unpalatable. The reason for this is its population size (17% of the future Europe of 27), which will enable it to reach the demographic blocking threshold in this manner. The same does not apply to the other large countries which, without Germany, will be obliged to seek out more difficult four-way alliances.

Finally, the declaration on enlargement establishes the number of votes required to achieve a qualified majority in a Union of 27 at 258 votes out of 345, or 74.78% of the votes. Another

declaration stipulates that the percentage of votes required to achieve a qualified majority will rise to a maximum of 73.4% and, once the Union has 27 members, establishes at 91 the number of votes constituting a blocking minority. It is worth noting that setting the blocking minority at this level amounts to saying that the qualified majority corresponds to 73.91% of the votes, which is higher than the 73.4% referred to in the declaration. We shall in fact have to await the conclusion of the last accession agreement or agreements before knowing the final figures for a Union of 27 members.

Weighting of votes in the Council (EU 15) as from 1 January 2005

COUNTRY	VOTES
Belgium	12
Denmark	7
Germany	29
Greece	12
Spain	27
France	29
Ireland	7
Italy	29
Luxembourg	4
Netherlands	13
Austria	10
Portugal	12
Finland	7
Sweden	10
United Kingdom	29
Total	237

The weighting of votes in the Council EU 27

<i>Members of Council</i>	<i>Current Situation</i>	<i>Approved at Nice</i>	<i>Population (thousands of inhabitants)</i>
Germany	10	29	82 038
United Kingdom	10	29	59 247
France	10	29	58 966
Italy	10	29	57 612
Spain	8	27	39 394
Poland		27	38 667
Romania		14	22 489
Netherlands	5	13	15 760
Greece	5	12	10 533
Czech Republic		12	10 290
Belgium	5	12	10 213
Hungary		12	10 092
Portugal	5	12	9 980
Sweden	4	10	8 854
Bulgaria		10	8 230
Austria	4	10	8 082
Slovakia		7	5 393
Denmark	3	7	5 313
Finland	3	7	5 160
Ireland	3	7	3 744
Lithuania		7	3 701
Latvia		4	2 439
Slovenia		4	1 978
Estonia		4	1 446
Cyprus		4	752
Luxembourg	2	4	429
Malta		3	379
TOTAL	87	345	481.181

■ Extension of QMV or the move to co-decision

Unlike the spheres in which the intergovernmental method applies (common foreign and security policy, and police and judicial co-operation, but also in particular processes predicated on the “soft law” deriving from sources including the Lisbon European Council), in the context of the EC Treaty Community interests have been furthered through the implementation of the “Community method” based on the triangular interplay of institutions (European Commission, Parliament and Council). The role of each institution is crucial in the decision-making process but also in terms of the legitimacy of the European Union’s actions (expressed likewise in the role assigned to the EC Court of Justice).

Depending on the matter in hand, the Council acts unanimously or by a qualified majority. As the case may be, the Council reaches its decision after having received the opinion of the European Parliament and, for socio-economic matters, that of the Economic and Social Committee. Similarly, the Committee of the Regions must be consulted on all matters pertaining to economic and social cohesion. The Commission may amend or withdraw its proposal at any stage, until such time as the Council has given its final verdict. According to the provisions of Article 250 of the EC Treaty, unanimity in the Council is always required for an amendment to a Commission proposal (except under the co-decision procedure in the context of the Conciliation Committee).

As far as co-decision is concerned, the general rule is QMV in the Council, except for the area of cultural affairs (8), and three cases linked to free movement (free movement of persons (9), free movement of workers (10) and the recognition of qualifications when exercising a profession (11)), for which unanimous votes are always required (12). Article 18 of the TEC (European citizenship, right to move and reside freely) is the only case which has shifted to “normal co-decision” (a qualified majority in the Council) under the Treaty of Nice.

The co-decision procedure, introduced by the Maastricht Treaty, enables the Council and European Parliament jointly to adopt legal acts. Its scope had been extended by the Amsterdam Treaty to twenty-three new cases, eight of them created by new provisions in the Amsterdam Treaty. Some fundamental sectors are excluded, such as the common agricultural policy, indirect taxation and the new fields of Community activity under the third pillar (asylum and immigration, together with issues related to the free movement of persons). This situation remains unchanged with the Treaty of Nice, which does provide for asylum and immigration to move to co-decision - but not until 1 January 2004.

In principle, the Parliament acts by a simple majority of its Members. When votes are taken on major decisions, specific quorums must be achieved (13); in the case of legislative procedures, the amendment or rejection of the Council’s common position in the context of the co-operation procedure (14) and the co-decision procedure (15) necessitate an absolute majority; similarly, the adoption of the common project emerging from the Conciliation Committee under the co-decision procedure requires an absolute majority.

Overall, the number of provisions moving from a qualified majority with or without co-decision (see Annexes I, II and III) is far lower than that envisaged in the preparatory lists. For a number of important decisions the move is deferred until 2004 or will only apply as from 2007 (economic and social cohesion and the Structural Funds; financial regulations). Apart from the appointment of the President of the European Commission and the list of its Members, where the political importance is manifest, the move from unanimity to QMV applies to a number of procedural matters (appointments and approval of rules of procedure). Generally speaking, here again the Treaty falls well short of simplifying the decision-making machinery in the European Union.

The agreement on external economic relations is particularly complex (Article 133 of the TEC). It concerns trade in services and the commercial aspects of intellectual property. The Commission must report regularly to a Special Committee in all fields except cultural affairs. The European Parliament is not given a role, but will merely be consulted if and when a procedure is embarked on with a view to extending commercial negotiations to other agreements on intellectual property. The Parliament, backed by the Commission, had asked

8.. Article 151 of the TEC par. 5.

9.. Article 18 of the TEC par. 2.

10.. Article 42 of the TEC, rules relating to the social security of migrant workers.

11.. Article 47 of the TEC par.2.

12. In the area of environment, codecision is the rule with the exception of certain essential aspects (in particular, taxation and management of water resources) where unanimity and the simple consultation of the Parliament remain unchanged (article 175 TEC par. 2) in the treaty of Nice.

13. A motion of censure against the Commission must be carried both by two thirds of the votes cast and by the majority of MEPs (Article 201 of the TEC). The same applies to the Parliament’s assent to the sanction mechanism envisaged in the case of breaches of human rights (Article 7 of the TEU). Amendments to the budget require a majority of Members; modifications to compulsory expenditure at first reading need an absolute majority of the votes cast; rejection of the budget requires that the Parliament act by a majority of its Members and that the result represents two thirds of the votes cast; a modification of the maximum rate of increase in compulsory expenditure necessitates a vote reflecting a majority of MEPs and three-fifths of the votes cast (Article 272 of the TEC, paras. 8 and 9).

14. Article 252 of the TEC.

15. Article 251 of the TEC.

that all international agreements falling under Article 300 of the EC Treaty should be subject to its assent once the co-decision procedure applies internally.

In respect of social policy (Article 137 of the TEC), the combating of social exclusion and the modernisation of social protection systems are brought into the sphere of co-decision (and, consequently, QMV but only for the adoption of measures designed to encourage co-operation between the Member States). Furthermore, the Council may – on a proposal from the Commission and after consulting the European Parliament – unanimously decide the move to co-decision on matters relating to the protection of workers where their employment contract is terminated, the representation and collective defence of the interests of workers and employers, including co-determination, and the conditions of employment for third-country nationals legally residing in Community territory. This does not affect the provisions on social security and the social protection of workers, which will remain subject to unanimity.

The Treaty fails to simplify an already complex situation in the Treaty of Amsterdam concerning the free movement of persons, asylum and immigration. There will be a move to co-decision as soon as the Treaty enters into force, but only in respect of the provisions of Article 65 of the TEC on judicial and civil co-operation, with the exception of aspects relating to family law. Measures relating to asylum will move to co-decision only once the basic legislation has been adopted (Article 63 (1a, b and c)). The measures giving temporary protection to displaced persons (Article 63 (2a)) will also be affected, provided that Community legislation defining the common rules and basic principles has been adopted.

Under the terms of the *declaration* relating to Article 67 of the TEC, the Council will rule by co-decision as from 1 May 2004 on matters concerning the free movement of third country nationals (Article 62 (3) of the TEC) as well as illegal immigration (Article 63 (3b)).

As from 1 May 2004, co-operation among administrations (Article 66 of the TEC) will move to a qualified majority.

Measures relating to checks on persons at the EU's external borders (Article 62 (2a)) will not move to QMV until an agreement has been reached on the scope of these measures. Finally, the Council will endeavour to make the co-decision procedure applicable by 1 May 2004 or as soon as possible thereafter to the other areas covered by this part of the Treaty.

These results do not of course go as far as the proposals put forward by the Parliament and the Commission. As far as the institutions are concerned, the heightened complexity of decision-making in the Council obviously fails to match the expectations of the Parliament and Commission. As concerns decision-making procedures, the Parliament considered that the co-decision procedure and QMV in the Council should become the general rule for legislative decisions. Parliament also wished the co-decision procedure to apply to legislation concerning police and judicial co-operation in criminal matters. It also called for an extension of QMV to decisions related to appointments to the institutions and bodies of the Union, while unanimous voting in the Council would be limited to decisions of a constitutional nature which – by virtue of the Treaty - must be approved by the national parliaments. The Parliament - backed by the Commission - proposed extending the instances in which it would be called on to give its assent (on all international agreements falling under Article 300 of the EC Treaty where the co-decision procedure applies internally, on decisions relating to own resources and for appointments to the Court of Auditors, Court of Justice and Court of First Instance as well as to the Executive Board of the ECB).

All in all, the IGC deferred the move to co-decision for all the most sensitive aspects. This is particularly true in respect of economic and social cohesion. Co-decision is scheduled to apply as from 1 January 2007, which means that this decision will not in fact become operational until the expiry of the financial perspectives for 2007-2013. This amounts to

saying that, until that date, it will still be possible for the so-called existing “cohesion countries” (16) to attempt to forestall the reforms rendered necessary by enlargement rather than running the risk of losing their Community aid. The second report on economic and social cohesion is most enlightening on this point and suggests a rethink of the cohesion policy so as to ensure its maintenance and effectiveness (17).

Observers are unanimous that national considerations took precedence over the desire to equip the Union with the means to function after its enlargement to include the twelve candidate countries. However, other adjustments are needed. For example, the co-decision procedure does not apply to all quintessentially legislative matters, and the very notion of a Community legislative act has yet to be clearly defined. This is an issue which crops up regularly at IGCs but remains in limbo. Here too, enlargement will protract procedures and necessitate a distinction between strictly technical acts and those of a legislative nature subject to co-decision. In this case, as in others, it would seem that the Union will not be able to avoid a clarification which is necessary in view of enlargement and inherently connected with the simplification process. This is without doubt one of the elements likely to offer food for thought in terms of the declaration on the future of the Union appended to the Treaty of Nice (see below).

■ **Members of the European Parliament**

As far as the European Parliament is concerned, it is noteworthy that the previously adopted threshold of 700 MEPs has now been raised to 732 (see Annex IV). The “consolation prizes” for some of the compromises made on the re-weighting of votes appear to have been increases in the number of MEPs. Thus Germany, which is not “uncoupled” from France in terms of voting strength in the Council, does outstrip the other large countries in its number of MEPs (99 as opposed to 72). Conversely, Belgium, which has been uncoupled from the Netherlands in the Council, narrows the gap with its Dutch neighbour in terms of its MEP count.

16. Spain, Portugal, Greece and Ireland, which receive aid from the Structural Funds and the Cohesion Fund. The latter was created in 1992 in order to assist those countries whose GNP per capita is less than 90% of the EU average in the run-up to Economic and Monetary Union.

17. Report from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: Second Report on Economic and Social Cohesion, COM (2001)24 of 31 January 2001. An assessment of the requirements of the cohesion policy from the perspective of an enlarged Union reveals that, if enlargement were to take place tomorrow, at national level more than one third of the population would live in a country where the earnings (GDP) per inhabitant are less than 90% of the EU average (the present eligibility threshold for the Cohesion Fund), as opposed to one sixth in the existing Europe of Fifteen. At regional level the average earnings per inhabitant of 10% of the population living in the least prosperous regions of the Europe of 27 members would reach just 31% of the average for the Europe of 27. In the existing Europe of 15, the earnings per inhabitant of the 10% of the population situated at the bottom of the scale are equal to 61% of the average.

According to the Protocol on enlargement, the breakdown of seats for the 15 Member States from 1 January 2004 onwards is to be as follows:

Country	Seats
Belgium	22
Denmark	13
Germany	99
Greece	22
Spain	50
France	72
Ireland	12
Italy	72
Luxembourg	6
Netherlands	25
Austria	17
Portugal	22
Finland	13
Sweden	18
United Kingdom	72
Total	535

These 535 MEPs will be joined by the tally of representatives from the new Member States. For the 2004-2009 term the total could temporarily exceed the ceiling of 732 laid down in Article 189 of the TEC. If the total number of Members is less than 732, a correction will be applied so that the total number is as close as possible to 732, without however exceeding the number of representatives of the 15 current EU Member States (1999-2004 term). The declaration on enlargement contains the number of seats allocated to the candidate countries and will be the common position of the Fifteen when the institutional chapter of the accession negotiations comes up for negotiation (see Annex IV).

■ **Enhanced co-operation**

In addition to the "Amsterdam left-overs", the other key issue at the IGC was enhanced co-operation. The only hint of a response given by the Amsterdam Treaty to the challenges of enlargement consisted in the insertion of a new Title on "enhanced co-operation" into the Treaty on European Union, whose purpose is to allow for differential development within the Union by enabling certain Member States to "forge ahead". But, according to the current provisions, aside from certain conditions to be met in the context of the EC Treaty, a Member State may object to the initiation of closer co-operation "*for important reasons of national policy*". Under the common foreign and security policy there is a mechanism known as "constructive abstention", it too indirectly authorising the taking of initiatives limited to certain States. In all cases, the right of veto is granted to any Member State considering that its political interests are harmed by such co-operation. Several commentators have concluded that the conditions for engaging in enhanced co-operation are so stringent as to prevent any at all from taking place (18). Although it is unclear whether or not enhanced co-operation will function in respect of social security, recent events have confirmed that taxation and Economic and Monetary Union are potential areas for its application. Thus Michaele Schreyer, European Commissioner responsible for the budget, has envisaged the possibility

18. Françoise de La Serre and Helen Wallace, "*Les coopérations renforcées: une fausse bonne idée?*", Paris, Fondation Notre Europe, 1997, and Françoise de La Serre, "*Une Europe ou plusieurs?*", Politique étrangère, No. 1, 1999.

of resorting to enhanced co-operation in respect of energy taxation (19); similarly, the possibility of its use is envisaged in the multilateral surveillance process for Economic and Monetary Union (20).

The debate on future enhanced co-operation did not feature prominently at the IGC until summer 2000. On the margins of the IGC, but also at the Conference itself, various key individuals have expressed their views on enhanced co-operation. The most important aspects are summarised below.

A "Federation of nation-states" and an "open avant-garde" according to Jacques Delors

A few days before the start of the IGC, commenting on the decision taken at the Helsinki European Council to extend the process of accession negotiations to encompass all the candidate countries (and to include Turkey among them but to defer the start of accession talks with that country), Jacques Delors described enlargement as a *"fuite en avant"* (21). Enhanced co-operation could not function because of the unanimous voting requirement and the fact that it does not apply to the whole of the Maastricht Treaty. Although the former president of the European Commission did not choose between the deepening "or" enlargement of the Union, the best way to further deepen it would in his opinion be for an *"avant-garde"* to move ahead. Delors proposed that this pioneer group should be allowed to constitute a *"federation of nation-states"*, governed by a *"specific, more exacting and more explicit treaty"*, which he also describes as a *"Treaty within the Treaty"*. It would be necessary at the same time to *"hone the economic and social pact which will be the Treaty of the Union of 27"* because *"Europe is undergoing a change of paradigm in the context of globalisation"* (22).

According to Jacques Delors, the "open avant-garde" model is the one which *"for those who wish to and are able to adopt it ... best reconciles the fastest possible enlargement with the pursuit of European integration"*. In an article published by *Le Nouvel Observateur*, he outlined the shape that might be taken by relations between the Federation of nation-states and the European Union, or "Great Europe". The latter would need to *"provide its members with an area of active peace, a framework for sustainable development and, lastly, an area of shared values lived out in the diversity of our cultures and our traditions"* (23).

"In institutional terms, the avant-garde would take the form of a Federation of nation-states with its two dimensions: federal, for clarifying powers and responsibilities; national, for ensuring the durability and cohesion of our societies and our nations. This would of course be an application of the healthy principle of subsidiarity. The link with the Great Union would be ensured through the existence of a joint Commission, responsible for coherence between the two entities and for compliance with EU regulations and the acquis communautaire. The avant-garde, however, would have its own Council of Ministers and its own Parliament."

19. During a speech made in Berlin on 5 February 2001, Mrs Schreyer raised this option as a means of overcoming the stalemate over the directive proposed four years ago on energy taxation, caused by the requirement for a unanimous vote in this area.

20. Commission Communication on strengthening economic policy co-ordination within the euro area, COM (2001)82 of 7 February 2001.

21. *"Jacques Delors critique la stratégie de l'élargissement de l'Union"*, in *Le Monde* 18 January 2000.

22. Contribution by Jacques Delors to the fourth Franco-German seminar, "The European avant-garde, a new centre of gravity for Europe", Témoins/Europartenaires/Friedrich Ebert Stiftung, Paris, 29 June 2000, available on the website of the study and research group "Notre Europe", <http://www.notre-europe.asso.fr/DiscoursVI00.pdf>.

23. *"Pour une avant-garde européenne"*, *Le Nouvel Observateur* No. 1890, 25-31 January 2001.

A "European Federation" and a "centre of gravity", according to Joschka Fischer

The German Foreign Minister, Joschka Fischer, commenting in his personal capacity in the now famous speech he gave in Berlin in May 2000, stated: "*the steps [going from enhanced co-operation] towards a constituent treaty (...) require a deliberate political act to re-establish Europe*", synonymous with the "*completion of its political integration*" for an "*avant-garde*" of European countries" (24). The risk of enlargement to encompass 27 or 30 Member States is that the absorption capacity of the EU with its outdated institutions and mechanisms will be overloaded, provoking serious crises. The time has come to reflect both on "*the nature of this so-called finality of Europe and on how we can approach and eventually achieve this goal*". Enlargement will render fundamental reform of the European institutions absolutely vital.

According to Joschka Fischer, the development of enhanced co-operation should enable countries so wishing to move ahead in common areas, such as "*on the further development of Euro-11 to a politico-economic union, on environmental protection, the fight against crime, the development of common immigration and asylum policies and of course on the foreign and security policy*" (25). Later on, the development of a "*centre of gravity*" would pave the way for the completion of political integration. "*Such a group of states would conclude a new European framework treaty, the nucleus of a constitution of the Federation*". Finally, on the basis of this new basic treaty, "*the Federation would develop its own institutions, establish a government which within the EU should speak with one voice on behalf of the members of the group on as many issues as possible, a strong parliament and a directly elected president*".

A constitutional process, according to Schröder and Amato

In an article published in the newspaper *La Repubblica* on 21 September 2000, Giuliano Amato and Gerhard Schröder voiced their expectations that Nice would be successful not only in making enhanced co-operation operational (in order to prevent the most dynamic countries from acting outside of the Treaties) but also in launching a constitutional process (Charter of Rights and allocation of powers) which should then lead into a wide-ranging conference in 2004, itself preceded by a broad-based public debate. The proposals subsequently put forward by Italy and Germany in the context of the IGC (26) are the first to refer openly to the possibility that certain Member States may constitute an "*avant-garde*" which would assist in the integration process and be entirely open to subsequent participation from other Member States. While stressing the importance of enhanced co-operation under the common foreign and security policy, the document cited one possible application in the context of the EC Treaty, namely to foster rights linked to European citizenship by granting the right to vote in national elections. The idea that enhanced co-operation is a way of circumventing blockages due to unanimity was not shared by the Belgian delegation, in whose opinion "*there does not seem to be any need to limit closer co-operation solely to areas governed by the unanimity rule*" (27). The European Parliament resolution ruled out such a possibility and in the light of enlargement advocated the use of transitional periods before finalising the tool of enhanced co-operation (28).

24. Speech given by Joschka Fischer at the Humboldt University, Berlin: "From Confederation to Federation – reflections on the 'purpose' of European integration", 12 May 2000.

25. Cf. note 14.

26. CONFER 4783 of 4 October 2000.

27. CONFER 4765 of 28 August 2000.

28. European Parliament resolution A5-0288/2000 on enhanced co-operation, 25 October 2000.

“Promotion of the Community method”, according to the Benelux countries

In a memorandum adopted in October 2000 on the Intergovernmental Conference and the future of the European Union, the Benelux countries put forward their point of view on enhanced co-operation and reform of the European Union. They likewise proposed a gradual approach based on the following two principles (29): the implementation of new reforms within the context of the existing institutions, and support for the Community method as the principal vehicle of European integration. Meanwhile at Nice, picking up on the idea floated in September by the Belgian Prime Minister Guy Verhofstadt (30), their timetable – broad guidelines for the political future of the European Union to be issued by the end of 2001 in the form of a declaration by the Heads of State and Government – was taken up by the European Union.

Enhanced co-operation in the Treaty of Nice

The Treaty of Nice modifies the provisions on enhanced co-operation which are also an option in the context of the common foreign and security policy.

Under all three pillars (EC Treaty; common foreign and security policy; police and judicial co-operation in criminal matters), the minimum number of Member States required to launch enhanced co-operation is set at eight. It can however only be used “as a last resort”, i.e. where all other possibilities offered by the Treaties have been exhausted. It is open to all Member States from its inception and allows them to join in “at any time” thereafter.

The “veto” option has been abolished. Nevertheless, any Member State will be entitled to refer matters to the European Council. This right of referral does not alter the fact that the decision to authorise enhanced co-operation is taken by the Council acting by a qualified majority. Under the second pillar, if recourse is made to this option, the final decision lies with the European Council, acting unanimously. It may relate to the implementation of a common action or a common position but not to any matters with military implications or in the field of defence.

Only members of the Council who represent Member States participating in the enhanced co-operation may take part in the adoption of these decisions. The acts and decisions adopted do not form part of the “*acquis communautaire*”, are binding only on the States participating in enhanced co-operation and are directly enforceable only in those Member States.

The European Parliament must be consulted in cases where the expenditure resulting from the implementation of enhanced co-operation, other than administrative costs entailed for the institutions, is to be borne by the EU budget. Under the EC Treaty, enhanced co-operation may not be initiated in fields subject to co-decision unless the European Parliament gives its assent. The Parliament is to be consulted in areas falling under the third pillar but merely informed in second pillar areas.

It is up to the Council and Commission, “*invited to co-operate to this end*”, to ensure the coherence of action undertaken in this framework, as well as the consistency of these actions with policies of the Union and the Community.

29. CONFER 4787 of 19 October 2000.

30. Speech given by the Belgian Prime Minister, Guy Verhofstadt, at the European Policy Centre: “A vision of Europe”, 21 September 2000.

3. Will the Union be “reconstituted”?

Just as happened with the Amsterdam Treaty, the provisions negotiated at Nice will hardly have come into effect before a new treaty is negotiated in a manner which could however be radically different. According to the declaration on the future of the European Union, annexed to the Treaty of Nice, the Conference “*agrees that the conclusion of the IGC opens the door to enlargement of the Union*” and, now the way is open, it calls for “*that both a wider and deeper debate on the future of the European Union will begin*”, raising – among others – questions as to the delimitation of powers between the Union and its Member States, simplification of the Treaties, the role of national parliaments in the European architecture and the legal status of the Charter of Fundamental Rights.

The next steps have been outlined: on the basis of a report to be drafted during the Swedish presidency, the Brussels/Laeken European Council (December 2001) will adopt a declaration heralding another revision of the Treaties in 2004. The content of this report will be important, in that it will set out the full agenda for the next Intergovernmental Conference and contain information on the method to be applied in preparing the next revision of the Treaties.

More specifically, it is the intention of the Swedish presidency, which followed on from France at the start of this year, that the Göteborg European Council should adopt a work programme, while leaving it up to the Belgian presidency, due to take over on 1 July 2001, to set the ball rolling. Interestingly, the Swedish government appears sceptical about the idea of creating a constitutional and federal framework to protect the European Union. The Swedish Prime Minister, Göran Persson, expressed his opposition to a federal trend in a recent article (31).

Belgium’s Prime Minister, Guy Verhofstadt, alluded to several items on Europe’s future agenda in his speech on 21 September last year. In his opinion, incorporating the Charter of Fundamental Rights and rewriting the Treaties could represent the first step towards a fully-fledged EU constitution. As far as the method is concerned, the Belgian Prime Minister has already announced that he would not have misgivings about departing from the classic intergovernmental method (32).

The other way forward takes up where the work of the Convention which drafted the Charter of Fundamental Rights left off. The European Parliament has already come out in favour of this approach, as has the University Institute in Florence, asked by the European Commission to envisage the implications of separating the Treaties “without departing from the law as it stands”, i.e. without altering the existing content of the Treaties (33). According to the Finnish Prime Minister, Paavo Lipponen, speaking recently in Bruges, it is necessary to determine “*a method to be followed and goals to be attained in terms of governance and transparency in the follow-up to Nice*” (34). Taking his lead from those who advocate a model akin to the Convention, Mr Lipponen proposes that Europe’s future agenda should be prepared at a general assembly bringing together the Member States’ governments, national parliaments and the candidate countries as well as the EU institutions. Contrary to the view of the European Parliament, which believes that the Convention should be responsible for drafting the future Constitution of the Union, the assembly proposed by Mr Lipponen could participate in drawing up the future Treaty. We can deduce from this that the Treaty would

31. “The future of the EU – a Europe in transformation”, published on 5 December 2000. French version: http://www.regeringen.se/galactica/service=irnews/owner=sys/action=obj_show?c_obj_id=37085.

32. “*Le temps est venu de dire clairement où va l’Europe*”, in *Libération*, 12 February 2001.

33. EP Resolution A5-0289/2000 on Constitutionalisation of the Treaties, 25 October 2000. Also, “Reforming the procedures for revision of the Treaties. Second report of the European University Institute of Florence”, submitted to the Commission on 31 July 2000, co-ordinators: Claus-Dieter Ehlermann and Yves Mény; rapporteur: Hervé Bribosia.

34. Agence Europe, 17 January 2001.

then be adopted by an Intergovernmental Conference, whose duration would be greatly reduced if its remit were merely to ratify the work already undertaken.

Furthermore, on 13 February 2001, speaking to the European Parliament in Strasbourg, the President of the European Commission raised certain issues connected with the Union's future, in terms of both content and method. Commenting that the "post-Nice" debate will be about "*where we want the European Union to go from here*", Mr Prodi acknowledged that the debate must be broadened beyond the four issues emerging at Nice. In terms of content, the Commission President stated that the Commission's input, in its forthcoming White Paper on Governance, will seek to propose "*ways of decentralising the administration of the Union and ways of ensuring that our common policies are applied at the appropriate level - as closely as possible to the citizen*"; it will not merely list "*the powers and responsibilities of the Union and its Member States*". In terms of method, Mr Prodi regards an "*ongoing dialogue*" between the European Council and the "*convention or conference, or body*" as the best means of clarifying matters in such a way that the institutional perspectives will finally emerge.

What is to become of Europe's treaties? Should they be consolidated into two texts, one containing a "*basic treaty*" and the other the "*other provisions and those concerning specific policies*" which could be amended by a simplified procedure – as suggested by the "Three Wise Men" (35) in their report and supported by the European Commission (36) – or should they be replaced by a constitution featuring the new Charter of Fundamental Rights as its preamble (37) or first chapter? Or alternatively, might the countries belonging to a "pioneer group" perhaps conclude a new "*constitutional treaty*" on the basis of enhanced co-operation, or else should they instead negotiate a "*Treaty within the Treaty*"? Otherwise, should the "Federation of nation-states" serve as a model for a "new European federalism" aiming for a Federation of States and of peoples, as proposed by the European Socialists (38)?

How should the candidate countries be involved in the process? Is the European Conference the most suitable forum to reflect the positions of present and future candidate countries in the work of the future "body" or "convention"?

All such solutions deserve thorough exploration during the debate on the 'purpose' of the European Union with 27 or more Member States. This debate encompasses a whole host of other questions, such as of course ones related to the legitimacy of its actions both internally and externally (how should the Community method be updated and how should the intergovernmental method best be used?), the crucial question as to its funding, but also that of governance of and within the European Union. This question in turn arises in conjunction with globalisation and the numerous other uncertainties which globalisation is already engendering for the European Union's economic, social and political cohesion both now and in the future. This debate has also the merit to show that the stakes of enlargement largely go beyond the institutional dimension.

35. "The institutional implications of enlargement", Jean-Luc Dehaene, Richard von Weizsäcker and David Simon, report presented to the European Commission on 18 October 1999.

36. Preparations for the Intergovernmental Conference - Commission contribution to the Presidency report to the Helsinki European Council, COM (1999) 592 of 10 November 1999, and "A basic Treaty for the European Union", COM (2000) 434 of 12 July 2000, where the Commission, refusing to comment on the options set out in the first study transmitted to it by the Florence European University Institute in May 2000, supports in general the aim of producing a reorganised treaty "without departing from the law as it stands". The report and the model fundamental treaty of the European Union have been published on the Commission's website: http://europa.eu.int/comm/igc2000/offdoc/repoflo_fr.pdf and http://europa.eu.int/comm/igc2000/offdoc/drafttreaty_fr.pdf.

37. Robert Badinter, "*Une Charte, oui, mais laquelle?*" in *Le Monde*, 20 June 2000.

38. A European project for the European Socialists: The New Federalism, outline manifesto, 24 January 2001, contribution by several members of the Socialist Group in the European Parliament.

ANNEXE I : ARTICLES MOVING TO QUALIFIED MAJORITY VOTING (QMV) AND CONSULTATION OF THE EUROPEAN PARLIAMENT OR TO CO-DECISION

- Article 13 § 2 TEC: the combat against discrimination: incentive measures (co-decision).
- Article 18 § 2 TEC: citizenship, the right to move and reside within the Union (normal co-decision; Suppression of unanimity as set out in the Treaty of Amsterdam). **Does not cover the provisions on passports, residence permits or assimilated documents, nor the provisions concerning social protection or social security.**
- Article 67 TEC: Visas, asylum and other policies linked to the free movement of persons (Title VI of the TEC): various provisions move from unanimity to QMV or co-decision :
- Article 62.2.a) TEC: checks on persons at external borders. **When? Once an agreement has been reached on the scope of measures concerning the crossing of the external borders by persons of the EU Member States.**
- Article 62.3 TEC: conditions governing the free movement of third countries nationals (co-decision). **When? As from 1 May 2004.**
- Article 63.1.a) b) c) and d) TEC: measures relating to asylum (co-decision). **When? Following the adoption of Community legislation defining the common rules and basic principles governing this issue.**
- Article 63.2.a) TEC: temporary protection (co-decision). **When? Following the adoption of Community legislation defining the common rules and basic principles governing this issue.**
- Article 63.3.b) TEC: illegal immigration (by co-decision). **When? From 1 May 2004.**
- Article 65.a) b) c) TEC: judicial co-operation in civil matters (co-decision), with the exception of aspects relating to family law .
- Article 66 TEC: co-operation among administrations (QMV; consultation of EP). **When? From 1 May 2004.**
- Article 137 TEC (partly re-formulated) TEC: social provisions: extension of co-decision to two fields, namely **combating exclusion and the modernisation of social protection systems but only for the adoption of measures designed to encourage cooperation between Member States, which excludes any legal harmonisation, notably by means of directives. The Council may – on a proposal from the Commission and after consulting the European Parliament – unanimously decide the move to co-decision on matters relating to the protection of workers where their employment contract is terminated, the representation and collective defence of the interests of workers and employers, including co-determination, and the conditions of employment for third-country nationals legally residing in Community territory. Social security and the social protection of workers will remain subject to unanimity.**
- Article 144 TEC : establishment of a of Social Protection Committee (qualified majority; consultation of the EP).
- Article 157 TEC: measures in support of action taken in the Member States in the industrial field (co-decision).

Article 159 TEC: specific actions as regards economic and social cohesion (co-decision).

Article 181bis (new) TEC: economic, financial and technical cooperation with third countries (qualified majority on a proposal from the Commission and after consulting the EP).

Article 190 § 5 TEC: regulations and general conditions governing the performance of Member of the European Parliament (laid down by the Parliament, qualified majority). Exception: taxation of Members or former Members (unanimity).

Article 191 TEC (new paragraph): statute of European political parties (co-decision).

Article 279 TEC: Financial Regulations. **When? From 1 January 2007.** QMV, consultation of EP.

Appointments

Article 214 TEC: President of the Commission and list of other Members of the Commission (QMV, role of European Parliament unchanged: approval).

Article 247 § 3 TEC: Members of the Court of Auditors (QMV, consultation of European Parliament).

Enhanced co-operation

Article 11 TEC: procedure for establishing enhanced co-operation in the framework of the EC Treaty, **QMV based on a Commission proposal, consultation of EP, assent if the area is subject to co-decision).**

Article 40 A: procedure allowing for enhanced co-operation in the area of police and judicial co-operation in criminal matters, Title VI, **QMV, Commission proposal or initiative of at least eight Member States, consultation of EP).**

ANNEXE II : OTHER CHANGES INTRODUCED BY THE TREATY OF NICE CONCERNING THE EUROPEAN PARLIAMENT

ASSENT

Article 7 TEU: majority of four-fifths of the Member States, determination of the existence of a serious and persistent breach of fundamental rights by a Member State, **right of proposal of the EP and assent (two-thirds majority of the votes cast, representing a majority of its Members)**.

Article 11 TEC: procedure for establishing enhanced co-operation in the framework of the EC Treaty, **QMV based on a Commission proposal, consultation of EP, assent if the area is subject to co-decision**).

Article 161 TEC: economic and social cohesion and the Structural Funds (QMV, assent of EP and consultation of Economic and Social Committee and Committee of the Regions). **When? From 1 January 2007** or after adoption of the 2007-2013 financial perspective.

INFORMATION

Article 27 c TUE : procedure for establishing enhanced co-operation in the framework the Common Foreign and Security Policy (request addressed to the Council, forwarded to the Commission and to the EP for information. Possibility recognized to circumvent the QMV for a Member State which would not agree, the decision returns then to the European Council for a unanimous decision).

Article 100 § 1 TEC: supply of products in severe economic circumstances (shortages) and § 2 in the event of natural disasters or exceptional occurrences (QMV, Commission proposal, information of European Parliament).

RIGHTS OF ACTION

Article 230 TEC: Like the other institutions, the EP can bring an action before the Court of Justice.

Article 300 par. 6 TEC: Like the other institutions, the EP has the possibility of obtaining the opinion of the Court of Justice on the compatibility of an agreement.

ANNEXES III : ARTICLES MOVING TO QUALIFIED MAJORITY VOTING (QMV) WITHOUT IMPLICATION FOR THE EUROPEAN PARLIAMENT

Treaty on European Union (TEU)

Article 23 TEU: special representatives: Common Foreign and Security Policy (CFSP).
Article 24 TEU (new wording): conclusion of international agreements if QMV is foreseen (Common Foreign and Security Policy: implementation of a joint action or common position) and in police and judicial co-operation. Unlike the arrangements under the Treaty of Amsterdam, these agreements are binding for the institutions and could transform the EU, which at present has a legal “mini-personality”, into a fully-fledged legal entity.

Enhanced co-operation

Article 27 e TEU: procedure allowing the participation in enhanced co-operation of the other Member States within the framework of Common Foreign and Security Policy.

Article 40 b TEU: procedure allowing the participation in enhanced co-operation of the other Member States in the area of police and judicial co-operation in criminal matters, **opinion of the Commission with or without recommendation**).

Treaty establishing the European Community (TEC)

Article 111 § 4 TEC: external representation of the EMU (participation at the G7, etc.). A declaration adds that procedures must be such as to enable all the Member States in the euro area to be fully involved in each stage of preparing the position of the Community in respect of EMU.

Article 123 § 4 TEC: measures for the rapid introduction of the euro (QMV).

Article 133 § 5 TEC: commercial policy: trade in services and the commercial aspects of intellectual property (Commission is strictly controlled by a Special Committee).

Rules of procedure

Article 223 TEC: Rules of Procedure of the Court of Justice.

Article 224 TEC: Rules of Procedure of the Court of First Instance.

Appointments

Article 207 TEC: Secretary-General and the Deputy Secretary-General of the Council.

Article 215 TEC: Replacement of a Member of the Commission in the event of death or resignation.

Article 259 TEC: List of members of the Economic and Social Committee.

Article 263 TEC: List of members of the Committee of the Regions.

ANNEXES IV : EP SEATS

Countries	Current situation (1999-2004)	Approved in Nice (2004-2009)
Germany	99	99
United Kingdom	87	72
France	87	72
Italy	87	72
Spain	64	50
Poland		50
Romania		33
Netherlands	31	25
Greece	25	22
Czech Republic		20
Belgium	25	22
Hungary		20
Portugal	25	22
Sweden	22	18
Bulgaria		17
Austria	21	17
Slovakia		13
Denmark	16	13
Finland	16	13
Ireland	15	12
Lithuania		12
Latvia		8
Slovenia		7
Estonia		6
Cyprus		6
Luxembourg	6	6
Malta		5
Total	626	732