

EUROPEAN PARLIAMENT

NOTICE TO MEMBERS

Overview of the results of the Intergovernmental Conference

Dear colleagues,

The meeting of the European Council of 7-11 December in Nice marked the end of our mandate as representatives of the European Parliament at the 2000 Intergovernmental Conference. Accordingly, we attach a general overview of the results of the conference as incorporated in the provisional text of the Treaty of Nice of 12 December.

At the same time, we should like to thank you for the trust which you placed in us and to wish you a happy and healthy new year.

Elmar BROK

Dimitrios TSATSOS

Representatives of the European Parliament at the Intergovernmental Conference

Brussels, 19 December 2000

Overview

Results of the Intergovernmental Conference

Between 7 and 11 December 2000 the European Council in Nice reached agreement on a 'Treaty of Nice'. Subject to its ratification by the parliaments of the Member States and by the people in those countries in which a referendum is planned, it amends the Amsterdam Treaty. This concludes the Intergovernmental Conference which opened on 14 February 2000. Altogether, the Intergovernmental Conference met nine times at ministerial level and nineteen times at the level of the representatives on the Preparatory Group. In addition, three informal meetings of the representatives and four ministerial conclaves took place. The President of Parliament took part in the regular meetings at ministerial level and the representatives of Parliament attended all the official and informal meetings of the Preparatory Group.

The following overview of the changes made by the Treaty of Nice focuses on what the EP saw as key objectives, namely **preparing the Union properly for enlargement and enhancing democratic legitimacy**. In this light we cannot but conclude that the agreement reached at Nice on the transition to qualified-majority voting **has only marginally increased the Union's ability to act**, on balance the **democratic deficit has grown** and the **decision-making procedure has been rendered much more complex and less transparent**.

Weighting of votes in the Council

- **In effect, a threefold majority requirement** was introduced, in that, in addition to a qualified majority of the votes (between approximately 71% and approximately 74% of the votes, depending on the actual number of Member States), and a majority of the Member States, a so-called '**demographic safety net**' was introduced (62% of the total population of the Union). In this way, the very reverse of the objective of simplifying decision-making by qualified-majority voting was achieved. It should be noted that an increase in the minimum number of votes required lower than that now agreed was discussed in Amsterdam and rejected as too high. What is more, in general terms the cumulative nature of the various hurdles makes blocking minorities easier to achieve, thereby increasing the likelihood of proposals being thwarted in future by destructive minorities. Moreover, the new system is complicated and lacking in transparency and in this respect also fails to meet the criteria employed by the European Parliament.

Extension of decision-making by a qualified majority vote

- As regards the issue of **qualified-majority decision-making**, which is the key to the Union's future ability to act, it was decided that qualified-majority voting should be introduced, either when the Treaty enters into force or at a later date, in the 35 cases shown in the attached list. In addition, in future the President and Members of the Commission will be appointed by a qualified majority. On key issues such as **policy on taxation, the environment or social affairs**, however, there is either no change or only very minor changes. With regard to the **Structural Funds**, qualified-majority voting is to

be introduced with effect from 1 January 2007 at the earliest. In the field of **justice and home affairs**, no change at all was made to Title VI of the EU Treaty (police and judicial cooperation in criminal matters), in Title IV of the EC Treaty (visas, asylum, immigration and other policies relating to free movement of persons), Article 67 was reformulated with the effect that the measures referred to in Article 65 of the EC Treaty will be subject to the Article 251 procedure as soon as the new Treaty enters into force, but other measures (e.g. controls on crossing internal borders, distribution of refugees, residence of third-country nationals in other Member States, asylum) only once uniform Community legislation has been adopted (Art. 63 TEC) or on 1 May 2004 after a unanimous decision by the Council. A declaration in favour of such a decision was adopted (see attached list). In the field of **external relations**, it was agreed that in principle the scope of the common commercial policy should be extended to cover services and intellectual property rights. However, numerous safeguard clauses will reduce the significance of this provision for some time to come. No provision has been made for codecision in respect of the implementing provisions for the common commercial policy, as called for by the EP. All in all, there is reason to fear that these results will not improve to the requisite extent the **ability of an enlarged Union to act**.

Increase in the democratic deficit

- Despite the European Parliament's calls, the issue of a general link between **qualified-majority voting and codecision** involving the European Parliament in the legislative field (and in other cases, such as appointments, its assent) was not at any time systematically debated. In those fields already subject to qualified-majority voting (the **common agricultural policy, Economic and Monetary Union, competition and State aid**), provision has still not been made for codecision. But likewise in Articles **133 TEC, 181a TEC and 279 TEC**, which are at least partially being made subject to QMV, there is no provision for codecision involving Parliament. This also applies to the subsequent transition to QMV in the case of the **Structural Funds (Art. 161 TEC)**. **Thus on balance, the decisions taken at Nice concerning qualified-majority voting will only increase the democratic deficit, rather than reducing it.**

The Commission

- With regard to the size of the Commission, it was agreed that as from 1 January 2005 each Member State should provide one Commissioner until the Union has 27 members. For a Union with more than 27 members, the Council will unanimously decide the size of the Commission (which must then consist of fewer members than there are Member States) and the arrangements for rotation on the basis of equality.
- Note should be taken of the stronger role to be conferred upon the President of the Commission, something which Parliament too had called for: in future, he will have the power, inter alia, to reallocate portfolios among the Commissioners. His right to dismiss members of the Commission is provided for by the Treaty. Moreover, the President and Members of the Commission are now to be designated by a qualified-majority vote.

Composition of the European Parliament

- The consensus achieved during the Intergovernmental Conference in favour of retaining an upper limit of 700 for the number of Members of the European Parliament was set aside, agreement being reached on the figure of 732, with the proviso that it could be exceeded – perhaps substantially – during a transitional period. The exact allocation of seats is not guided by any system but was decided ad hoc as compensation for the weighting adopted for votes in the Council. In the case of the Czech Republic and Hungary, the present allocation of seats is contrary to the principle of equality and democracy, as the number of seats assigned to those countries is smaller than the number assigned to Member States with smaller populations.

Enhanced cooperation

- It was agreed that enhanced cooperation should be permitted solely for the purpose of furthering integration in an enlarged Union within the context of the existing Treaty and making use of its procedures, institutions and mechanisms; it must respect the single legal order and institutions, it must be open to States which do not at first participate in closer cooperation, and it may be engaged in only as a last resort.
- Under the **first and second pillars** the **de-facto veto** on the initiation of cooperation is generally **abolished**. For all pillars, the minimum number of participants in enhanced cooperation is eight States. Under the second pillar, enhanced cooperation will likewise be possible in future, but will be confined to the implementation of joint actions and common positions, and it is expressly stipulated that it cannot extend to security and defence policy.
- As regards **participation by the European Parliament in the procedure for initiating cooperation**, the EP has a right of assent in those first-pillar fields which are subject to Article 251. Under the third pillar, Parliament must be consulted; under the second pillar, it must be informed.

Article 7

- **Article 7 TEU**: Article 7 of the Treaty is supplemented by a provision whereby it may be determined that there is a clear risk of a serious breach by a Member State of the fundamental principles mentioned in Article 6(1) of the TEU. It both confers upon the **European Parliament a right of proposal** and stipulates that Parliament's **assent** is required before recommendations can be made.

Article 191

The Treaty of Nice lays down a new legal basis (Art. 191) stipulating that matters relating to the Statute for Members and the financing of European political parties will henceforth be subject to the codecision procedure.

European Court of Justice

- The most important aspects of Parliament's proposals were accepted. In particular, the EP was placed on an equal footing with the Council and Commission with regard to the right to bring actions before the Court pursuant to Article 230 TEC.

Charter of Fundamental Rights and the post-Nice process

- Parliament's call for a reference to the Charter to be incorporated in Article 6(2) of the TEU was supported by nine Member States and the Commission, but not discussed at the preparatory meetings in Nice. The question of the legally binding incorporation of the Charter in the Treaties will be considered as part of the so-called post-Nice process, in connection with which a declaration on the future of the Union is to be incorporated in the final act of the conference. It contains preliminary indications about the substance of and arrangements for the post-Nice process, which is designed to lead to a new Intergovernmental Conference in 2004. It is intended that the European Parliament should participate in the preparatory work; the declaration leaves open the possibility of a Convention's being the forum for this work. The subjects of the process are the demarcation of powers, simplification of the Treaties, the status of the Charter of Fundamental Rights and the role of national parliaments in the 'architecture' of Europe.

Extension of QMV by the Treaty of Nice

A. QMV to replace unanimity when the Treaty of Nice enters into force

1. Article 23(1) TEU: appointment of special representatives
2. Article 24(3) and (4) TEU: international agreement implementing a joint action or common position (but with a clause providing for referral to the European Council); QMV also for internal rules
3. Article 13(2) (new) TEC: measures against discrimination (for incentive measures only)
4. Article 18(2) TEC: free movement of EU citizens (except measures concerning passports, identity cards, social protection and social security)
5. Article 65 TEC: judicial cooperation in civil matters (except family law)
6. Article 100 TEC: para. 1, supplies in the event of a serious economic situation (shortage), and para. 2, financial assistance in the event of a natural disaster or exceptional occurrences
7. Article 111(4) TEC: representation of the European Community at international level in the field of EMU
8. Article 123(4) TEC: measures necessary for the introduction of the euro
9. Article 133(5) TEC: trade in services and commercial aspects of intellectual property (strict provisions with cultural derogations at all levels)
10. Article 157(3) TEC: specific measures in support of action by Member States in the field of industrial policy
11. Article 159(3) TEC: specific actions outside the funds
12. Article 181a (new) TEC: economic, financial and technical cooperation with third countries
13. Article 190 TEC: Statute for Members of the European Parliament (except taxation of Members)
14. Article 191 TEC: status of, and financial rules governing, political parties at European level
15. Article 207(2) TEC: appointment of the SG and Deputy SG of the Council

16. Article 214 TEC: nomination and appointment of the President of the Commission and its Members
17. Article 215 TEC: dismissal of a Commissioner by decision of the Council
18. Article 223 TEC: approval of the Rules of Procedure of the Court of Justice
19. Article 224 TEC: approval of the Rules of Procedure of the Court of First Instance
20. Article 247 TEC: Members of the Court of Auditors
21. Article 259 TEC: list of members of the Economic and Social Committee
22. Article 263 TEC: list of members of the Committee of the Regions

B. Introduction of QMV deferred until a later date

Visas, asylum and immigration

Article 67 TEC: QMV with codecision is to apply **after** the Council adopts unanimously (no date set) the Community legislation laying down common rules and basic principles governing the following subjects:

23. Article 63(1)(a) – measures relating to asylum
24. Article 63(1)(b) – measures relating to asylum
25. Article 63(1)(c) – measures relating to asylum
26. Article 63(1)(d) – measures relating to asylum
27. Article 63(2)(a) – measures relating to refugees

In a **declaration annexed** to Article 67 the Council undertakes to do everything possible:

- to ensure that QMV with **codecision** applies from 1 May 2004 to:
 28. Article 62(3) - conditions governing the free movement of third-country nationals
 29. Article 63(3)(b) - measures relating to clandestine immigration
- to ensure that QMV with **consultation of the EP** applies from 1 May 2004 to:
 30. Article 66 - cooperation between the appropriate departments of administrations
- to ensure that QMV applies to:
 31. Article 62(2)(a) – The procedures relating to checks on persons at external borders as soon as agreement has been reached on the scope of the measures concerning the crossing of the external borders of the Member States by persons

Some or all of the other fields falling under Title IV – VISAS, ASYLUM, IMMIGRATION - (Art. 62(1) – no checks when crossing internal borders - Art. 63(2)(b) – measures to ensure a balance between the efforts of Member States to receive refugees – Art. 63(3)(a) – measures relating to conditions of entry and residence – Art. 63(4) – residence of third-country nationals in other Member States) will be subject to Article 251 from the same date or as soon as possible, if the Council takes a corresponding decision.

Social provisions

32. Article 137 TEC: social provisions: 'Passerelle': after a unanimous decision by the Council and consultation of the EP, QMV to be introduced with **codecision** for: protection of workers in the event of termination of their employment contract (point d of the new text), collective representation and defence of the interests of workers and employers, including codetermination (point f of the new text) and conditions of employment of third-country nationals legally resident on Community territory (point g of the new text) -

Structural and Cohesion Funds

33. Article 161 TEC: as from 1 January 2007, or even later (date of adoption of the Financial Perspective for 2007-2013), QMV for the Cohesion Fund
34. Article 279 TEC: as from 1 January 2007 – Financial Regulations and rules relating to the liability of financial controllers, authorising officers and accounting officers

C. Special majorities

Fundamental rights

35. Article 7 TEC: four-fifths of the Member States for determination of a clear risk of a serious breach