

Decision-Making in the EU: a Small State Perspective

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A lively discussion has been taking place over the past two years within the European Union regarding the future of the EU. This future now plays an increasingly concrete part in the Union's politics with its impending massive expansion.

While European integration used to mainly be a process whose central political dimensions – such as geographical and political form – were punctuated by multiple question marks, it now appears to be reaching its near-ultimate shape in the not too distant future. The more permanent borders of the expanding Union already loom on the horizon. This has also prompted a discussion with respect to the ultimate political form of the Union.

The Laeken meeting of the European Council established a special broad-based body to advance the discussion and called it the Convention on the Future of Europe. The Convention was not only asked to come up with a vision for the Union's more distant future, however. It was also authorised to make proposals to the next intergovernmental conference addressing the Union's basic treaties in 2004. This article analyses the EU's decision-making from the perspective of a small member state.

The Challenge of Effective Decision-Making

The EU's decision-making system is one of the Union's structural components that most clearly reflect its diversity. This decision-making system mixes the Union's federal elements with

intergovernmental elements familiar from traditional international organisations. As intergovernmental processes are proving increasingly inadequate both in terms of the Union's democracy and general effectiveness, it has been difficult to find a workable alternative for a federal model.

Discussions regarding the EU's future have examined the Union's decision-making system mainly from the perspectives of democracy and legitimacy, and the efficiency and effectiveness of an enlarged Union. The primary development models can be seen as reinforcing either federal or intergovernmental elements based on their predominant institutional characteristics. The guiding principle behind federal models is that the EU level is at least as important as the individual member state level for the operation of a democratic system. The effectiveness of the democratic system must also be evaluated at this level in order to establish the democracy and legitimacy of the Union.¹ Both American-style President-driven and purely parliamentary models of representative democracy have been proposed for the EU.

The *full* implementation of representative democracy at the EU level would mean clarifying Montesquieu's doctrine on the separation of powers between the institutions of the Union. This would, first of all, require that the Commission's role be solidified as the Union's executive body. Reinforcing and expanding the Commission's original functions – such as the right to propose legislation and represent the

Union internationally – would play an essential part in this.²

The executive role of the Council of Ministers would be minimised by developing it increasingly in the direction of a legislative body – and the second chamber of the European Parliament. The parliamentary relationship between the Commission and the European Parliament would be reinforced so that the composition of the Commission would more clearly reflect the outcomes of EP elections than is presently the case. The Commission's political accountability to the Parliament would become more concrete, and the Commission's action plans would be more closely connected to the platforms of pan-European political parties.³ One alternative brought up in the discussion on the EU's future has been electing the President of the Commission by popular vote, which would mean that the Union system would develop more toward a presidential rather than parliamentary direction.⁴ Direct elections have been seen as a boost to the legitimacy of the Commission – and also to its power with the President's mandate coming directly from the people. The role of the European Council made up of the heads of government and state is not all too clear in these federal models. In a proposal by the European Federalist Movement, the European Council was turned into a collective Presidential body of sorts that would have the power to appoint the head of government (i.e. the Commission) and to dissolve the Parliament. The European Council would also manage foreign and security policy at the general level.⁵

The functional and ideological diversity of European political parties at the pan-European level and the general difficulty of promoting EU-wide political debate constitute central problems in reinforcing the federal model. Such a system would, in principle, provide citizens with the opportunity to evaluate Union-level decisions, the argumentation put forth in their support, and the alternatives available all the way from the preparation of proposals to the implementation of decisions. It would thus reinforce the transparency of the Union system and better facilitate participation and citizens' political opinion formation. It would also clarify powers and responsibilities within the system. In reality, however, debate over the EU's decisions is not based on political juxtapositions in the same way as political choices at the nation-

al level. This is largely a result of the national character of EP elections. EP candidates are nominated by national political parties, which leads to election campaigns based on national themes. This prevents the emergence of uniform themes – and themes related to the EU's central political issues. There are also other impediments to uniform political debate, however. The EU is a multilingual community where mass media still operate very nationally. Even the growing role of pan-European parties will not guarantee political debate unless such debate is provided a common political space by the media.

The intergovernmental development models for the EU's political system start from the idea that the representation of member states by their governments is the primary channel for the implementation of democracy within the EU. This is why reinforcing the role of those Union institutions through which governments perform this representation is considered necessary. In order to increase democracy within the EU, an attempt has also been made to increase the participation opportunities of national parliaments directly at the EU level. In the discussion on the EU's future intergovernmental development models have in the first hand been reflected in aspirations to increasingly develop the European Council toward an executive body, or into an area that under the current division of labour belongs to the Commission.⁶

Attempts have been made to reinforce the political leadership role of the Council of Ministers – like that of the European Council – through multi-year programmes.⁷ Another goal has been to develop the presidency of the Council of Ministers from an administrative presidency to an increasingly political presidency. To this end it has been proposed, for example, that the semi-annually rotating Council presidency be replaced by having each Council composition select a suitable chairperson from its membership. These chairpersons would then constitute a steering group of sorts that would coordinate the work of various Council compositions. As a separate model for the European Council level it has been proposed, in connection with changing the presidency system, that an individual be appointed for a specified period of time as the President of the European Council. He or she would lead a steering group

consisting of Council chairpersons and would represent the Union with respect to key foreign powers.⁸

Plans aimed at reinforcing the position of national parliaments at the EU level can also be included under the intergovernmental model because their starting point is particularly the promotion of democracy through national systems. The most far-reaching proposal with regard to national parliaments is based on creating a second chamber in the European Parliament consisting of national representatives. Reinforcing the position of the current parliamentary cooperative body – COSAC – has been proposed as a more moderate alternative. Various duties have been sketched for national parliaments at the EU level with the key ones relating to the oversight of the implementation of the subsidiarity principle within the EU system. The President of the Convention on the Future of Europe, Valéry Giscard d'Estaing, among others, has proposed much more general EU responsibilities for national parliaments that would be handled by a group of representatives from national parliaments acting together with the European Parliament. This organ, dubbed the "Congress of the Peoples", would meet regularly to discuss such matters as the Commission's and Council's action plans and to make certain key appointments.⁹

Intergovernmental models are problematic mainly from the perspectives of the Union's effectiveness and the equality of member states. The Council of Ministers is the EU institution that connects the national interests of member states to Union policy. Its decisions are compromise-oriented and are often based on the lowest common denominator. Elevating this type of a pure intergovernmental body to a political leadership role in a Union of nearly 30 member states presents a problem in terms of the workability of the Union. It is safe to assume that decision-making processes will stretch out more frequently, which in a Council-led Union would be reflected as a weakness in both the Union's international effectiveness and its internal decision-making processes.¹⁰

The manner in which solutions to this problem have been sought is in itself another problem with the intergovernmental model. The role of the Council of Ministers as an intergovernmental organ is also based on the equality of mem-

ber states. This is reflected in its makeup, e.g. the number of representatives or the Council's management system, i.e. its semi-annually rotating presidency. In order to guarantee the effectiveness of the Council of Ministers in an enlarged Union it has for some time been developed in a direction that primarily benefits large member states. Increasing majority decision-making represents such an element, which has also been found necessary by smaller member states based on their own national interests, however. Majority decision-making also reinforces the Commission's position among the Union's institutions.

Moves toward replacing the rotating presidency system with various longer-term leadership arrangements in anticipation of the Union's enlargement would not necessarily in and of themselves be at odds with the equality of member states. However, when they have been linked to attempts to elevate the Council of Ministers to the Union's leading organ in the debate over the future of Europe, they have inevitably taken on forms that would distort the equality of member states in the European Council system. It is quite likely that both the permanent presidency of the European Council held by an individual and the power given to various compositions of the European Council to choose their chairpersons would reinforce the position of large member countries in the Union as a whole. When giving the presidency of the European Council permanently to an individual has been justified particularly based on the need to increase the Union's international prestige, it is extremely unlikely that smaller and larger member states would have an equal chance to get their representatives appointed to this office. It is equally improbable that the representative of a non-allied country could ascend to this position whose holder would also lead the EU's common foreign and security policy.

Shaping the EU's decision-making system for the impending expansion is linked to the Union's democracy and effectiveness, as well as its legitimacy. The system must address the equality of member states and the differences in their population sizes in a balanced manner that is considered fair. Only a decision-making system that is seen as fair will create a strong basis for the confidence of new member states in the EU.

Puzzling and Problematic: Fair Allocation of Power

One important question in examining a decision-making body, such as the EU, that makes supranationally binding decisions is the fair and proportionally correct representation of its members. This question includes a regional dimension (member states or regions) and an institutional dimension (Commission, Council, European Parliament). In any event, the principle applied is a constitutional matter.

The allocation of power between the member states of the European Union is directly tied to the nature of the Union. The nature of the EU can be roughly analysed through two alternatives: a union of independent nation states (pure intergovernmental model) and various types of federal models.¹¹

In a purely intergovernmental decision-making model there is no need to make a distinction between Luxemburg and Germany since a member state is the basic component of this structure. If all member states had one vote on the Council of Ministers and if all decisions required the unanimous consent of all member

states, the EU would be a purely intergovernmental organisation.

The European Union's key decision-making body has traditionally been the intergovernmental Council of Ministers. The role of the European Parliament began to grow in the latter 1980s when it was also given an official role in EU decision-making.¹² Voting on the Council of Ministers is weighted based on the size of member states as presented in Table I. Most decisions require a qualified majority.

In other words, the Union has adopted a hybrid where an element of federalism has been built inside the Council of Ministers in that the relative population sizes of EU member states are reflected in their representation on the Council. The weighting of votes helps to address differences in the sizes of member states and to pursue the equality of the Union's citizens in EU decision-making. What relative weights are appropriate or fair is again a lot more complicated question.

It is easy to see in the figures in Table I that the number of votes is not directly proportional to population sizes even after the Treaty of Nice.

Table I Votes and Qualified Majority in the Council of Ministers 1958-

	1958	1973	1981	1986	1995	2005
Germany	4	10	10	10	10	29
Great Britain		10	10	10	10	29
France	4	10	10	10	10	29
Italy	4	10	10	10	10	29
Spain				8	8	27
Netherlands	2	5	5	5	5	13
Greece			5	5	5	12
Belgium	2	5	5	5	5	12
Portugal					5	12
Sweden					4	10
Austria					4	10
Denmark		3	3	3	3	7
Finland					3	7
Ireland		3	3	3	3	7
Luxembourg	1	2	2	2	2	4
Qualified majority	12	41	45	54	62	169
Minimum of countries for majority	3	5	5	7	8	8

In fact, one often hears the statement that small countries are overrepresented in the EU.

It is a common misconception that the voting power of member states should be in direct proportion to their population size. If the goal is to give each citizen of the Union equal representation in its decision-making bodies, it can easily be established that voting based directly on population size is unworkable. This is due to the federation's two-tier nature whereby member states first elect their governments, which then meet on the Council of Ministers.¹³

What then is a fair allocation of power?

If the EU were to make all of its decisions based on referenda, it would be fair to give each citizen of the EU one vote. Thereby each member state would have the same number of votes as people, and the members' voting power would exactly correspond to their proportionate share of the Union's total population. This is known as proportional representation. A proportional allocation of power would require that each citizen of the Union represents only himself or herself and can vote on matters as if a member of the Council.

In national elections the residents of large countries carry less relative power than those of smaller countries since each voter in both small and large countries has only one vote but larger countries have more voters than small countries. In order for each EU citizen to be equally represented in the decision-making of the Council, larger countries must have more voting power on the Council than small countries – but how much more?

Lionel Penrose (1946) proved that the correct answer is based on the square root of population size. In order for each citizen of the EU to have the same influence on the decisions of the Council, the influence of member states should be based on the relative square roots of their population sizes.¹⁴ The Swedish delegation proposed using this square root rule to the allocation of Council votes at the Nice Summit.¹⁵ The advantage of this proposal is that it would guarantee the equal representation of EU citizens in Council decision-making to a fairly high degree. It is also a very transparent system. The implementation of the square root rule in the federation is the cornerstone of fair regional representation.

How well is the square root rule then implemented within the European Union?¹⁶ Based on a qualitative evaluation, voting on the Council has always fairly closely followed the idea of the square root rule. Up to the Nice Summit small countries were slightly overrepresented in that, if the EU is seen as a pure federation, the citizens of large countries were less well represented than those of smaller countries. On the other hand, if the EU is seen as a hybrid of a federation and a union of member states, this conclusion no longer holds. A pure intergovernmental union of member states leads to less good representation of the citizens of large countries. It can be argued, for example, that each Finn carries more power at the UN General Assembly than his or her German counterpart.¹⁷

After the Nice Summit the allocation of power on the Council more closely meets the square root rule. The only notable exceptions are Luxembourg, which is overrepresented, and the underrepresented Germany.

The implementation of the square root rule on the Council alone is not enough, however, since it is based on moulding an intergovernmental decision-making body in a federal direction in terms of the relative allocation of power between the member states. This leaves out the position of the European Parliament. One possibility would be to apply the square root rule also to the allocation of Parliament seats. This would create a bicameral decision-making body where both chambers would directly apply a federalist allocation of power.

The year 2000 intergovernmental conference, for example, that culminated in the Nice Summit, sought to consider the nature of the EU as a union of people and peoples. This was probably also the single most important factor behind the so-called *simple dual majority* that the Commission promoted as its own proposal during the intergovernmental conference and in Nice.¹⁸

Simple dual majority is a standard approach to organising the allocation of power between the federal level and member states. It is a peculiar voting rule in that it is not weighted voting but, in a sense, still gives countries different weighting. In the EU case simple double majority requires that the majority of both member states (currently eight countries) and the population

of the member states (when the countries' votes are weighted based on their relative population) support a proposal.

The simple dual majority rule is based on the idea that a minority of countries or people cannot make decisions at the expense of the majority. It is therefore also based on a clear idea of legitimacy. Simple dual majority is also a very transparent principle and once implemented will not require the type of arm wrestling into the wee hours of the morning we saw at the Nice Summit. Simple dual majority is also a good way to implement the square root rule very precisely whenever the member states have no significant size differences.

In the decision-making of federal governments, as in the U.S. congress, the idea of simple dual majority is built on a bicameral system. The state component is addressed in the Senate¹⁹ where each state has two senators. In other words, power has been distributed equally to the states. The population size component is addressed in the House of Representatives where seats are allocated based on the population of each state. Both houses are in turn similarly represented because the majority of both is required for the passage of bills.

In the European Union a special problem attends the implementation of simple dual majority as such given its larger differences in the size of member states. At the extremes, Germany should have 200 times the number of seats given to Luxemburg in an EU House of Representatives. This problem can naturally be reduced by using the current type of voting on the European Council and existing type of seat allocation in the Parliament.

The Nice Summit ultimately failed to shape the EU's decision-making system into simple dual majority and stayed with the former weighted voting where countries continue to be divided into various categories, but the weighting of votes has been revised (see Table 1). Despite this decisions also considered the idea of double majority, although not in the manner proposed by the Commission. The revised votes in EU15 total 237, of which the current roughly 71 percent qualified majority represents 169 votes. Additionally, 62 percent of the population of the member states is required for decisions when the votes of member states are weighted in direct proportion to their relative

population sizes, together with a simple majority of the member states (currently 8 countries). The Nice Summit therefore actually arrived at triple majority.

One reason for why the Nice Summit arrived at triple majority was in all likelihood the fact that weighted voting will not necessarily guarantee the legitimacy of decisions in the same sense as double majority. Weighting votes heavily in favour of large countries may mean that a minority of member states can make decisions. Conversely, weighting votes in favour of small countries may mean that only a minority of the Union's residents stands behind a decision. Double majority coupled with weighting removes these possibilities and functions as a safety net. The efficiency of decision-making may suffer, however. In the case of the European Union, the current safety net is not meaningful.

Perhaps the most amusing decision made at the Nice Summit was to raise the qualified majority employed on the European Council to 74 percent. This change is not very large but in a Union of 27 countries it bears notable potential for decreasing efficacy in decision-making. The goal of the Nice Summit was, in fact, exactly the opposite.

In Conclusion

The problem frequently faced by European integration is that overly complicated solutions must be found for simple problems. When common decisions must be approved on the home court of each member state, elements are added by each to make them more easily acceptable. Thus the end result – whether a legal norm or a decision-making structure – becomes entangled and complicated. The significance of the EU in relation to national politics or legislative projects is also often not admitted, for example. This creates the impression that EU is a secondary and technical rather than political venture. The language used in connection with integration is also rather peculiar. Acts of Parliament are not Acts within the EU but Statutes or Directives. This is to convey the image that the EU is turning into a new state.

This all results in the EU becoming difficult, technical and uninteresting. The great benefit of the discussion on the future of the EU is that

concepts familiar to its citizens have unexpectedly been brought to the forefront of EU politics. Instead of a Treaty system people have started to talk of a constitution while also discussing the Commission's ability to act as the EU's government. The reaction of the citizenry has been mainly positive. It is quite a bit easier to get interested in matters whose primary building blocks one can sort out. The use of the proper concepts also emphasises the importance of the EU system. A constitution-based venture that defines the basic rights of citizens in a binding manner, for example, cannot any more remain a politically indifferent technical process.

Endnotes

¹ This was the spirit of the opening remarks delivered by the German foreign minister Joscha Fischer (12 May 2000, Humboldt University, Berlin) in the discussion on the future of Europe. Far-reaching proposals in support of this type of thinking have appeared particularly in German statements and statements of the representatives of the Benelux countries on the discussion regarding the future of Europe. The positions of pan-European political parties, such as the European People's Party and European Socialist Party, also naturally run along these lines.

² Clarifying the division of labour between the EU's institutions based on the original integration plans has been a central message in the European Commission's contributions to the discussion on the future of the EU (Communication from the Commission, 2002).

³ Based on the constitution proposal of the European People's Party (EPP), the European Council should propose the President of the Commission to the European Parliament based on the results of EP elections. European political parties could thus bring their candidates for the Commission presidency up already in their election campaigns (A Constitution for A Strong Europe, 2002).

⁴ Raunio, 2002, 158-160.

⁵ Towards a European Federal Constitution, 2002, 10. The proposal of the European Socialist Party to the Convention also supports reinforcing the European Council's foreign and security policy leadership role (Priorities for Europe, 2002), whereas the European People's Party would keep the European Council's position unchanged (A Constitution for A Strong Europe, 2002).

⁶ Great Britain has sought to give a more concrete leadership role to the European Council through multi-year programmes and by developing the presidency system. Tony Blair's speech at the Polish Stock Exchange on 6 October 2001, for example.

⁷ The decision to prepare longer-term programmes was made already at the Seville meeting of the European Council in June of 2002. According to this decision, the European Council adopts three-year strategic programmes prepared by the member states in turn for the Council presidency during the period in question in consultation with the Commission. Based on this programme the General Affairs Council decides on the Council's annual action plan which the member states in line for the presidency also prepare in consultation with the Commission (Seville European Council 21-22 June 2002, Presidency Conclusions).

⁸ The model was presented in this way for example in a speech given by the British Europe Minister, Peter Hain, on 25 June 2002 entitled "Where Next for Europe?". This individual President has been referred to as the "President of the European Union" in public discussion. This position should not be confused with the presidency of the Commission that can also be described using a similar term (the President of the Commission).

⁹ Le Monde, 22 July 2002.

¹⁰ See for example Temple Lang, 2002.

¹¹ For analysis see Laruelle & Widgrén (1998).

¹² The name European Parliament was adopted in the Single European Act in 1986. This was the first amendment to the Treaty establishing the European Community. The European Parliament was originally called the European Assembly and its attendees were members of national parliaments. The European Parliament was first elected by popular vote in 1979.

¹³ To be specific, the citizens of member countries do not elect their government directly unless the country has a two-party system. Otherwise the process involves three steps. This analysis starts with the idea that the citizens of all member states can have

equal influence over the composition of their government. This also brings out the important question whether the members of the European Council should be elected by direct vote like U.S. senators.

¹⁴ The fact that the weighting of votes and influence do not typically go hand in hand presents an additional problem. Votes are simply a resource in the exercise of power. A situation where two voters have 49 votes and the third has two votes serves as a classic example of this. If decisions are based on simple majority voting, it is easy to see that these voters are equally influential since each plays the deciding role in two majority coalitions even though the situation appears very asymmetrical based on the number of votes. This makes the design of weighted voting difficult in practice. In the European Union differences between influence and voting power are reasonably small, however, and getting smaller with the eastward expansion.

¹⁵ It should be noted, however, that the Swedish delegation was not familiar with Penrose's findings. Their proposal computed the square root of each country's population as a percentage of the square root of the Union's total population and multiplied the result by two. The number of votes was then rounded off to the closest whole number.

¹⁶ By comparison, the bicameral system used in the U.S. congress requires the majority of both the Senate and the House of Representatives to pass resolutions. The senate applies a "union of states" idea. Two senators are elected from each state. In the House of Representatives the number of seats allocated to each state rather closely follows their respective population sizes. The combination of these proportionality and one state – two votes principles produces an allocation of power in the United States that comes very close to the square root rule (see Baldwin et al. 2000).

¹⁷ It should be noted that this also applies within the European Central Bank, for example, even though the advancement of national interests goes poorly with the spirit of the ECB.

¹⁸ Five different alternatives were still considered right before the Nice Summit for reforming Council decision-making. No one of these was adopted as such. For a detailed comparison of the alternatives see Baldwin et al. (2000), and for an analysis of the outcomes of Nice see Baldwin et al. (2001), Felsenthal & Machover (2001) or Leech (2002).

¹⁹ As the United States expanded, no one questioned whether smaller states should have the same representation in the Senate as more populous states (see Rosenthal 1995).

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