

## 'A contract imposing a burden on a third party' from Die Zeit (14 December 2000)

**Caption:** On 14 December 2000, following the Nice European Council, the German weekly newspaper Die Zeit criticises the limited scope of the decisions adopted at the end of the Nice European Council held on 7, 8 and 9 December.

**Source:** Die Zeit. 14.12.2000, Nr. 51. Hamburg. "Vertrag zulasten eines Dritten", auteur:Wernicke, Christian , p. 4.

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## A contract imposing a burden on a third party

### The decisions taken by the EU Heads of State or Government in Nice have harmed the Union / By Christian Wernicke

Brussels

It is the evening before the endless night of the European Summit in Nice: a German diplomat is already running through the tally of what was sought and what has been gained. 'We have got everything we wanted,' he murmurs. More voting strength in the Council of Ministers in Brussels, and, on top of that, maintenance of the status quo with 99 German seats in the Strasbourg Parliament. That is already something, just when the great game of musical chairs is about to begin in the EU: when space needs to be created for Czechs, Poles or Hungarians, the Teutons alone keep all their seats. But that is not all that Berlin got from Nice: the official holds in his hands the jewel in the crown, that solemn *Declaration on the future of the Union*, with which Schröder, Fischer and Co. are already planning the next EU reform for the period up to 2004. A successful outcome then? Strangely, the man hesitates — and then speaks of all those summit battles in which German demands would at the same time have meant European progress: 'Well, I suppose that things don't look so good there.'

Ten hours later, the position was not the slightest bit better. Early in the morning, despite fatigue and gastric flu, summit host Jacques Chirac took a deep breath and praised the new EU Treaty as 'a success for Europe', even a 'historic' achievement. But that was no more than a white lie. For the President of France had put himself under pressure. It is not just that before Nice — along with all the Heads of State or Government in unison — he had declared that, on the Riviera, the EU would be fitted out for the enlargement of Europe. No, Chirac had, in addition, boasted that it would be better to have no Treaty at all than a bad Treaty. Now, before the cock had even crowed, he denied himself. Despite his own instinct, and although he knew better.

The Nice compromise sets out in 120 pages what lawyers call a contract imposing a burden on third parties. In this case: a burden on one third party, namely the European Union. The 15 Governments zealously protected every (purportedly) national interest against all kinds of (presumed) unfairness emanating from Brussels — and forgot their great mission: to prepare the fragile machinery of the Brussels institutions for enlargement to include the countries of Central and Eastern Europe in a Union encompassing 27 (instead of the previous 6, 12 or 15) Member States.

Certainly, the EU reforms make for dry, tedious business. That applies in particular when someone like Gerhard Schröder comes back from Warsaw where, in all honesty and in public, he declared his mission: 'the historic task of enlargement to include the countries of Central and Eastern Europe'. Compared with that, the details and footnotes of an EU Treaty, hammered out through hours of negotiation inside the bunker-like concrete shell of the Acropolis Conference Centre in Nice, are burdensome trivia. Something for those who deal with the small print. So let us move on, ready or not: 'We are fit for enlargement,' announced the German Chancellor the morning after. The polished confidence of Schröder, the car man, is reminiscent of an old metaphor of Jacques Delors: some years back, he compared the EU to a completely overloaded Mercedes, with only the engine of a two-stroke runabout under its bonnet. At the controls of this machine, which has undergone emergency repairs in Nice, Schröder now plans to take the road towards Eastern Europe. Piston seizure guaranteed.

Before Nice, the EFFICIENCY of Europe and its CAPACITY FOR COMMON ACTION were the measure of any success. After Nice, the verdict is crushing: 'Decisions have not become any easier,' grumbled Finnish Foreign Minister Erkki Tuomioja, 'if anything, the hurdles are higher than ever.'

That is true. And the European scandal is that the Heads of State or Government did not spend as much time on anything, anything at all, as they did chipping away at this partial achievement in Nice. The miserable wrangling over the redistribution of voting rights in the Council of Ministers soured the atmosphere for months, particularly between the large and the small countries. Still in Nice, Portugal's Prime Minister, António Guterres, interpreted a forceful paper from the French Presidency as an attempt at an 'institutional

*coup d'état*'. The mistrust stoked up at that moment will now bedevil the future.

Berlin, London, Paris, Rome and Madrid may have won more power for themselves after 2005: the number of votes in the Council of Ministers, hitherto ranging from 2 (for Luxembourg) to 10 (for Germany), now spans a gulf between 3 and 29. And mathematicians, especially those unfamiliar with the EU, may even assume that this redistribution of numerical influence should help to gather majorities behind constructive compromises. But that is pure theory.

Europe's pragmatic politicians actually did have their eyes on the ball, and they have built in three brakes. The threshold for a 'yes' in the Council of Ministers will soon be 73.5 % of all votes — higher than ever before. Secondly, the small countries, unsurprisingly, insisted on a 'safety net' against excessive decision-making power in Brussels: a majority of EU Member States must always be in favour, and that, in a Community of 27 Member States, means at least 14. The big countries were not having that and demanded, thirdly, a blockade formula of their own: a majority in the Council must, in future, always represent at least 62 % of the EU population. Why 62 %? Because this trick confers on the German Government a kind of special veto; only Berlin can, henceforth, in a negative coalition with just two other large partners, block an EU decision. This arithmetic of power compensates Schröder for having (like Adenauer und Kohl before him) spared the French political class the ignominy of Germany being attributed greater voting rights at the centre of power in Brussels.

This benefit is only destructive in its effect, a European disbenefit in other words. But the biggest net contributor to Brussels thinks that, in this way, it can prevent this or that raid on the EU treasury.

Of course, the new majority rules will not take effect as often as Berlin might hope. Nice has built in some safety structures. And again in concrete: for, in decisions of conscience henceforth to abandon the national veto in important fields of policy, there was nearly always one who refused to budge. One Treaty article after another was checked off. 'The Heads of State are just playing "Battleships",' moaned an EU diplomat on Sunday as the sun went down for the fourth time.

Jacques and Gerhard, Wim and Tony — they are on first-name terms. Can Europe decide on tax matters by majority voting in future? 'My dear Jacques,' said Tony, 'you know that I can't accept that.' — 'Oh yes, of course.' But perhaps in the fight against tax fraud? 'No, sorry!' Environmental taxes? Göran, the Swede, quickly states his regrets. On immigration, cultural policy and questions of vocational training, Gerhard says 'sorry, no,' on two counts out of consideration for the *Länder*, on another for fear of protests from decent tradesmen. And so on. On all sides, fear of being outvoted is greater than any concern that the future Europe of 15, 20 or 27 could be immobilised in a paralysis of unanimity.

Even 48 hours after the negotiations had finished, diplomats were still puzzling over how many of the hitherto 70 EU Treaty articles had now been freed from the constraint of unanimity. Sceptics counted 29 instances, the Germans 35, the French Presidency no fewer than 40. In purely numerical terms, that would account for over half. But all kinds of secondary issues were lumped together in the tally. Appointments to the Committee of the Regions, for example, or the rules of procedure of the Court of Auditors. A more weighty result was the success of an onslaught by the Benelux countries: in future, the President of the Brussels Commission will be appointed by majority voting. This reform should save Europe from many an embarrassing personnel debate after 2005. A relatively small result, but nevertheless a piece of good news.

This says nothing about the internal BALANCE OF POWER in a united Europe. The future role of the European Commission, for example, did not come up for discussion in Nice. Jacques Chirac did indicate in coarse and unseemly terms how little he thought of Romano Prodi and his Eurocrats. But the Treaty of Nice, if as expected it comes into force in 2002, will strengthen the master of the house in Brussels. That is also necessary; after all, in a few years, up to 27 Commissioners will be joining the discussion at the round table in Brussels. Internal leadership will help him to speak to the world outside, to the Council and Parliament, from a position of strength.

The small countries, in particular, fought hard for the principle that each country should have its own

Commissioner. Whether the clause requiring the number of Commissioners to be reduced in a system of rotation, at the latest when the number of Member States has risen to 27, will ever take effect is doubtful. The Austrians, Portuguese and Swedes have paid so much, perhaps too much, to the large countries in terms of increased voting strength in the Council of Ministers that they can hardly be expected to give up their own Commissioners some time after 2010.

The uncivilised passion with which the struggle for power in Europe's 'civilising project' was waged over four days and one night shocked many participants. 'I heard something crack,' reported Jean-Claude Juncker from the interior of the Acropolis, 'events from the past came to prominence in the debate on our common future.' Oh, Europe? Certainly the Luxembourg Prime Minister, for whom acting as an intermediary between Paris and Berlin is almost a part-time job, felt reminded 'with burning concern' of how 'insanely complicated our Continent is'. And then he added: 'if Nice happened every day we should soon be back in the trenches — though perhaps without live ammunition.'

But was it only the sound of blanks being fired that was heard in the conference room? António Guterres, that otherwise so companionable Portuguese, adopted a vibrant tone in the battle for more voting rights: 'the history of Portugal is the history of a nation asserting its right to exist on the Iberian peninsula.' The point was made in an attempt to reduce the difference in votes between Lisbon and Madrid from 17 to 15. Tony Blair just carried on beating the drum for the 'defence of British interests'. The longer the Summit lasted, the more crude national psychology came into play.

Especially between the Germans and the French. Not shouting, but a frosty silence sometimes broke out between the powers who are so happy to be portrayed as the EU's inner 'axis'. And German diplomats were quietly furious to learn how Jacques Chirac worked up an artful proposal on trade policy into a historic recompense for that expensive agricultural compromise which Gerhard Schröder had to make as EU host in the round of financial poker played in Berlin a year and a half ago. 'We do not expect gratitude, but we do expect a minimum of respect,' warbled Chirac. Contempt was the silent echo.

Alliances proliferated, on paper at least and in wild projections. Paris diplomats pictured the enlarged Union over a glass of white wine: France marginalised, Germany in the middle, with a large backyard. And the Germans, over a glass of beer, described the opposite bank of the Rhine as the power on the Mediterranean, in coalition with all the net recipients, who only want to dip into Berlin's wallet. Both repeated the mantra of 'Franco-German friendship as a necessary condition of European unity'. But it is no longer enough.

France, said one Berliner, had to work out its role for itself: '1789 or 1989?' Of course, more glances were directed at Germany. Behind concrete, amid legal wrangling and voting rights arithmetic, Nice posed the question of good or ill where the prospect of German leadership in Europe was concerned. This time, Schröder exercised restraint. He saw how Jacques Chirac suffered and, later on, he smoked an agreeable cigar.

Now, after Nice, 'post-Nice' begins. That is what that debate on Europe's future which Fischer, Chirac and Blair have already begun is called in EU jargon. The EU could henceforth be more German in form and geography. In any event, it will be less French than before Nice.

PS: The first skirmishes around 'post-Nice' have already taken place. Italian Prime Minister Giuliano Amato wanted to know why the French Presidency recommended a conference of 'only short duration'. Foreign Minister Hubert Védrine answered: that was intended 'entirely constructively'; after all, it is clear that the 'months of preparation' for Nice 'did not deliver much'.