The Nice European Council

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Nice was the venue for the European Council meeting which was to determine the amendments to be made to the Treaty on European Union. It was held on 7, 8 and 9 December 2000 at the end of the French Presidency and was the longest Council meeting ever held, largely because the governments involved disagreed so strongly on the issue of institutional reform.

Before the start of the Council proper, the Fifteen held a symbolic European Conference with the representatives of the 12 countries recognised as applicants for EU membership, plus the spokesman for Turkey and an observer from Switzerland. The Conference decided to include other potential applicant states too (Ukraine, the Balkan states, Norway, Iceland and Liechtenstein), but the Fifteen declined to set a completion date for the talks currently under way with the Twelve.

Then, before beginning its work, the Council, along with the European Parliament and Commission, speaking through their respective Presidents, jointly unveiled the Charter of Fundamental Rights of the Union which set out the civil, political, economic and social rights of Europe's citizens. But this announcement was of symbolic value only, since United Kingdom opposition meant that the Charter was not incorporated into the Treaty, which would have made it binding in law.

Before addressing the institutional issues, the Nice Council gave its views on a number of subjects carefully prepared by the Portuguese and, subsequently, the French Presidencies. The Council approved the report on the common security and defence policy (CSDP), adopting the requisite changes to the Treaty on European Union. It adopted the European Social Agenda called for by France to strengthen and modernise social Europe, setting specific priority objectives to promote employment and social protection over a five-year period. It adopted the agreement on the Statute for a European company for firms operating in more than one Member State, an issue which had remained stalled since 1970 because of disagreement over worker participation in management. It resolved to speed up measures relating to maritime safety (following the shipwreck of the oil tanker *Erika*) by intensifying vessel inspections and gradually phasing out single-hull tankers. In the wake of the crisis over bovine spongiform encephalopathy ('mad cow disease'), it decided to set up a European Food Safety Authority, although the role of this body would be purely advisory. The Council decided to strengthen the area of freedom, security and justice through the mutual recognition of judicial decisions and the introduction of Eurojust, a body to promote criminal justice cooperation. It adopted an 'action plan for mobility' in order to develop mobility within Europe for students, researchers and teachers. Lastly, it adopted a 'declaration on the specific characteristics of sport', requested by France, whereby the exemption granted to culture from the rules of the marketplace would be extended to sport, therefore enabling governments and federations to regulate sport more effectively (particularly transfers of professional players and protection for young sportsmen and women).

One institutional question which was resolved without difficulty was reform of the Community judicial system, the broad lines of which had been agreed at the European Council held at Feira under the Portuguese Presidency. The challenge here was to manage the sizeable increase in the number of cases being brought before the Court of Justice and the Court of First Instance of the European Communities (CFIEC), a surge triggered by the Community's increasing powers and its successive enlargements. The Treaty produced by the Nice Council brought major changes to the structure and functioning of the judiciary which would increase its capacity, particularly through the provision for specialist judicial chambers to hear appeals on certain subjects at first instance.

Two reforms to the Community system went through smoothly, because experience had shown them to be necessary and because they did not pose a threat to the national interests of Member States: 'enhanced cooperation' and increased powers for the President of the European Commission.

The 'enhanced cooperation' procedure, introduced by the Treaty of Amsterdam to enable some Member States to advance faster than others along the road to European integration, had been subject to extensive restrictions, making it very unlikely that the procedure would work. None of these restrictions had been enforced. Accordingly, the Nice Council made things rather more flexible. It widened the scope of enhanced

cooperation to include the Union's second pillar, the common foreign and security policy (CFSP), but with restrictions demanded by the United Kingdom, Ireland and Sweden: with regard to foreign policy, enhanced cooperation had to be limited to the implementation of common actions or positions agreed unanimously by the Council and could not apply to matters which had military or defence implications. Enhanced cooperation under the first Community pillar could apply only to areas in which the Community did not have sole competence, and, for matters subject to the codecision procedure between Parliament and Council, the assent of the European Parliament was required. The enhanced cooperation mechanism was made more flexible. The number of Member States required to invoke it remained at eight, even though the Union would consist of not 15 but 27 Member States following enlargement. Moreover, the possibility for an objecting state to use its veto, possible under the Amsterdam Treaty, was replaced by the right of appeal to the Council, which would act by a qualified majority. Accordingly, 'pioneer groups' could be formed in areas covered by the first and by the third pillar (justice and home affairs) but not in that relating to defence policy.

The position of the Commission President was strengthened in anticipation of the Commission's imminent enlargement and so as to avoid further incidents of the kind which had happened during the Santer Commission. The European Council would, henceforth, appoint the Commission President by qualified majority and not by unanimity, a requirement which had enabled the United Kingdom to veto the appointment of Jean-Luc Dehaene as Jacques Delors' successor in 1994. In agreement with the President-designate, the Council would likewise nominate the members of the Commission, who then had to be approved by the European Parliament. In this way, the President's authority over his Commission was strengthened: he could allocate portfolios and reshuffle the Commissioners' responsibilities during their term of office. With the approval of the Commissioners, he could appoint the Vice-Presidents and could, if he deemed it appropriate, ask individual Commissioners to resign (something that President Santer had not been able to do).

The debate became very difficult when the European Council addressed the matter of Member States' representation within the enlarged institutions. At issue was the delicate balance amongst the various bodies and, above all, the 'weight' of each Member State within each institution, that is to say, its ability to influence European Union policies and, possibly, oppose them. Whilst the objective, in principle, was still to preserve the efficiency of the decision-making process despite the increase in the number of Member States, the governments' prime concern was to advance their own national interests. The debate was all the fiercer in that the result would be a global 'package' resulting from horse-trading and compromises. It assumed a future European Union of 27 Member States: the Fifteen, plus the Twelve currently conducting accession talks, but with no account taken of countries which might accede later (Turkey and the Balkan States).

There was only partial agreement on the composition of the Commission. France and Germany thought that a Commission with too many members would lose cohesion and efficiency. They therefore agreed, along with Italy, the United Kingdom and Spain, to give up their entitlement to a second Commissioner in order to keep the numbers down. But the 'small' Member States already in the Union or about to accede insisted that they should have one Commissioner each. The role of Commissioners was not to represent their Member States (the members of the Council of Ministers did that) but to act independently in the European interest. For reasons of prestige, all the Member States wanted one of their nationals to be a member of the Commission.

Accordingly, the Treaty ruled that the 'big five' would have only one Commissioner each as of 1 January 2005, like the other Member States. Upon accession, each of the new Member States would be entitled to appoint one Commissioner. Only after the accession of the 27th Member State would the Council, acting unanimously, agree to determine the number of members of the Commission. There was no stipulation that this number would be lower than the number of Member States. If that were the case, a system of rotation based on the principle of equality might be adopted, reflecting the demographic and geographical range of the Union as a whole. So the question of an excessively large Commission was not resolved at Nice.

The Amsterdam Treaty had capped the number of Members of the European Parliament at 700, which was considered to be the maximum size for a working parliamentary assembly, and had stipulated an allocation

of seats which took account of the potential new Member States. Accordingly, this item did not feature on the agenda for the Intergovernmental Conference (IGC). But the small countries held out for as many seats as possible so as to make up for what they saw as their insufficient voting strength in the Council. Parliament thus became a variable for tweaking the institutional equation. However, the solution adopted took greater account of population, weakening proportionality to the advantage of the medium- and smaller-sized countries, as had been the case right from the Community's beginnings.

The European Parliament representing the Fifteen had had 626 seats, but that of the 27-Member State Union would have 732. This meant a smaller number of MEPs for the old Member States. Germany was the exception, holding on to the 99 seats that it had been allocated after reunification in time for the 1994 elections. France, Italy and the United Kingdom now had just 72 seats each (instead of 87), Spain had 50 (instead of 64), the Netherlands had 25 (instead of 31), Belgium, Greece and Portugal each had 22 (instead of 25), Sweden had 18 (instead of 22), Austria had 17 (instead of 21), Denmark and Finland had 13 (instead of 16), Ireland had 12 (instead of 15), and Luxembourg kept its 6 seats, a figure justified by the need of a small country to have multiparty representation.

The accession countries were classified according to the size of their population: Poland 50 seats, Romania 33, the Czech Republic and Hungary 20 each, Bulgaria 17, Slovakia 13, Lithuania 12, Latvia 8, Slovenia 7, Estonia and Cyprus 6 each, Malta 5. Until such time as Romania and Bulgaria acceded, their seats would be divided *pro rata* among the Twenty-Five. No provision was made for a number of Member States greater than 27.

The role of Parliament was strengthened. The codecision procedure was extended to cover the new issues which had to be approved by the Council acting by qualified majority: not to all matters, as Parliament wanted, but to a number of significant areas (industrial policy, judicial cooperation in civil matters, and immigration).

The breakdown of seats on the two advisory committees, the Economic and Social Committee (ESC) and Committee of the Regions (CoR) was determined for the European Union of 27: 24 seats each for Germany, the United Kingdom, France and Italy; 21 for Spain and Poland, 15 for Romania, 12 for the Netherlands, Greece, the Czech Republic, Belgium, Hungary, Portugal, Sweden, Bulgaria and Austria; 9 for Slovakia, Denmark, Finland, Ireland and Lithuania; 7 for Latvia, Slovenia and Estonia; 6 for Cyprus and Luxembourg; and 5 for Malta. In other words, a total of 344 seats for each committee.

Very little progress was made on extending qualified majority voting in the Council, even though this was seen as necessary to facilitate decision-making under the first Community pillar and to prevent the unanimity requirement from leading to paralysis, especially in an enlarged Union of 27 Member States. The Commission and European Parliament wanted majority voting for all legislative decisions of the Council. But the bigger Member States were keen to retain unanimity, that is to say their veto, on subjects which they regarded as very important to them — the United Kingdom on matters of taxation and social policy and France on the cultural aspects of the common trade policy in negotiations with the World Trade Organisation (WTO). Germany, previously very much in favour of majority voting, had become more reticent as a result of the reluctance of the *Länder* to see their powers reduced by Community legislation, particularly in the areas of immigration, visas, asylum, culture and the environment. Reform of the constitution in 1993 in fact gave the *Länder* a right of codecision with the Federal Government on European matters, which explains why the Federal Government felt that it had to retain the option of a veto.

As a result, progress was very limited. The Commission had recommended qualified majority voting for 50 out of the 70 areas where unanimity was required, but only 29 provisions of the Treaty on European Union were amended. Many were of secondary importance, being concerned chiefly with procedural matters. Implementation of five of these was conditional or was held over to a later date: to 1 May 2004 with regard to measures on illegal immigration and the movement of third-country nationals. The most striking exemption was secured by Spain, in that the continuance of unanimity voting on regional aid, of which Spain is the biggest beneficiary, will enable it to block any cuts in this aid up to 2014, notwithstanding the country's economic growth.

With regard to qualified majority voting, the most important factor is the weighting of votes in the Council of Ministers, that is to say, how they are allocated amongst the Member States. At Nice, this was the final item addressed by the European Council and the most contentious, since the Member States were eager to maximise their ability to influence decisions taken by qualified majority. The larger Member States wanted the new distribution of votes to restore a balance with the other Member States which had been destroyed by successive enlargements. Their relative weight had decreased from the Community of Six to the Union of Fifteen, even though they still accounted for the bulk of Europe's overall population and wealth. The bigger countries also feared that, with the accession of 12 new Member States, of medium or small size (except for Poland), they might find themselves in a minority position. Furthermore, France, Germany, the United Kingdom, Italy and Spain had given up their right to two Commissioners each in return for an increase in their voting power in the Council of Ministers.

The Commission put forward a simple solution: a decision would be adopted only if it was supported by a numerical majority of Member States and a majority of the total population of the Union. This would work to Germany's advantage, as its 'weight' would be greater. But this dual majority principle, though simple and readily comprehensible to the man in the street, was not upheld because it represented too much of a departure from the balances already solidly established amongst the older Member States. Account had to be taken of inequalities in population, however. But France wanted to retain parity with Germany, a political principle upheld since the very dawn of the Communities but latterly challenged by the reunified Germany, which had already been granted increased representation in the European Parliament and now wanted more votes in the Council than the other large Member States. President Chirac was against this, despite the difference in population (82 million Germans compared with 59 million Frenchmen). It was, therefore, decided that France, Germany, the United Kingdom (population 60 million) and Italy (58 million) should each have 29 votes. This drew protests from Member States less populous than the big ones but keen to be seen as big players: Spain (population 40 million) and Poland (39 million) were each allocated 27 votes, i.e. almost as many.

Then came the medium-sized countries. Romania (22 million) would have 14 votes. The Netherlands (16 million) would have 13 votes, a break from its traditional parity with Belgium (10 million) which, despite its protests, had to be content with 12 votes along with Portugal, Greece, Hungary and the Czech Republic, which also have a population of 10 million. Countries with a population of about 8 million (Austria, Sweden and Bulgaria) would each have 10 votes, those with a population of 5 million would have 7 votes (Denmark, Finland and Slovakia), as would those with a population approaching 4 million (Ireland and Lithuania). All other Member States would be given the minimum of 4 votes, regardless of the differences in their populations: Latvia (2.4 million), Slovenia (2 million), Estonia (1.5 million), Cyprus (750 000) and Luxembourg (440 000). Malta alone (population 380 000) was allocated just 3 seats.

For a total of 27 Member States, the total number of votes would thus be 345, and a qualified majority would be 258 votes in the case of a decision on a Commission proposal. In other cases, the majority of 258 votes had to reflect the votes of at least two thirds of the Member States. The threshold for a qualified majority in the Union of 27 would thus be almost 74 %, which was higher than in the Fifteen and meant that it would be harder for a decision to be adopted. Germany, moreover, insisted on a third condition which ensured that its demographic 'weight' was taken into consideration: when a decision was taken by qualified majority, a Council member could ask for verification of whether that majority represented at least 62 % of the Union's total population. If it did not, the decision could not be adopted. Accordingly, far from making decision-making in an enlarged Union easier, the Treaty of Nice made it more difficult by imposing three conditions: weighted majority of votes, numerical majority of the Member States, majority of the Union's population.

The European Council did not adopt these provisions until 4.20 a.m. on Monday 11 December, after a very lively debate which left everyone exhausted. That is why the figures were approximate and sometimes contradictory, because they were the result of last-minute concessions. The diplomats would need time to finalise the text, which would not be signed until 26 February 2001.

The Treaty of Nice certainly made enlargement possible by establishing the place of the new Member States within the EU institutions, but it did not address the major issues surrounding the future of the Union, and it highlighted, once again, the inadequacies of the method of intergovernmental negotiation. That is why, at Germany's instigation, a 'Declaration on the future of the Union' was annexed to the Treaty. This instructed the Swedish and Belgian Presidencies in 2001 to hold wide-ranging discussions and to report back in December 2001 to the European Council to be held in Laeken (Brussels), which would initiate the measures required to establish a delimitation of competences between the Union and the Member States (as demanded by the *Länder*), address the status of the Charter of Fundamental Rights, simplify the treaties and define the role of national parliaments in the European architecture. A new IGC would be convened in 2004 to carry out the necessary amendments to the Treaty. From early 2001, Germany would revive the debate on the future of the Union, something which France thought premature, and, on 30 April, Chancellor Schröder would support greater integration.

The French Government was happy to have secured a compromise which facilitated the accession of the new Member States, but Jacques Chirac, President-in-Office of the Council of the European Union, presenting the Treaty to the European Parliament on 12 December 2000, was severely criticised by the leaders of the political groups and by the President of the European Commission, Romano Prodi. Parliament approved the Treaty's provisions on the Commission and on enhanced cooperation, but it was unhappy that the Charter of Fundamental Rights of the Union had not been made an integral part of the Treaty, unhappy with the limitations placed on the extension of the codecision procedure between Council and Parliament, unhappy that the cap of 700 MEPs for the future enlarged Europe had been exceeded and unhappy with the national allocation of seats. On 14 December, the European Parliament adopted a resolution which accused the governments of having given 'priority to their short-term national interests rather than to EU interests'. But Parliament was unable to block the Treaty, since there was no requirement for it to give its assent, as had been the case with the accession treaties. The Belgian and Italian Parliaments threatened not to ratify the Treaty if the European Parliament opposed it. They did not do so, however, as this would have delayed the accession of the applicant countries.