

Council voting in the Constitutional Treaty: Devil in the details

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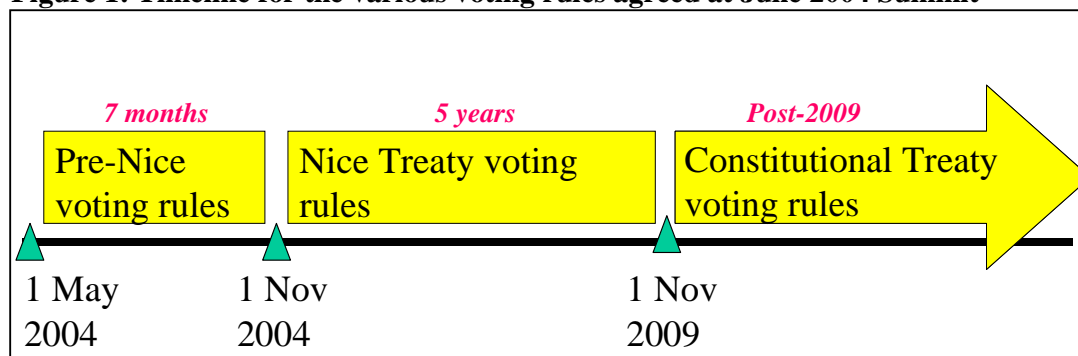
ABSTRACT

The June 2004 EU Summit failed to solve the enlarged EU's decision-making problems. Although the Constitutional Treaty's double-majority voting rules would maintain the enlarged EU's ability to act, the botched Nice Treaty rules will govern Council decision-making up to November 2009. This failure will have important consequences since the Council, Commission, and Parliament must make many tough decisions in the next 5 years and this will be extremely difficult under Nice Treaty voting procedures. Most importantly, these 5 years will be decisive in forming the public's opinion on the enlarged EU. If the next 5 years see a series of deadlock, bitter disputes and missed deadlines, EU citizens are likely to grow ever more disenchanted with the endeavour – and the Euro-sceptics ever stronger.

Regardless of whether the Constitutional Treaty becomes law, the Nice Treaty rules will be in force during the critical, formative years of the new EU. In this sense, the most pressing task facing EU leaders is not to get the Constitutional Treaty ratified – it is to fix the Nice rules without a treaty change.

The Constitutional Treaty proposes a radical change in Council of Ministers voting procedures, but these changes are postponed for 5 years. In this short essay, we evaluate the implications of three sets of voting rules that will govern Council decision-making in the years to come (see Figure 1). This essay first describes the voting rules ([Section 1](#)) before evaluating their impact on members' power and the EU's ability to act ([Section 2](#)), and providing our overall evaluation ([Section 3](#)).

Figure 1: Timeline for the various voting rules agreed at June 2004 Summit



1. What did they do?

The Constitutional Treaty explicitly sets out two sets of Council's voting procedure and implicitly recognizes the current system set up by the Accession Treaty (Article 24):

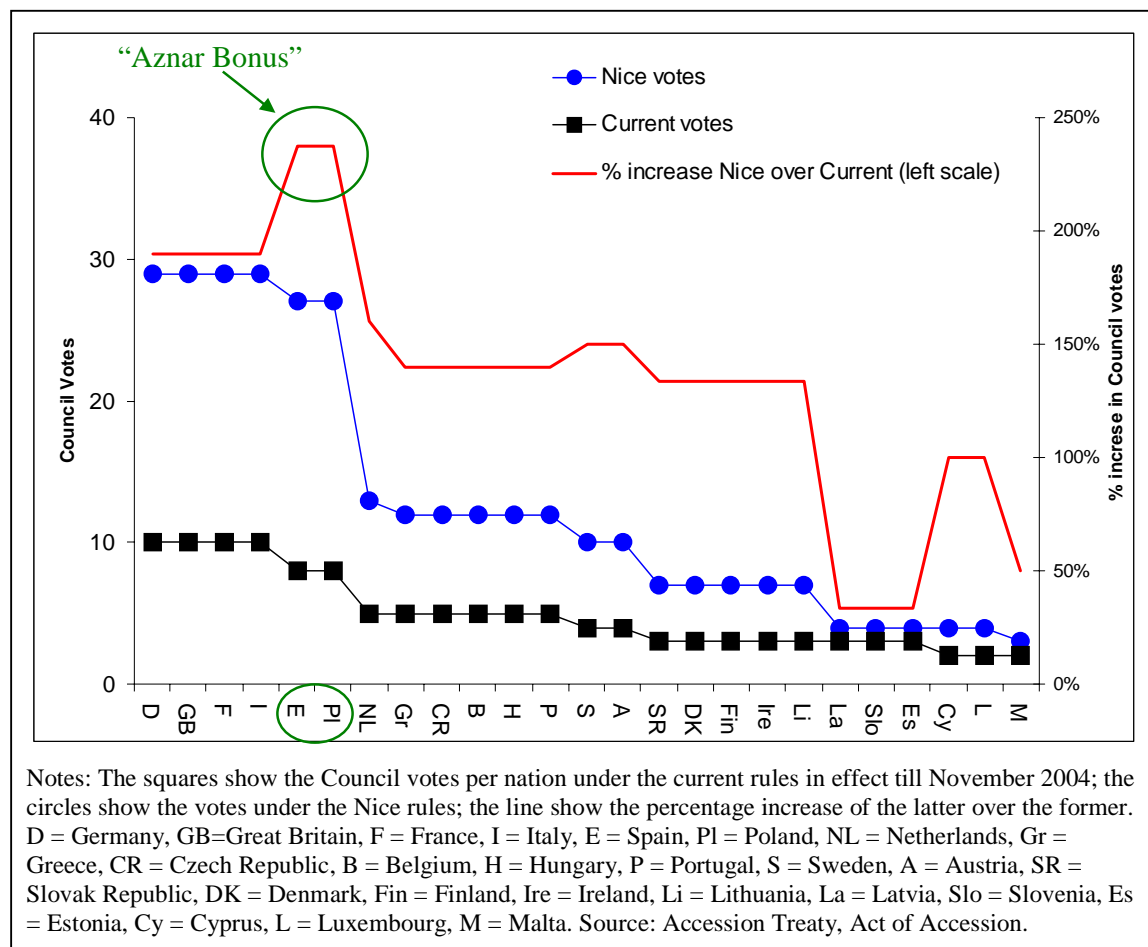
Up to November 2004, the pre-Treaty of Nice rules apply, i.e. qualified majority voting with weighted votes and the old majority threshold of 71% to win. The numbers of votes for the

incumbent 15 are unchanged; those for the 10 newcomers are a simple interpolation of EU15 votes as specified in the Accession Treaty.

From November 2004 to October 2009 the Nice Treaty rules apply (as per the "Draft Council Decision relating to the implementation of Article I-24").

- The Nice rules maintain the basic 'qualified majority voting' framework, but add two extra criteria concerning the number of yes-voters and the population they represent. Specifically, the vote threshold is 72.2% of the Council votes (232 of the 321 votes), the member threshold is 50% of members (13 members), and the population threshold is 62% of the EU population.¹
- Additionally, the Nice rules redistributed votes in a way that heavily favoured the big and near-big members, as Figure 2 shows; Spain and Poland won disproportionate increases. We call this the "Aznar Bonus".

Figure 2: Treaty of Nice and Accession Treaty reweighing of Council votes



From November 2009, the Constitutional Treaty (CT) rules apply; weighted voting is out and double majority is in. A winning coalition must represent at least 55% EU members and 65% of the EU population. As a constraint on the blocking power of the biggest members, a blocking coalition must have at least 4 members (Germany plus any two of the 6 largest EU27 members could block anything on the 65% threshold). This means that a qualified majority can be formed by a single, super majority consisting of all members but three. A last-minute Summit compromise inserted the requirement at least 15 members vote 'yes', but this is

¹ The rules that take effect in November 2004 are not those agreed at the Nice Summit, December 2000; the legally binding changes are in the Accession Treaty. Since EU leaders eventually realised how inefficient the Nice rules were, they improved efficiency by lowering the vote threshold from the 74% set at Nice.

irrelevant; 15 members of 25 is 60% and thus greater than 55%, but by the time these rules take effect, the EU should have 27 members and 55% of 27 is 15 (Bulgaria and Romania are pencilled in for membership in 2007). The 15-member rule will be redundant when it takes effect.

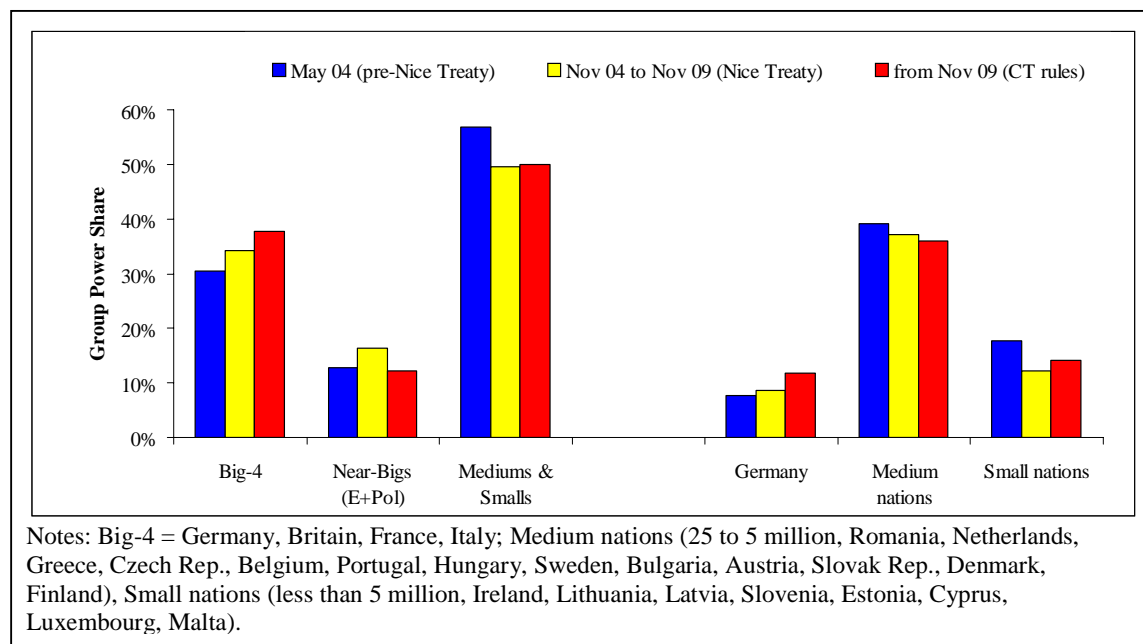
2. Analysis of power and efficiency

2.1. Winners and losers

Measuring the power implications of a voting rule is a difficult business. It is, nevertheless, one that will be undertaken by proponents and opponents of the Constitutional Treaty alike, so it is helpful to have some objective measure of power, even one that fails to capture the full richness of political interactions.

Here we present our calculations for a specific numerical measure of power, the NBI.² The general idea behind the NBI is simple. We use a computer to look at how likely it is that each member's vote is crucial on a randomly drawn issue – crucial in the sense that its vote can make or break a winning coalition. We note that we used this measure to predict (in June 2003) that Giscard d'Estaing's draft Constitutional Treaty would be rejected. (For a fuller explanation this and other technical issues, see Baldwin and Widgrén "[Winners and Losers under Various Dual-Majority Rules for the EU's Council of Ministers](#)", CEPS Policy Brief No. 48, April 2004.)

Figure 3: Winners and losers, big vs medium and small members



Nice Treaty power changes. The Nice Treaty rules will shift a great deal of power from Small and Medium-sized members to the Big and Near-Big members (see Figure 3 for group definitions). While it was agreed in 2000, this power-shift kicks in only at the end of 2004. Spain and Poland as a group see their slice of the “power pie” rise by about 3.5 percentage

² The particular measure is the “normalised Banzhaf index” (NBI) invented by Penrose (1946) but named after its re-inventor, Banzhaf (1965). This measure cannot be worked out by hand since in the EU25, there are over 33 million different line-ups of yes and no voters. In the EU27, there are over 134 million.

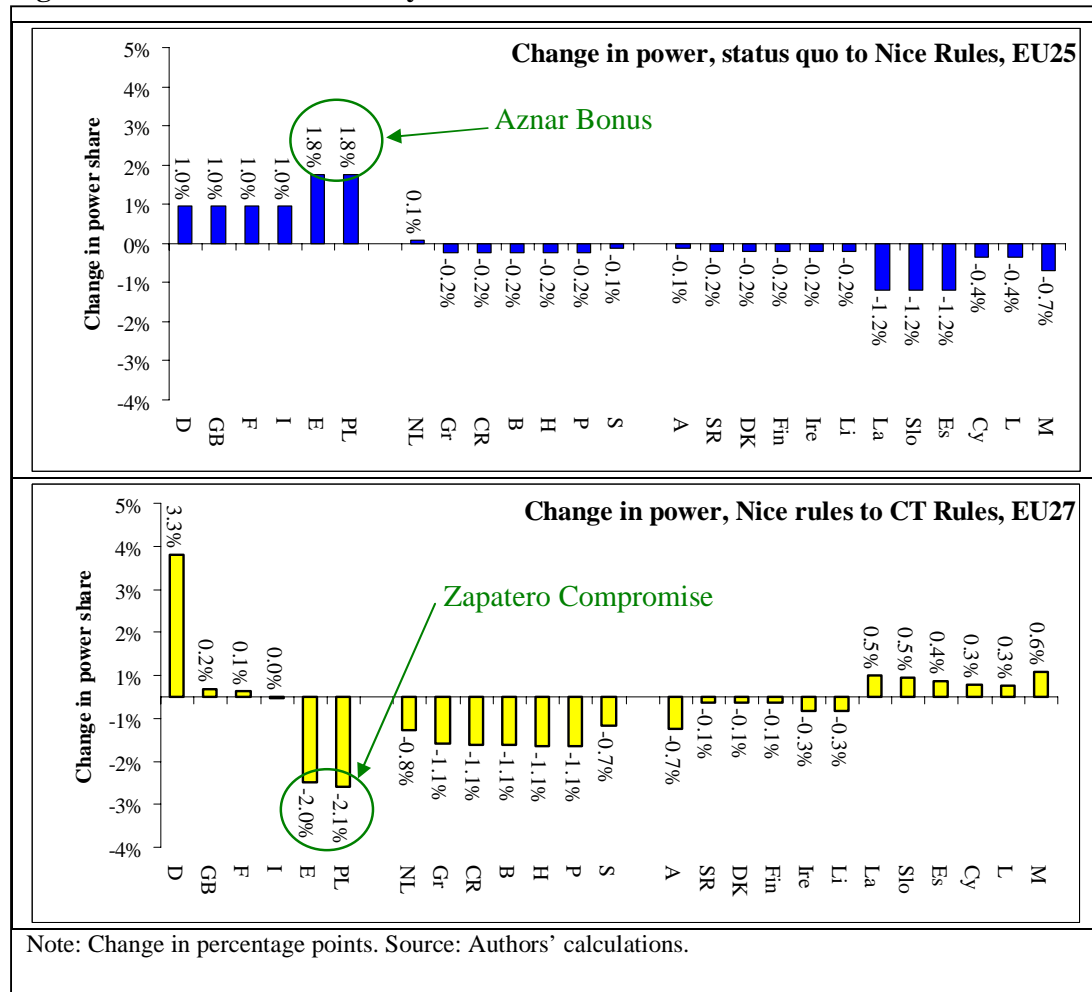
points – this is the fruit of the Aznar vote bonus. The Big-4’s slice expands by about the same. The extra power for the Bigs and Near-Bigs comes at the expense of the Mediums and Smalls.

Constitutional Treaty power changes. The Constitutional Treaty shifts even more power to the Big-4, but this time, the Near-Bigs pay for the Big-4’s gain (the Big-4’s gain almost exactly matches the Spanish and Polish loss). We call this drop in Spanish and Polish power the “Zapatero compromise”. When the Zapatero-compromise kicks in after 2009, it will more than completely reverse the Aznar-bonus, leaving these two Near-Big nations with a small drop in their combined power share. Small and Medium-sized nations see little change in aggregate, but power shifts moderately from the Mediums to the Smalls.

To summarise:

The two-step voting-rule changes in the Nice and Constitutional Treaties will greatly boost the power of the EU’s 4 largest members (Germany, Britain, France and Italy). The 2004 jump in Big-4 power will come at the expense of Small and Medium-sized members. The 2009 jump in Big-4 power will come at the expense of Spain and Poland.

Figure 4: Winners and losers by member: Nice rules and CT rules



Results by nation

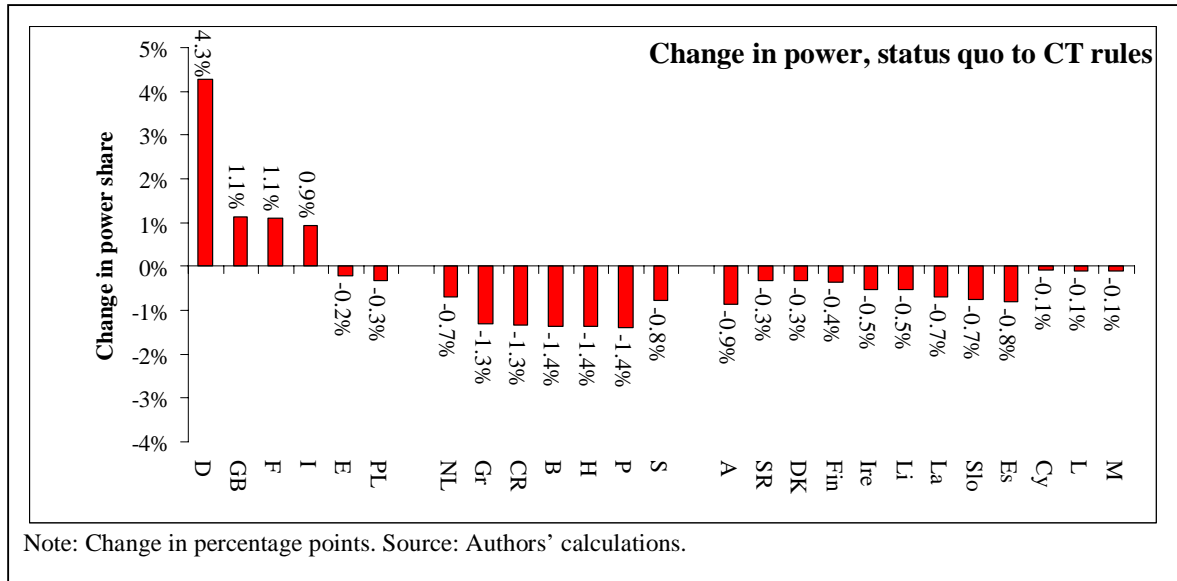
The CT will have to be ratified by each nation so the power implications by nation may be important in national debates.

Changes in November 2004. The top panel of Figure 4 shows that each of the Big and Near-Big members will see their power boosted substantially at the end of this year. By contrast, all the Mediums and Smalls will lose with the cuts being particularly marked for the Latvia, Slovenia and Estonia. The extra-large losses to these three nations are due to their low allocation of votes under the Nice rules. The Nice Treaty allocated votes 'by hand' and these three nations – with 1 to 2 million people – were not at the table to argue their case. Without a natural benchmark-member at the table to fight for votes, these three fall-between nations got short-changed in the vote allocation undertaken by EU15 leaders.

Changes in November 2009. The bottom panel of Figure 4 shows that the CT rules will shift even more power to Germany while taking a great deal of power away from Spain and Poland. In short, the "Aznar bonus" (Spain gained almost twice as much as France in the Nice-Treaty negotiations) will be more than offset by the "Zapatero compromise" when the CT rules take effect. Of course, Zapatero is likely to be out of power by then, having enjoyed 5 years of the "Aznar bonus." There are will also be important losses for the Mediums. Somewhat unexpectedly, the tiny members will gain compared to the Nice Treaty rules.

Finally, we turn to the full analysis -- power changes between today's power distribution and the distribution that will be in effect when the Constitutional Treaty rules come into effect.

Figure 5: Winners and losers by member, the full effect, status quo to CT rules



The full effect, today versus November 2009. The bottom panel of Figure 5 shows the full shift that will occur between the voting rules in force today and the CT rules that come into effect in 2009. The salient features of our calculations are:

- The Big-4 and especially Germany are the big winners from the piecemeal voting reform that has been going on since the IGC2000.
- The biggest overall losers are not Spain and Poland since the "Zapatero compromise" merely undoes the "Aznar bonus". The biggest losers are the Mediums – nations with populations in the neighbourhood of 10 million.
- The Near-Big status that Spain and Poland won at Nice will be reversed; France, for example, will have about 40% more power than Spain.
- Franco-German power equality is ruptured; Germany will have about a third more power than France. The duo that drove European integration in the past will become an unequal partnership with France as the junior partner. Of course, French President Chirac who agreed

to this is likely to be out of power by then – having finished out his term with Franco-German equality.

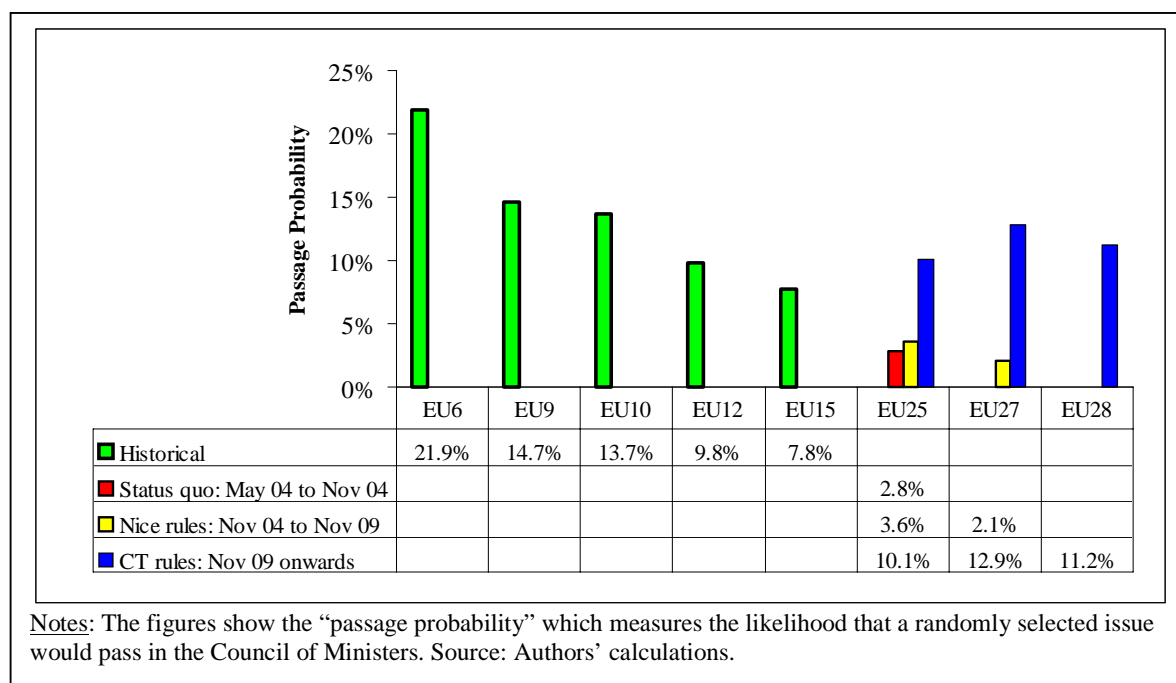
To summarise:

The Constitutional Treaty rules will break the traditional French German power equality making France the junior partner in the Franco-German alliance. Spain and Poland will lose the Near-Big status they won in the Nice Treaty. The biggest losers are the Mediums (about 10 million citizens). The chief winners are the Big-4; Germany alone wins more than the other Big-4 combined.

2.2. Ability to act: decision-making 'efficiency'

The CT had to reform EU voting rules since the Nice Treaty rules were widely seen as unworkable, so a critical question is: "Will the enlarged EU maintain its ability to act? Because the CT rules take effect only in November 2009, answering this question requires us to first examine the efficiency of the rules that will govern Council's decision making for the next five years.

Figure 6: Enlarged EU's ability to act



It is widely appreciated that the Nice Treaty rules cripple the EU's ability to act since they make it very difficult to find winning majorities (see Baldwin et al, [Nice Try: Should the Treaty of Nice be Ratified?](#), CEPR, London, 2001 for a complete analysis). Figure 6 confirms this. To provide some historical perspective, the five leftmost bars in the figure show the passage probability for qualified majority voting in historical EUs. Efficiency has been declining but past enlargements only moderately hindered decision-making efficiency. The last enlargement lowered the probability from 10% to 8%, and the Iberian expansion lowered it from 14% to 10%. The figures also hide the fact that the Single European Act, which took effect in 1987, greatly boosted efficiency by implementing majority voting for Single Market issues.

Looking forward, the figure shows that the EU is in for a big drop in its ability to act in normal Council matters, i.e. matters where qualified majority voting is in effect. We calculate

that it will be about twice as hard to find a qualified majority in the enlarged EU as it was in the EU15. The southeastern enlargement foreseen in 2007 will make matters slightly worse. Note that the Nice Treaty rules (as per the Accession Treaty) are slightly more efficient than the current rules since the massive concentration of power in the hands of the Bigs and Near Bigs improves efficiency (the 6 biggest nations in the EU25 have half the power).

By contrast, when the Constitutional Treaty's rules come into force, the EU's ability to act will soar. According to our calculations, the CT rules will make it easier to pass a proposal in the EU27 than it was in the EU12. The entrance of Turkey would do little to change this assessment.

For comparison, we show how efficient the CT rules would be if they were applied immediately to the EU25 instead of in 2009. As the third set of bars from the right show, the CT rules would make it dramatically easier to get things through the Council of Ministers.

To summarise:

The Nice Treaty voting rules defined in the Accession Treaty that will apply until the end of 2009 will lower EU decision-making effectiveness to unprecedented levels in the EU25 and EU27. Finding a qualified majority in the enlarged EU will be about twice as hard as it was in the EU15. The switch to the CT rules in 2009 will involve a quantum jump up in decision-making efficiency; it will be less difficult to find a qualified majority in the EU27 than it was in the EU12.

3. Concluding remarks

This short essay argues that the June 2004 EU Summit did not solve the enlarged EU's decision-making problems. Although the voting rules in the Constitutional Treaty rules will maintain the enlarged EU's ability to act, they will not take effect for 5 years. In the meantime, the botched Nice Treaty rules will govern Council decision-making – rules that are so flawed that EU leaders asked the European Convention to reform them even before they were implemented.

This failure will have important consequences because the next 5 years are so critical. They will determine how the enlarged EU functions and how it is perceived to function. This period includes the whole life of the next Commission and the next European Parliament. During these years, the EU will have to make many extremely difficult decisions. For example, the structural and farm spending programmes must be deeply reformed if the newcomers are to be treated as equals (the pre-set 2005 and 2006 budget allocations for the 10 newcomers imply distinctly second-class treatment).³

Most importantly, these 5 years will be decisive when it comes to the public's opinion on the enlarged EU. If the next 5 years see a series of deadlock, bitter disputes and missed deadlines, EU citizens are likely to grow ever more disenchanted with the endeavour – and the Euro-sceptics ever stronger.

Regardless of whether the Constitutional Treaty becomes law, the Nice Treaty rules will be in force during the critical, formative years of the new EU. In this sense, the most pressing task facing EU leaders is not to get the Constitutional Treaty past their voters, it is to fix the mistake that they made in Nice without a Treaty change.

³ See December 2002, Danish Presidency Conclusions, Annex 1; on structural spending see European Commission, COM (2003) 34 final, Table 11.