# EU COUNCIL DECISION-MAKING: A DISCUSSION ON THE LATE WEIGHTED VOTES CRITERION

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**Abstract.** *In the wider extended academic concern regarding the decision-making system that the EU is and should be using, a voting frame rediscussed in the Brexit context and whose modification proposals are usually widely debated, this paper focuses on a peculiar aspect of the intra-institutional decision-making process, i.e. on what was known as the weighted votes component of the qualified majority voting used in the EU Council. What was the logic of establishing this system, how did it develop and why the member states decided to abandon it? These are the main questions to whom the article will answer, with the aim to indicate that the current modified Lisbon system, despite its alleged improvements in terms of legitimacy, transparency and adaptability to enlargement waves, offered a new QMV definition that is still locked in the blocking minorities safety nets of the EU power politics game.*

**Keywords:** *Council of the European Union, European Union, qualified majority voting, weighted votes*

## Introduction

A brief overview of the latest articles published by the most well-known academic journals focused on EU studies reveal that their main discussion topics dramatically changed when it comes to subjects regarding the decision-making process of the European Union. If a few years ago, there were plenty of articles offering in-depth analyses on how each EU institution was involved in the inter-institutional power game, today's literature – widely influenced by the successive crises EU faced – deals with more explanatory items (what is the ordinary legislative procedure, how it works, what are the actors' main preferences, etc.). However, considering the possible implications of the Brexit case, as well as the democratic exercise represented by the *Conference on the Future of Europe*, I believe that understanding (with the aim of improving) the current decision-making system (the "how" question) means firstly to answer to the "why" inquires: why do we have, in EU Council's case, for example, the current definition of the qualified majority voting (QMV)? Why it was different and the beginning and why it was changed? Why is it important to know these historical details when focusing on the future of the EU?

In the light of the previous arguments, this paper focuses on a peculiar aspect of the intra-institutional decision-making process, i.e. on what was known as the weighted votes component of the QMV used in the EU Council. What was the logic of establishing this system, how did it develop and why the member states decided to abandon it? These are the main questions to whom the article will answer, with the aim to indicate that the current modified Lisbon system, despite its alleged improvements in terms of legitimacy, transparency and adaptability to enlargement waves, offered a new QMV definition that is still locked in the blocking minorities safety nets of the EU power politics game.

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The first part of the article offers an in-depth image on the pre-Nice Council voting, while the second part refers to the most well-known case for the weighted votes subject, the Nice Treaty. The article ends with conclusions that point the relevance of the Constitutional Treaty for understanding the current Lisbon Treaty, with a decision-making system that granted (or deprived, that is still debatable) the EU Council with a new QMV definition without the weighted votes criterion.

**The Pre – Nice Council Decision-Making System**

The unique institutional architecture of the European Union[1] was established very carefully in the Rome treaties, as the optimal equilibrium between the double nature of the Communities – supranational and intergovernmental –, as well as the equilibrium between the small and large member states, was carefully considered[2]. When and why the weighted votes subject became a delicate issue on the negotiation table? Despite the presence of the voting weights even in the Constitutive European Economic Community Treaty (also, in the European Atomic Energy Community Treaty)[3], the long standing practice of using unanimity instead (remember, for example, the disruption provoked by the Empty Chair Crisis and solved by the Luxembourg Compromise) meant that, despite each new enlargement wave and new weighted votes allotted to new comers, the whole weighted system was rather not used. In this respect, the sovereign equality of states, the principle of ′one state, one vote′, sacrosanct in the international law, was the unwritten general rule in the European Union. Nevertheless, the creation of the single market, through the Single European Act (SEA), revealed the necessity of a more efficient decision-making process and this is the particular moment when QMV reached the first time the status that it has from that moment on (Galloway 2001). The institutional changes facilitated, therefore, - through the SEA adoption, and, mainly, the Treaty of Maastricht, as well as the 80s and mid90s enlargement waves -, a renewed interest in the QMV as a solution to avoid a *de facto* decision blocking.

Therefore, that was the time when the weighted votes emerged as a delicate issue on the member states agenda, as they realized that the initial balance between small and large partners was altered by significant differences between the populations of the new member states and that a new equilibrium was necessary in this small vs. large duel (fuelled by additional axes such as old versus new, North versus South, and, later, West versus East) complying with an intergovernmentalist logic. In this respect, one can mention the first ample discussions on the blocking minority idea; the act of testing that QMV was not going to be used anymore just as a mechanism for achieving consensus and that the new state of affairs would imply a real voting on different issues, which significantly increased the importance of the threshold, was what become known since March 1994 as the Ioannina Compromise. Briefly, it "foreseen that "if Members of the Council representing a total of 23 [the old blocking minority] to 26 [the new blocking minority] votes indicate their intention to oppose the adoption by the Council of a

[1] In this paper, the generic collocation "European Union" is used in order to describe its unique institutional framework, despite the historical differences existing between the European Communities period, the Maastricht acception or the eventually Lisbon Treaty legal implications.

[2] A brief history on the initial Treaties of Rome debates indicates in fact tensions between the adepts of the simple majority voting and those seeking for population-induced benefits – Germany and France -, favouring a weighted votes system (Moravcsik 1998, 153).

[3] The first European Coal and Steel Community had a different voting procedure for the Council (European Union, 2013).

Decision by qualified majority, the Council will do all within its power to reach, within a reasonable time and without prejudicing the obligatory time limits laid down by the Treaties and by secondary law (…) a satisfactory solution that can be adopted by at least 68 votes [the old QMV threshold]" (Council, 1994, art. 1; see also Milton and Keller-Noëllet, 2005, p. 74). In fact, this clause describes a possibility to change *ad hoc* the level of the threshold.

**Table 1**. The historical evolution of the QM in the Council

| **Year** | **Total No of MS** | **Total Votes** | QM: Votes and % | Min. MS Forming QM | Min. No. of MS Forming a BM |
|---|---|---|---|---|---|
| **1958** | **6** | **17** | 12 (70.59%) | 3 | 2 |
| **1973** | **9** | **58** | 42 (72.41%) | 5 | 2 |
| **1981** | **10** | **63** | 45 (71.43%) | 5 | 2 |
| **1986** | **12** | **76** | 54 (71.05%) | 7 | 3 |
| **1995** | **15** | **87** | 62 (71.26%) | 8 | 3 |
| **2004** | **25** | **321**[4] | 232 (72.27%) | 13 (17 if the proposal is not issued by the Commission) | 4 |
| **2007**[5] | **27** | **345** | 255 (73.91%) | 14 (18 if the proposal is not issued by the Commission)[6] | 4 |

***Source***: Table based on the Opinion of the Commission, 'Adapting the institutions to make a success of enlargement' delivered on 26 January 2000, *COM* (2000) 34 *apud* Tsebellis and Yataganas (2002, p. 289). The grey cells represent the author's own updated contribution.

However, the next Treaty of Amsterdam did little on this QMV aspect, constraining itself to applying QMV to a broader area of policies (see Slapin 2011, pp. 102-104). Table 1 presents the evolution of the weighted acception of the QM in the Council and Table 2 offers an image of the same problem together with details for each member state of the Union for the period 1958 – 2014 (in order to have a full image on the

[4] The table does not include the transitional May – November 2004 period between the occurrence of the 10 new member states' accession wave and their actual compliance to the Nice requirements.

[5] The 2007 new data were applied until 1 November 2014 (the entering into force of the new definition of the qualified majority adopted in 2009 through the Lisbon Treaty); moreover, until 31 March 2017 a protocol annexed to the Lisbon Treaty foresaw the possibility of any Member State to ask for the weighted vote system to be applied in decisions implying qualified majority voting. For this reason, one could also mention the 7 weighted votes Croatia received through its Accession Treaty, situation which implied for the 2013-2014 period a total of 352 weighted votes and a 260 votes threshold, representing 73.86% from the amount, and being reached if 15 members were in favour (18 if the proposal was not issued by the Commission).

[6] In both 2004 and 2007 cases, the success of a legislative proposal could have also involved the compliance with the demographic clause (to be mentioned in this analysis), if a member state would have asked.

QMV evolution, I have updated the table with the grey cells, using Treaty of Nice, Treaties of Accession and Treaty of Lisbon data)[7].

**Table 2**. Qualified Majority Voting: Weights and populations

| | 1958-72 | | | 1973-80 | | | 1981-85 | | | 1986-94 | | | 1995-2004 | | | 2004-2007 | | | 2007-2013 | | | 2013-2014 | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | **Wt** | % | % Pop | **Wt** | % | % Pop | **Wt** | % | % Pop | **Wt** | % | % Pop | **Wt** | % | % Pop | **Wt** | % | % Pop | **Wt** | % | % Pop | **Wt** | % | % Pop |
| **Germany** | **4** | 23.5 | 32.2 | **10** | 17.2 | 24.2 | **10** | 15.9 | 22.8 | **10** | 13.2 | 18.9 | **10** | 11.5 | 21.9 | **29** | 9.0 | 18.0 | **29** | 8.4 | 16.6 | **29** | 8.2 | 15.9 |
| **UK** | | - | - | **10** | 17.2 | 21.8 | **10** | 15.9 | 20.5 | **10** | 13.2 | 17.6 | **10** | 11.5 | 15.8 | **29** | 9.0 | 13.1 | **29** | 8.4 | 12.4 | **29** | 8.2 | 12.7 |
| **France** | **4** | 23.5 | 26.6 | **10** | 17.2 | 20.3 | **10** | 15.9 | 20.0 | **10** | 13.2 | 17.2 | **10** | 11.5 | 15.7 | **29** | 9.0 | 13.2 | **29** | 8.4 | 12.9 | **29** | 8.2 | 13.0 |
| **Italy** | **4** | 23.5 | 29.1 | **10** | 17.2 | 21.4 | **10** | 15.9 | 20.9 | **10** | 13.2 | 17.6 | **10** | 11.5 | 15.3 | **29** | 9.0 | 12.7 | **29** | 8.4 | 11.8 | **29** | 8.2 | 12.0 |
| **Spain** | | - | - | | - | - | | - | - | **8** | 10.5 | 12.0 | **8** | 9.2 | 10.5 | **27** | 8.4 | 9.4 | **27** | 7.8 | 9.2 | **27** | 7.7 | 9.2 |
| **Poland** | | - | - | | - | - | | - | - | | - | - | | - | - | **27** | 8.4 | 8.3 | **27** | 7.8 | 7.7 | **27** | 7.7 | 7.5 |
| **Romania** | | - | - | | - | - | | - | - | | - | - | | - | - | | - | 0.0 | **14** | 4.1 | 4.2 | **14** | 4.0 | 3.9 |
| **Netherlands** | **2** | 11.8 | 6.6 | **5** | 8.6 | 5.2 | **5** | 7.9 | 5.3 | **5** | 6.6 | 4.5 | **5** | 5.7 | 4.2 | **13** | 4.0 | 3.5 | **13** | 3.8 | 3.3 | **13** | 3.7 | 3.3 |
| **Greece** | | - | - | | - | - | **5** | 7.9 | 3.6 | **5** | 6.6 | 3.1 | **5** | 5.7 | 2.8 | **12** | 3.7 | 2.4 | **12** | 3.5 | 2.2 | **12** | 3.4 | 2.2 |
| **Belgium** | **2** | 11.8 | 5.4 | **5** | 8.6 | 3.8 | **5** | 7.9 | 3.6 | **5** | 6.6 | 3.1 | **5** | 5.7 | 2.7 | **12** | 3.7 | 2.3 | **12** | 3.5 | 2.1 | **12** | 3.4 | 2.2 |
| **Portugal** | | - | - | | - | - | | - | - | **5** | 6.6 | 3.1 | **5** | 5.7 | 2.7 | **12** | 3.7 | 2.3 | **12** | 3.5 | 2.1 | **12** | 3.4 | 2.1 |
| **Czech Republic** | | - | - | | - | - | | - | - | | - | - | | - | - | **12** | 3.7 | 2.2 | **12** | 3.5 | 2.1 | **12** | 3.4 | 2.1 |
| **Hungary** | | - | - | | - | - | | - | - | | - | - | | - | - | **12** | 3.7 | 2.2 | **12** | 3.5 | 2.0 | **12** | 3.4 | 1.9 |
| **Sweden** | | - | - | | - | - | | - | - | | - | - | **4** | 4.6 | 2.4 | **10** | 3.1 | 2.0 | **10** | 2.9 | 1.9 | **10** | 2.8 | 1.9 |
| **Austria** | | - | - | | - | - | | - | - | | - | - | **4** | 4.6 | 2.2 | **10** | 3.1 | 1.8 | **10** | 2.9 | 1.7 | **10** | 2.8 | 1.7 |
| **Bulgaria** | | - | - | | - | - | | - | - | | - | - | | - | - | | - | 0.0 | **10** | 2.9 | 1.5 | **10** | 2.8 | 1.4 |
| **Denmark** | | | | **3** | 5.2 | 2.0 | **3** | 4.8 | 1.9 | **3** | 3.9 | 1.6 | **3** | 3.4 | 1.4 | **7** | 2.2 | 1.2 | **7** | 2.0 | 1.1 | **7** | 2.0 | 1.1 |
| **Finland** | | - | - | | - | - | | - | - | | - | - | **3** | 3.4 | 1.4 | **7** | 2.2 | 1.1 | **7** | 2.0 | 1.1 | **7** | 2.0 | 1.1 |
| **Slovakia** | | - | - | | - | - | | - | - | | - | - | | - | - | **7** | 2.2 | 1.2 | **7** | 2.0 | 1.1 | **7** | 2.0 | 1.1 |
| **Ireland** | | - | - | **3** | 5.2 | 1.2 | **3** | 4.8 | 1.3 | **3** | 3.9 | 1.1 | **3** | 3.4 | 1.0 | **7** | 2.2 | 0.9 | **7** | 2.0 | 0.9 | **7** | 2.0 | 0.9 |
| **Croatia** | | - | - | | - | - | | - | - | | - | - | | - | - | | - | 0.0 | | - | 0.0 | **7** | 2.0 | 0.8 |
| **Lithuania** | | - | - | | - | - | | - | - | | - | - | | - | - | **7** | 2.2 | 0.7 | **7** | 2.0 | 0.6 | **7** | 2.0 | 0.6 |
| **Latvia** | | - | - | | - | - | | - | - | | - | - | | - | - | **4** | 1.2 | 0.5 | **4** | 1.2 | 0.4 | **4** | 1.1 | 0.4 |
| **Slovenia** | | - | - | | - | - | | - | - | | - | - | | - | - | **4** | 1.2 | 0.4 | **4** | 1.2 | 0.4 | **4** | 1.1 | 0.4 |
| **Estonia** | | - | - | | - | - | | - | - | | - | - | | - | - | **4** | 1.2 | 0.3 | **4** | 1.2 | 0.3 | **4** | 1.1 | 0.3 |
| **Cyprus** | | - | - | | - | - | | - | - | | - | - | | - | - | **4** | 1.2 | 0.2 | **4** | 1.2 | 0.2 | **4** | 1.1 | 0.2 |
| **Luxembourg** | **1** | 5.9 | 0.2 | **2** | 3.4 | 0.1 | **2** | 3.2 | 0.1 | **2** | 2.6 | 0.1 | **2** | 2.3 | 0.1 | **4** | 1.2 | 0.1 | **4** | 1.2 | 0.1 | **4** | 1.1 | 0.1 |
| **Malta** | | - | - | | - | - | | - | - | | - | - | | - | - | **3** | 0.9 | 0.1 | **3** | 0.9 | 0.1 | **3** | 0.9 | 0.1 |
| **Total** | **17** | 100 | 100 | **58** | 100 | 100 | **63** | 100 | 100 | **76** | 100 | 100 | **87** | 100 | 100 | **321** | 100 | 100 | **345** | 100 | 100 | **352** | 100 | 100 |
| **Threshold** | **12** | 70.6 | | **41** | 70.7 | | **45** | 71.4 | | **54** | 71.1 | | **62** | 71.3 | | **232** | **72.2** | | **255** | **73.9** | | **260** | **73.9** | |

***Source*** *of the original table:* Leech 2002, p. 440. The table indicates the number of weighted votes, the percentage share and the percentage share of the total population. The grey cells represent my update of the original table.

In this last table I have also updated the information which stopped at the 1995 realities, and, using the Treaties for the number of weighted votes, as well as Eurostat data for the population analysis, I offer a complete image until 2014, including Croatia's accession[8].

The data presented above reveal some of the principles that guided the Council in establishing the QM coordinates and its subsequent changes: first, that the number of votes a state had was dependent to its population; second, the decisional process involving QMV was based on a supermajority as reflected by the threshold established (Leech, 2002, p. 439). One of the main concerns was to stress the independence of the smaller member states, by providing them more votes in comparison with the countries more populous. This situation conducted to an over-representation of the small countries and an under-representation of the larger members, an approach closer to the liberal

[7] I chose 2014 as the last year relevant for the old definition of the OMV in its weighted version due to the 1 November 2014 entering into force of the new Lisbon Council decision procedures.

[8] The Eurostat data have only an orientation role. I have use the 2006 data for the 2004 population, the 2008 data for the 2007 population and the 2014 data for the 2013 population, by rounding the population at millions and one decimal, and then calculating the percentage share of the total EU population.

intergovernmentalist logic than to the classical intergovernmentalist/realist one, as win-win scenarios are now accepted even in this context that might seem unfavourable to the most populous members. This initial design was considered fair enough for the Union's objectives – the QM threshold was set around 70% (and until its dismissal it slightly varied between 67.7% and 73.91%,) and the larger member states' population (an overwhelming 90%) was reflected in almost 70% of the Council's votes. But several enlargements changed this balance and the taken for granted idea to preserve, as much as possible, the founder equilibrium proved to be extremely difficult.

After the Treaty of Amsterdam, the imminent envisaged enlargement of the EU with 12 new states (as it was finally agreed in 1999, at the Helsinki summit, negotiation started with 12 candidate countries – 10 ex-communist states together with Cyprus and Malta) opened a debate on the limits of the weighting system and the impossibility to continue to modify the threshold of the QM on the existing algorithm. Taking into consideration the acute lack of correlation between the voting power of the states and their population, the requirement of the Treaty of Amsterdam "to 'compensate' the larger member states for relinquishing in the right to nominate a second commissioner through the system of Council vote weighting"[9] (Galloway, 2001, p. 66) and the problem of the influence that the new small and medium-sized states will have in an EU – 27, it was explicitly that on the agenda of the Nice[10] Intergovernmental Conference the weighting of votes in the Council will be one of the key issues.

Briefly, QMV is seen as simultaneously distinctive for the supranationalist current and divisive for the EU as a whole (Dinan 2010); foreseen by the Constitutive Treaties, repudiated in practice, trigger of the Empty Chair Crisis and constrained by the Luxembourg Compromise, it needed the Single European Act and especially the Maastricht Treaty to be fully accepted as a fundamental stepping stone for the construction of EU (Dinan 2010).

Nice negotiations were just a solid reminder and the final Treaty of Nice was extremely challenging in aspects relating to the general institutional reform, and QMV – especially with its weighted votes component – was an important piece of the puzzle. There were three major reasons for this reconfiguration of the weights: (a) successive enlargement waves that modified the original power balance between the members; (b) the envisaged enlargement to the East that would have brought an additional distress within the existing framework; (c) the reconfiguration of the Commission and the pressure to offset large member states for losing a second commissioner. Nice negotiations soon transformed in a small versus large states debate, each side making efforts to preserve a comfortable position in the power game either in terms of winning coalitions or, as it was proved in the end, in terms of reaching the new-established blocking minority thresholds (see Slapin 2011, pp. 116-117).

[9] The enlargement would have made impossible the existing size and composition of the Commission (20 members with the right of two commissioners for the larger states). By keeping these privileges, the future EU, up to 27 members, would have dealt with a too numerous, inefficient Commission.

[10] To be more specifically, the agenda of Nice was drafted not directly in the Amsterdam Treaty, but also in the Cologne and Helsinki summits (June 1999 and December 1999). So, three hot issues were proposed to be resolved at Nice: the size and the composition of the Commission, the weighting of votes in the Council together with the possibility to extend QMV, and the allocation of seats in the European Parliament (see also Galloway 2001).

A SPECIFIC CASE. THE TREATY OF NICE

The institutional design of the European Union decided at Nice on 26 February 2001 included the Treaty of Nice, one protocol (Protocol on the Enlargement of the EU) and two declarations (Declaration on the Enlargement of the EU, and the Declaration on the QMV and the number of votes for a blocking minority in the context of enlargement); it entered into force at 1 February 2003. According to some pre-agreed, unquestioned principles, the EU council decision-making system was supposed to "reflect the dual nature of the Union" (a Union of states and a Union of people), to be "equitable, transparent, efficient and easily understood by citizens" and to have the minimum threshold of population in QM over 50% (CONFER 2000). In reality, the notion of efficiency in decision-making was translated in each member's power politics approach to preserve as much influence as possible, through the redistribution of power procedures, in the enlarged Union envisaged; the negotiation procedures transformed, despite traditional negotiations (where coalitions were formed taking into consideration only one specific issue), into a 'large' versus 'small' opposition.

There were three approaches taken into consideration at Nice as possible solutions for the revising of the QM issue: a simple dual majority system, a weighted dual majority system and the reweighting of votes. There was a clash between the big members, with preferences for higher thresholds – as a prevention against a possible coalition against them, and the small ones, in favour of lower levels – a measure conceived to block a 'tyranny' of the great powers of the Union.

During the negotiation process, the solution of reweighting come to fore. In this respect, it was decided to reweight all the votes of the existing member states (and not only of the big players, as it was proposed in the first place) in an ascending manner and taking into consideration the clause from the Amsterdam Treaty requiring a compensation for the countries that gave up their right to a second commissioner. Moreover, taking into consideration the future new comers, new clusters of states were created in order to reflect a similar voting weight of states with relative same size. In the reweighting procedures it became obvious that the multiplying coefficient was more important for some countries than for the others. For example, if Luxemburg's coefficient was 2 (by passing from 2 votes to a number of 4), the votes of the "big players" like Germany, France, United Kingdom and Italy multiplied by 2.9 (reaching 29 votes). The voting weights were also important due to their indivisibility, irrespective of the internal divergent opinions within a Member State, as Leech and Aziz (2010) pointed out. From this aspect, even without weights, the issue was as important as before, and each state was still seen as a monolithic unit, a rather classic intergovernmentalist (realist inspired) image.

The system that was finally agreed in the IGC was, however, not a reweighting or a double majority, as its defenders tried to present it, but a real triple majority. The reasons to sustain this point of view are the following: even if it was stipulated that the decision was taken *if* the number of votes equals or exceed the QM threshold *and* a simple majority of the member states was in favour, there was also added a *safety net*, which meant that any member state *could* have asked for that particular decision to pass also a threshold of 62% of the Union's population. In reality, this facultative condition was as important as the first two. After a comparative analysis of the three additional acts of the Treaty of Nice, there are some important observations to be made referring to each of the three conditions necessary for reaching QM.

First, the threshold for a qualified majority. In the Protocol on the Enlargement of the European Union, when referring to provisions concerning the weighting of votes

in the Council after the 1 January 2005, article 3 operated changes in the Treaty and set the number of votes at 237 for an EU – 15, with a QM of 169 votes, which meant 71.31% of the total. Successive, in the Declaration on the Enlargement of the EU, for an EU – 27 it was established a 345 total number of votes and a QM of 74.78%. In this case, the blocking minority of 88 votes would have been very difficult to reach. These provisions were not the final ones, because in the third additional document, the so-called Threshold Declaration (Declaration on the QMV and the number of votes for a blocking minority in the context of enlargement), the maximum level for the threshold was fixed at 73.4%, which meant that, at the end of the enlargement, the QM became 255 votes and the level for BM was fixed at 91 and not at 93, as it would have resulted from the threshold percentage (which corresponds to 73.9%, as indicated in table no. 2)[11]. The minimum coalition that was able to block a decision should have been composed by three larger states and a smaller one.

Second, the simple majority of member states. This second condition in the process of decision-making by QMV reflected the request of the medium and small member states of the Union to compensate the reweighting of votes (made in favour of the major players) and to assure that no decision was to be taken against their wish. In other words, in an EU – 27, if a minority of large member states obtain the QM of their weighted votes, a majority of small member states can however oppose this decision even if they do not reach the blocking minority of the votes (Tsebellis and Yataganas, 2002, p. 287). This additional requirement made even more difficult the decision-making process as the smallest 14 member states, with approximate 10% of the Union's population could paralyze a decision. This requirement passed easily as the larger players could not envisage so many delicate issues where the smaller states to feel threaten about and to form a blocking coalition.

Third, the demographic clause. This safety net for the QMV was considered as a compensation offered for Germany for not claiming a different (to be read higher) number of votes than France. Hence, this clause was simpler to obtain only if Germany was against, having in mind the fact that, together with one other larger country the threshold of 38% of the population was acquired, in order to block a decision. Anyway, the collective power to act was even more decreased by adding the safety net.

These complex rules, obstructing an efficient decision-making system by claiming for legitimacy or adequacy, were an argument of the opponents for the issue of QMV extension. They argued that the progressive raise of areas where QMV can be applied was touching their sovereignty and that there would be no need for their formal inscription into the Treaties if, in practice, a consensus culture and informal "'preference for unanimity' exists in Council decision-making" (Mattila and Lane, 2001, p. 40; see also Milton and Keller-Noëllet, 2005, p. 57).

Hence, usually, more is less. Even though the solution designed was not reflecting the initial trend not to increase the rigidity in the Council QMV decision making, the states tried to underline that the outcome was double legitimate by the majority of the states and that of the Union's citizens. But, speaking of the threshold of the weighted votes, the general impression was not of a qualified majority efficiently oriented voting but of a blocking minority logic supporting various national interests (Galloway, 2001, p. 92). However, too high thresholds criticisms were refuted on studies

[11] See in this respect Laursen 2005, p. 426 quoting a *Europolitique* contribution from 20 December 2000.

indicating that there was no evidence of decision sclerosis, while the QMV appeared to perform accordingly to its set objectives (Leech and Aziz, 2010). The post-Nice EU worked not as a consequence of an optimal voting system, but due to its long consensus and negotiating tradition[12].

Even if the Treaty contained significant improvements (as the extension of QMV area), the feeling was of a failure: the augmented veto power of the member states favoured or almost reified the legislative *status quo* (Tsebellis, 2002, p. 304) in a context where the Union reached a series of limits (of policies, geographical, institutional) and less political designs of constrains were essential.

It can be said that the means, described by Olson, through which an organization can improve the situation of its members – by producing a bigger social pie (and giving them larger shares accordingly to the established hierarchies) or by offering these larger shares from the existing pie (Olson, 1971, p. 51), were intensively used during Nice negotiations, in the reweighting procedure. For this reason, even if the entity as a whole was losing, the members continued to pursue their self-interest, as long as their reward was greater than the divided social cost. Moreover, the logic of self-seeking led also to well-defined divisions (big versus small, in this case) and to a progressively more complex institutional rules.

In brief, at Nice, the outcome of the negotiation referring to the QMV decision-making, put across in the triple majority described above, even if respected the particular preferences of all the individual players, was not the best solution for the Union as an entity. It led to a rather opaque system due to the heavy negotiations and the discussions oriented towards assuring each side a proper access to minority blocking[13]. Apparently, the final system offered advantages to the medium and small states[14], both through the simple majority condition, as well as due to a large number of weighted votes allotted to Spain and Poland, accompanied by a limitation of the reunited Germany's ones. Underrepresentation of the big players was treated, in fact, as "a reasonable degree of

[12] See Dinan 2010 on the "deep-rooted culture of consensus" to which the new member states are soon socialized, as here QMV is seen as a facilitator, not as a proper tool in the voting process; also, Moberg (2010) wrote on "decisions in the shadow of a vote" where it is questioned only the form of the final decision, not its existence, as the existence of the QMV is merely a push towards the culture of negotiation. Kleinowski (2018) analysed the subsequent "compromise culture" of Lisbon and the habit of the member states failing to ensure a blocking minority to express their contradictory opinions. Nevertheless, even if "formal voting in the Council might be rare", the actual voting power is important, as it indicates the possibility of a decisional blockage (Warntjen 2017).

[13] On Nice and the ability of each separate criterion to block the voting process, see also Moberg 2010.

[14] Kirsch argued, however, that Nice voting weights, with their disproportionality between weights and populations and while respecting the degressive proportionality principle, did not automatically offer a real influence to small actors (with Luxembourg as study case), as "the quota plays a crucial role of a weighted voting system" (Kirsch 2010). After a comparative analysis of Nice and Constitutional/Lisbon programmatic inputs, he also underlined the advantages, and, respectively, the disadvantages of the big four, on the one hand, and of the middle-sized members, on the other (Spain and Poland), in that new institutional context. A special mention referred to the threshold modification occurred between the draft and the ICG version of the Constitutional treaty in order to be voted by all the member states, fact that later did not impede Poland to renegotiate its status, which was indeed less favourable in the ICG version (Kirsch 2010).

fairness in the distribution of voting power" (Leech and Aziz, 2010). The only one accepted argument was the discomfort to alter the thresholds and set new voting weights clusters with every new arrival in the EU family. Therefore, what system could have been imagined to replace the Nice one?

## DISCUSSION AND CONCLUSIONS: THE CONSTITUTIONAL TREATY, THE MISSING LINK FOR UNDERSTANDING THE CURRENT LISOB DECISIONAL SYSTEM

The contested results of Nice were a sign that qualitative changes in the substance and the procedures of the Union were essential for a whole series of reasons: improving democratic legitimacy, providing an efficient EU in the international system, solving the equilibrium problems between firstly, the supranational and the intergovernmental forces, and, secondly, the equality of citizens and the equality of member states, handling the fear of the countries who seen the extension of the QMV as a possibility to be outvoted in traditional questions of national interest, and the list can continue.

In this respect, following the "Declaration on the Future of the Union", adopted at Nice, the new "Laeken Declaration on the Future of the European Union" (from December 2001) established the European Convention in terms of key players, the working procedures and, especially, the agenda meant to address fundamental questions for a regenerating Union. In fact, the Constitutional Treaty's history has two main important sequences: the Convention and the Intergovernmental Conference.

The voting system enforced by the Nice Treaty gave rise to a significant amount of criticisms. The Convention[15], aware of the importance of a different decision-making procedures for a renewed Union, considered that the alternative of the double majority (of member states and population) method would properly answer the requirements for simplicity, durability, fairness of reflection of this double nature (Milton and Keller-Noëllet 2005). The discussions enlightened again the idea that a consensus between the larger and the smaller members was difficult to reach in a context where the latter supported the idea of a double threshold set at 50% for both states and population and the former, having knowledge of the majority of small and medium sized countries in an enlarged Union, had in mind two separate thresholds - 50% of the member states and at least 60% of total population. The draft of the Constitutional Treaty, adopted by the Convention, reflected the point of view of the big actors (Germany being one of the most supporters of the new system), but it was clear that a group formed by the small states - as well as the new comers, especially Poland - and also Spain, would continue, from different reasons, to follow their self-interests in the Intergovernmental Conference that was succeeding the Convention's work.

Why the Convention's outcome is so different than the previous one? On the one hand, it could be that a weighted votes system could have proven ineffective in a larger membership; on the other, the convention method as such, replacing unanimity voting with a consensus orientation, could be another part of the answer, as in a typical IGC format, the veto power (blurring population differences between member states) usually favours the status-quo, while a genuine reforming process is rather hampered in this context (see also Slapin 2011, pp. 117, 120). It was agreed that the Convention had been a success from many aspects: it clarified the precise nature of the Union, it contributed to a

[15] The Convention took place between the 28 February 2002 until June 2003. See also Slapin 2011, pp. 117 for other peculiar traits of the Convention.

well-defined system of ordering the areas of responsibility (the Union's powers), it created a unique legal framework and it simplified the decision making instruments. Briefly, the favourable outcome of the Convention concerned the fundamentals[16]. However, even from the opening of the IGC[17], it was evident that some areas, especially QMV, would require further debates in order to get an agreement.

Nobody contested some of the advantages of the new voting system proposed - double legitimate, easy to understand, fitting whatever the future size of the Union. Nevertheless, a part of the member states had obvious reasons not to be satisfied with the changes and their demands were included in the IGC amendments of the Constitutional Treaty's draft[18]. On the one hand, it was the opposition of Spain and Poland, countries which desired to maintain the privileged status obtained at Nice (their power to block a decision) and strongly pleaded for a 70 % threshold of the population; finally, they agreed on a percentage of 65%[19] (see Milton and Keller-Noëllet 2005).

On the other hand, the smaller states addressed additional requests. Firstly, the percentage of 65% of the population could have been reached by only three large member states, this situation claiming for a correction, in the opinion of the small parties of the Union. So, it was consented that a blockage minority should contain at least four member states in order to be valid (which in fact lowers considerable the threshold for adopting a decision, only 58% of the population, 4% downwards difference from Nice). Secondly, the unequal level of thresholds constrained these states to ask for a minimum 5% difference between them. Nevertheless, the population threshold being already fixed at 65%, the only possible compromise was to raise by 5 % the threshold for member states needed for a decision to be adopted and to specify that in order to reach this 55% at least 15 member states are needed. This lack of simplicity can receive an explanation: 15 states mean 60% of the Union's 25 certain members, in conformity with the requirement of only 5% difference between the thresholds. However, in EU – 27, the threshold would lower back at the formally established 55%[20].

[16] Stepping stones for the Union's political and institutional architecture: a new vision of the treaties, a new conception of the Union in comparison with the Communities, a clearer distinction between the Union's attributions and those shared with or completely left to the member states, less red tape associated with the decisional process, more input and output legitimacy of the same decision-making process, etc. (Milton and Keller-Noëllet, 2005, pp. 47-48).

[17] The IGC lasted form the autumn of 2003 until June 2004.

[18] The voting system of the final version of the Constitutional Treaty was supposed to be in force since 1 November 2009.

[19] One of the reasons for Spain's "retreat", as it was perceived, was the election of a new government party.

[20] Not even the population criterion established at Lisbon escape several criticisms when looking at the population data considered for calculating the 65% Lisbon threshold. If one corroborates art. 16.4 of TEU and art. 238.2 of TFEU with regulation no. 1260/2013 on European demographic statistics, one may see that the population considered each year when calculating qualified majority population threshold is based on what member states declare as residents, not citizens, also counting, therefore, nationals of other or third non-EU countries (Kleinowski 2018). Pukelsheim also argues that EU should clarify in its internal documents between "European citizens, nationals, residents, or voters", as well as it should look deeper at double counting cases (citizens counted in one member state as residents and in another state as voters), as well as the suggestion that the delicate situation of some large member states which experience a decline of the population figures might also be a possible explanation for some of these reporting anomalies (Pukelsheim 2010, 237).

This progressively complicated double majority system had, at the end, an additional condition, a safeguard clause, similar with the one specified in the "Ioannina compromise": any member state, if opposed to a specific issue but it could not reach a blocking minority, could suspend the decision-making process, invocating basic national inconvenient and handing the specific act back to the Council for its reconsideration in a specific time limit. It was interesting that the opposition needed – in order to be heard – member states whose population comprised at least ¾ of the Union's population or whose number represented at least ¾ of the number of member states foreseen for ensuring a blocking minority (see Milton and Keller-Noëllet, 2005, p.111); in different words, this clause reflected the exact blocking capacity that both Spain and Poland had under Nice Treaty. This 'coincidence' saved the negotiations and led to the adoption of the Constitutional treaty whose regulations, according to the voting power theory, preserved the blocking capability of the larger states, enforcing their positions (mainly through the population criteria in the vote apportionment), and assured the old EU-15 leading the new EU-27 configuration (Passarelli and Barr, 2004, p. 21).

"All animals are equal, but some animals are more equal than others" wrote George Orwell in "Animal Farm". It also applies to countries, if one took into consideration the influence of the population criterion within the EU (Dinan 2010). The text adopted by the ICG contained different stipulations on the Council voting, replacing the Convention's proposals and attenuating somehow the influence of the most populous states as provided in the Draft Treaty, while still preserving them a huge trump card in forming the blocking minorities (Dinan 2010, Moberg 2010). Nevertheless, here is a general brief of the characteristics of the new voting procedures agreed in 2004: easy to understand, more democratic and easy to adapt to membership fluctuations (see Leech and Aziz 2010).

Despite the optimism of the supporters of the Constitutional Treaty and the ambitious politico-institutional reforms, the results of the 2005 ratification referenda in France and the Netherlands showed the presence of national populations less sensitive to vague and distant European themes, and more responsive to national issues and concerns. Therefore, the rejection of the Constitutional Treaty and its resumption, two years later, in the older logic of the amending treaties, brought again into question the definition of the QMV, while taking over from the Constitutional Treaty the changes agreed in terms of negotiating procedures, as well as stipulations *per se*[21].

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Is it fair to refer to residents when deciding European intricate power related mechanisms? Other EU member states nationals can vote for EP elections and can run for local elections in their country of residence, but they cannot vote in national elections. Meanwhile, non-EU residents do not have neither of these options. So? Is it fair to count all of them when establishing one EU country's population as a relevant criterion under the Lisbon Council voting framework? If one could find a solution to balance the voting power of any EU citizen, irrespective of her nationality, this could be treated as a fair output, in the light of our discussion. But what about the non-EU countries' residents whose input cannot be quantified? They have no direct, nor indirect voting power, but they influence the final data announced by the Member States.

[21] About the peculiarity of the speedy adopting process of the Treaty of Lisbon, a genuine reforming treaty in this logic of the previous modifying approaches, nevertheless considered a flawed process despite its uniqueness, see also Phinnemore 2013, a well-documented initiative that also indicated the impact that the preferences of the member states, together with the role of the German Council Presidency, had on the final configuration.

However, few analyses of the Treaty of Lisbon (at least those appeared in the first years after its entering into force) were willing to focus on the intricate debates that accompanied this new definition of the QMV inherited from the Constitutional Treaty; the general approach tended to list the changes Lisbon brought at the institutional and policies level, without paying too much attention to the delicate negotiating context, while diluting the general feedback in an optimistic expectance of a more legitimate and efficient outcome[22] following a so-called QMV simplifying acception (see, for example, Laursen 2012). Nevertheless, despite its dismissal of the weighted votes criterion and its alleged improvements in terms of legitimacy, transparency and adaptability to enlargement waves, the current modified Lisbon system offered a new QMV definition that is still locked in the blocking minorities safety nets of the EU power politics game.

ACKNOWLEDGEMENTS

The author thanks professor Adrian Miroiu for his careful reading of an early version of the article named "The Qualified Majority Voting in the Council of Ministers of the EU" and presented at the "Rational Choice Theory" course at the National University of Political Studies and Public Administration.

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[22] The efficiency of the outcome is debatable, at least in some aspects. For example, Hosli underlined another – ignored, deliberately or not – aspect: the fact that the easiness of reaching a decision within the Council affects the balance of power between this one and the EP. In other words, diminishing the Council's capacity of delivering a decision (not only by allotting voting weights, but also by altering the quota or by increasing the EU membership) also decreases the EP influence and – dramatically argued by the author – consolidates intergovernmentalism, as member states are mainly focused on assuring blocking minorities within the Council (Hosli 2010).

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