



THE TREATY OF NICE AND THE CONVENTION ON THE FUTURE OF EUROPE

The Treaty of Nice prepared the European Union only partially for the important enlargements to the east and south on 1 May 2004 and 1 January 2007. Therefore, following up on the questions raised in the Laeken Declaration, the European Convention made an effort to produce a new legal basis for the Union in the form of the Treaty establishing a Constitution for Europe. Following 'no' votes in referendums in two Member States, that treaty was not ratified.

TREATY OF NICE

The Treaty was signed on 26 February 2001 and entered into force on 1 February 2003.

A. Objectives

The conclusions of the 1999 Helsinki European Council required that, by the end of 2002, the EU be able to welcome as new Member States those applicant countries which were ready for accession. Since only two of the applicant countries were more populous than the Member State average at the time, the political weight of countries with a smaller population was due to increase considerably. [The Treaty of Nice](#) was therefore meant to make the EU institutions more efficient and legitimate and to prepare the EU for its next major enlargement.

B. Background

A number of institutional issues (which became known as the 'Amsterdam leftovers') had been addressed by the Maastricht and Amsterdam Intergovernmental Conferences (IGCs) but not satisfactorily resolved. These included size and composition of the Commission, weighting of votes in the Council, and extension of qualified majority voting. On the basis of a report by the Finnish Presidency, the Helsinki European Council decided in late 1999 that an IGC should deal with the leftovers and all other changes required in preparation for enlargement.

C. Content

The IGC opened on 14 February 2000 and completed its work in Nice on 10 December 2000, reaching agreement on the institutional questions, and on a range of other points, namely a new distribution of seats in the European Parliament, more flexible arrangements for enhanced cooperation, the monitoring of fundamental rights and values in the EU, and a strengthening of the EU judicial system.



1. Weighting of votes in the Council

Taking together the system of voting in the Council, the composition of the Commission and, to some extent, the distribution of seats in the European Parliament, the IGC realised that the main imperative was to change the relative weighting of the Member States, a subject no other IGC had addressed since the Treaty of Rome.

Two methods of defining a qualified majority were considered: a new system of weighting (modifying the existing one) or application of a dual majority (of votes and of population) – the latter solution having been proposed by the Commission and endorsed by Parliament. The IGC chose the first option. The number of votes was increased for all Member States, but the share accounted for by the most populous Member States decreased: previously 55% of votes, it fell to 45% when the 10 new members joined, and to 44.5% on 1 January 2007. This was why the demographic ‘safety net’ was introduced: a Member State may request verification that the qualified majority represents at least 62% of the total population of the Union. If it does not, the decision concerned will not be adopted.

2. The Commission

a. Composition

Since 2005 the Commission has comprised one Commissioner per Member State. The Council has the power to decide, acting unanimously, on the number of Commissioners and on arrangements for a rotation system, provided that each Commission reflects the demographic and geographical range of the Member States.

b. Internal organisation

The Treaty of Nice provides the President of the Commission with the power to allocate responsibilities to the Commissioners and to reassign them during his or her term of office, as well as to select and determine the number of Vice-Presidents.

3. The European Parliament

a. Composition

The Treaty of Amsterdam had set the maximum number of MEPs at 700. At Nice, the European Council thought it necessary, with an eye to enlargement, to revise the number of MEPs for each Member State. The new composition of Parliament was also used to counterbalance the altered weighting of votes in the Council. The maximum number of MEPs was therefore set at 732.

b. Powers

Parliament was enabled, like the Council, the Commission, and the Member States, to bring a legal challenge to acts of the Council, the Commission or the European Central Bank on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty or of any rule of law relating to its application, or misuse of powers.

Further to a proposal by the Commission, Article 191 was turned into an operational legal basis for the adoption, under the co-decision procedure, of regulations governing political parties at EU level and rules on their funding.



Parliament's legislative powers were increased through a slight broadening of the scope of the co-decision procedure and by requiring Parliament's assent for the establishment of enhanced cooperation in areas covered by co-decision. Parliament must also be asked for its opinion should the Council adopt a position on the risk of a serious breach of fundamental rights in a Member State.

4. Reform of the judicial system

a. The Court of Justice of the European Union

The Court of Justice was empowered to sit in a number of different ways: in chambers (where it consists of three or five judges), in a Grand Chamber (11 judges) or as the full Court. The Council, acting unanimously, may increase the number of Advocates-General. The Court of Justice of the EU retained jurisdiction over questions referred for a preliminary ruling, but it was able, under its Statute, to refer to the Court of First Instance types of matters other than those listed in Article 225 of the TEC Treaty.

b. General Court

The powers of the General Court (formerly the Court of First Instance prior to the Lisbon Treaty coming into force on 1 December 2009) were increased to include certain categories of preliminary ruling, with the possibility of judicial panels being established by unanimous decision of the Council. All these operating provisions, notably on the powers of the Court, were thereafter set out in the Treaty itself.

5. Legislative procedures

Although a considerable number of new policies and measures (27) now required qualified majority voting in the Council, co-decision was extended only to a few minor areas (covered by former Articles 13, 62, 63, 65, 157, 159 and 191 of the TEC Treaty); for matters covered by former Article 161 assent was now required.

6. Enhanced cooperation

Like the Amsterdam Treaty, the Treaty of Nice contained general provisions applying to all areas of enhanced cooperation and provisions specific to the pillar concerned. Whereas the Amsterdam Treaty provided for enhanced cooperation under the first and third pillars only, the Treaty of Nice encompassed all three pillars.

The Treaty of Nice made further changes: referral to the European Council ceased to be an option, the concept of 'a reasonable period of time' was clarified, and the assent of Parliament was now required in all areas where enhanced cooperation related to a question covered by the co-decision procedure.

7. Protection of fundamental rights

A paragraph was added to Article 7 of the Treaty on European Union (TEU) to cover cases where a patent breach of fundamental rights has not actually occurred but where there is a 'clear risk' that it may occur. The Council, acting by a majority of four fifths of its members and after obtaining the assent of Parliament, determines the existence of the risk and addresses appropriate recommendations to the Member State in question. A non-binding Charter of Fundamental Rights was proclaimed.



D. Role of the European Parliament

As with earlier intergovernmental conferences, Parliament was actively involved in preparations for the IGC in 2000, giving its views on the conference agenda and its progress and objectives^[1]. Parliament also expressed its opinion on the substance and judicial implications of the Charter of Fundamental Rights. Parliament insisted that the next IGC should be a transparent process, involving European and national parliamentarians and the Commission, as well as input from ordinary people, and that what it produced should be a constitution-type document.

CONVENTION ON THE FUTURE OF EUROPE

A. Basis and objectives

In accordance with Declaration No 23 annexed to the Treaty of Nice, the Laeken European Council of 14 and 15 December 2001 decided to organise a Convention bringing together the main parties concerned for a debate on the future of the European Union. The objectives were to prepare for the next IGC as transparently as possible and to address the four main issues concerning the further development of the EU: a better division of competences; simplification of the EU's instruments for action; increased democracy, transparency and efficiency; and the drafting of a constitution for Europe's citizens.

B. Organisation

The Convention comprised a chair (Valéry Giscard D'Estaing), two vice-chairs (Giuliano Amato and Jean-Luc Dehaene), 15 representatives of the Member States' heads of state or government, 30 members of the national parliaments (two per Member State), 16 members of the European Parliament and two members of the Commission. The countries that had applied to join the Union also took part in the debate on an equal footing, but could not block any consensus which might emerge among the Member States. The Convention therefore had a total of 105 members.

In addition to the chair and vice-chairs, the Praesidium comprised nine members of the Convention and an invited representative chosen by the applicant countries. The Praesidium had the role of lending impetus to the Convention and providing it with a basis on which to work.

C. Outcome

The work of the Convention^[2] comprised: a 'listening phase', in which it sought to identify the expectations and needs of Member States and Europe's citizens, a phase in which the ideas expressed were studied, and a phase in which recommendations based on the essence of the debate were drafted. At the end of 2002, 11 working groups presented their findings to the Convention. During the first half of 2003, the Convention

[1]European Parliament resolution on the Treaty of Nice and the future of the European Union, 31.5.2001 ([OJ C 47E, 21.2.2002, p. 108](#)).

European Parliament resolution on the preparation of the reform of the Treaties and the next Intergovernmental Conference, 18.11.1999 ([OJ C 189, 7.7.2000, p. 222](#)).

[2]<https://www.europarl.europa.eu/comparl/conv/default.htm>



drew up and debated a text which became the draft Treaty establishing a Constitution for Europe^[3].

Part I of the Treaty (principles and institutions; 59 articles) and Part II (Charter of Fundamental Rights; 54 articles) were laid before the Thessaloniki European Council on 20 June 2003. Part III (policies; 338 articles) and Part IV (final provisions; 10 articles) were presented to the Italian Presidency on 18 July 2003. The European Council adopted this text on 18 June 2004, retaining the basic structure of the Convention's draft, albeit with a considerable number of amendments. Approved by the European Parliament^[4], the Treaty was then rejected by France (29 May 2005) and the Netherlands (1 June 2005) in their national referendums. As a result of two 'no' votes in referendums in France and the Netherlands, the ratification procedure for the Treaty establishing a Constitution for Europe was not completed.

D. Role of the European Parliament

The impact of MEPs during the work of the European Convention was seen by most observers as decisive. Thanks to several factors, including their experience of negotiating in an international environment and the fact that the Convention was meeting on Parliament's premises, MEPs were able to leave a strong imprint on the debates and on the outcome of the Convention. They were also instrumental in the formation of political families comprising MEPs and national MPs. Parliament thus achieved a considerable number of its original aims, and most of that achievement is now safeguarded in the Treaty of Lisbon.

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[3]Treaty establishing a Constitution for Europe ([OJ C 310, 16.12.2004, p. 1](#)).

[4]European Parliament resolution on the Treaty establishing a Constitution for Europe ([OJ C 247E, 6.10.2005, p. 88](#)).

