



THE QUALIFIED MAJORITY VOTING IN
THE COUNCIL OF MINISTERS OF THE EU

- THE TREATY OF NICE AND THE CONSTITUTIONAL TREATY -

Oana Bosoi

February 2007



**THE QUALIFIED MAJORITY VOTING IN
THE COUNCIL OF MINISTERS OF THE EU
- THE TREATY OF NICE AND THE CONSTITUTIONAL TREATY -**

**THE QUALIFIED MAJORITY VOTING
IN THE COUNCIL OF MINISTERS OF THE EU**
February 2007

OANA BOSOI is a Ph.D. Candidate with SNSPA Bucharest and an analyst with the Center for Security and International Studies, FEDM, Bucharest. Her international relations interests are focused on the European Union – with institutional and security emphases, and on the Balkan region.

ABSTRACT

This paper belongs to the large sphere of researches dedicated to the unique institutional architecture of the European Union and to the less extended Romanian academic concern regarding the decision-making system that the EU Council of Ministers is using nowadays, a voting frame that Romania is also employing since its first day inside the European Union's borders.

Using the conceptual and theoretical frame provided by the Rational Choice Theory, the analysis focuses on the cleavage between the individual rationality (the rational agent defined here being any member state of the EU) and the collective rationality (the Council of Ministers), in other words, on the classic issue of collective action whose outcomes are often not the best solution for the entity as a whole if they respect the individual preferences of all the individuals involved into the process.

The case examined here is the Qualified Majority Voting (QMV) in the EU Council of Ministers as designed in the Treaty of Nice and in the Constitutional Treaty. Considering the efforts made since the original treaties to reflect the dual nature of the Union (states and people) into the voting outcome, there are here emphasized the aspects related, in the Nice case, to the inefficient triple majority explained in the terms of vote weighting and vote power, and, in the Constitution case, to the power politics that led to a "new" voting scheme which preserves the conflict between the smaller and the bigger EU states and create another one between the founding members and the new comers.

The final ideas of the paper are that a rational collective outcome of the EU Council of Ministers is indeed far away of being reached and that future institutional arrangement should be treated with more consideration regarding the power distribution into the voting system.

INTRODUCTION

The central unit of analysis in the Rational Choice Theory is the individual whose actions are utility-maximization seeking, accordingly to his preferences¹. The discrepancies observed between the individual rationality and the collective rationality determined scholars to search for solutions of what became the classic issue of collective action.

One of the essays to surmount this obstacle (known also as “the ‘Arrow’ problem of how groups of people can make decisions that satisfy the conditions of a social welfare function” – Peters, 1999, p. 46) is the rational choice approach on institutions. In this light, in order to correct collective irrationality that may occur from the simple aggregation of individual preferences, institutions are conceived as a sum of rules and incentives, positive and negative motivations planned to produce collectively rational outcomes.

The incentive to connect to an institution can be found at different levels of the social structure. Peters advances the example of European countries who decided to form and later to join EU in order to constrain the “competitive behavior of their competitors and produce a relatively level of playing fields for all actors” (Peters, 1999, p. 48).

Establishing as unit of analysis the rational agent defined here as any member state of the European Union, I will take into consideration in this paper the decision-making system of the European Union Council of Ministers², more precisely, the qualified majority voting (QMV), in order to describe this system that Romania is using after joining EU and to prove that there are situations when not even the institutions can avoid a collective irrational outcome.

¹ Rational Choice Theory’s basic assumptions can be summarized in this way: one individual is said to act rational if, taking into account the fact that he possesses ordered preferences, complete information and a perfect internal device, he chooses the action that will satisfy his preferences in such a manner that his anticipate utility would be maximized (cf. Hollis, 2001, pp. 113-114).

² “The Council of the EU is designed as the institutional vehicle for articulating the interests of member state governments in the Union’s legislative and executive decision-making processes” (Galloway, 2001, p. 59).

SOME INITIAL REMARKS

“Maximization of social welfare”: that is the classic vision of the government’s function. Downs challenged this traditional viewpoint and considered that there is no taken for granted mission of the government: “the way every government actually makes decisions depends upon the nature of the fundamental power relation between the governors and the governed in its society; that is, upon the society’s political constitution” (Downs, 1957, p. 150). This ‘political constitution’, in general, and the problem of providing a new set of institutions (how can we promote coordination of activities by finding a common agreed set of rules³) is reflected in the very wide spectrum of voting rules. Scholars have tried to offer a systematic approach of this field, classifying them accordingly to different criteria: “(1) the inputs required, (2) what the procedure does to those inputs and (3) the outcome or output produced” (Shepsle and Boncheck, 1997, p. 172)⁴. One voting method can respect only a part of the criteria stated for all the categories and if several actors have different opinions in this subject, reaching a consensus becomes a tough job. Levin is more pessimistic; he affirms that, in some cases, “a vote system can’t find a consensus when none exists” (Levin, 1995, p. 24). Let’s see the EU’s experience in this field.

³ Cf. Ostrom, 1990.

⁴ This wasn’t an easy task, one of the capital obstacles of their approach being the identification of these various methods goals concerning the outcome they produce: offering legitimacy to the winner, stimulating participation, preventing a multi-cleavage of the political spectrum, improving representativeness, enforcing one agent’s position etc. (cf. Levin, 1995, p. 23).

THE TREATY OF NICE

1. What was supposed to be Nice?

The current institutional design of the European Union⁵ was decided at Nice, on 26 February 2001, and it includes the Treaty of Nice, one protocol (Protocol on the Enlargement of the EU) and two declarations (Declaration on the Enlargement of the EU, Declaration on the QMV and the number of votes for a blocking minority in the context of enlargement).

According to some pre-agreed, unquestioned principles, the new system of decision-making 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%. (cf. Galloway). 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.

2. The Pre – Nice decision-making system

The unique institutional architecture of the European Union⁶ was established very carefully in the original treaties, in a period when “national sovereignty seemed indivisible” (Galloway, 2001, p. 16), the optimal equilibrium between its double nature – supranational and intergovernmental – being carefully considered.

⁵ Since 1 January 2005.

⁶ In this paper I will use the generic collocation “European Union” in order to describe its unique institutional framework, despite the differences existing between the European Communities.

For almost 30 years, since the original treaties until the Single European Act (SEA), the usual voting procedure in the Council was unanimity, alternative rules as simple majority or qualified majority being used occasionally. In fact, the simple majority was the preset selection of the decision-making rules, which always was to be followed except when the treaties explicitly altered it (as they proved to do), and the qualified majority's application for a set of actions had to "ensure a reasonable 'balance of influence' between member states of different sizes when decisions are being taken", the considered criteria being "population size, economic weight and budget contributions" (Galloway, 2001, p. 64). 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 SEA, revealed the necessity of a more efficient decision-making process and this is the particular moment when qualified majority voting (QMV) reached the first time the status that it has from that moment on.

Table 1 presents the evolution of the QM in the Council⁷ and Table 2 offers an image of the same problem together with details for each member state of the Union.

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

<i>Year</i>	<i>Total No of MS</i>	<i>Total Votes</i>	<i>QM: Votes and %</i>	<i>Min. MS Forming QM</i>	<i>Min. Population Forming QM</i>	<i>Min. No. of MS Forming a BM</i>	<i>% of Population Needed for the Smallest BM</i>
1958	6	17	12 (70.59%)	3	67.70%	2	34.83%
1973	9	58	42 (72.41%)	5	70.62%	2	12.31%
1981	10	63	45 (71.43%)	5	70.13%	2	13.85%

⁷ I have emphasized the most important figures for this moment of the analysis. However, having in mind the development of the research, I have kept into the table all the figures from the original document.

1986	12	76	54 (71.05%)	7	63.29%	3	12.12%
1995	15	87	62 (71.26%)	8	58.16%	3	12.05%

Source: Opinion of the Commission, 'Adapting the institutions to make a success of enlargement' delivered on 26 January 2000, *COM (2000) 34 apud* Tsebellis (Tsebellis, 2002, p. 289)

Table 2. Qualified Majority Voting: Weights and populations

	1958-72			1973-80			1981-85			1986-94			1995-			Pop (m)
	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	82.0
UK		-	-	10	17.2	21.8	10	15.9	20.5	10	13.2	17.6	10	11.5	15.8	59.2
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	59.0
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	57.6
Spain		-	-		-	-		-	-	8	10.5	12.0	8	9.2	10.5	39.4
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	15.8
Greece		-	-		-	-	5	7.9	3.6	5	6.6	3.1	5	5.7	2.8	10.5
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	10.2
Portugal		-	-		-	-		-	-	5	6.6	3.1	5	5.7	2.7	10.0

Sweden		-	-		-	-		-	-		-	-	4	4.6	2.4	8.9
Austria		-	-		-	-		-	-		-	-	4	4.6	2.2	8.1
Denmark				3	5.2	2.0	3	4.8	1.9	3	3.9	1.6	3	3.4	1.4	5.3
Finland		-	-		-	-		-	-		-	-	3	3.4	1.4	5.2
Ireland		-	-	3	5.2	1.2	3	4.8	1.3	3	3.9	1.1	3	3.4	1.0	3.7
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	0.4
Total	17	100	100	58	100	100	63	100	100	76	100	100	87	100	100	375.3
Threshold	12	70.6		41	70.7		45	71.4		54	71.1		62	71.3		

The table shows, for each member, the number of its weighted votes, abbreviated to Wt, its percentage share and its percentage share of the total population. The final column, Pop (m), shows the population in millions.

Source: Felsenthal, D.S. and Machover, M. (2001). The Treaty of Nice and qualified majority voting. *Social Choice and Welfare* 19: 465-483 *apud* Leech (Leech, 2002, p. 440)

The data presented above reveal some of the principles that guided the Council in establishing the QM coordinates and its subsequent changes. “Its key features are: (1) that all members have a seat but their respective numbers of votes are different to reflect their different populations; and (2) decisions are taken by qualified majority voting with respect to a decision rule based on a supermajority requirement defined by a threshold” (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 “big” members.

This initial design was considered fair enough for the Union's objectives – the QM threshold was set around 70% (it slightly varied between 67.7% and 71.26 %,) 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. For example, before Nice, the minimum population necessary to form a QM was around 58% from the total amount while in an EU with 27 members the analyses showed that the figures will descend below 50%.

With the Treaty of Amsterdam, the imminent envisaged enlargement of the EU with 12 new states⁸ 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 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 Nice¹⁰ IGC¹¹ the weighting of votes in the Council will be one of the key issues.

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 as “the Ioannina compromise” (March 1994). Briefly, it “stated that if the number of voted of member states opposing a particular proposal fell

⁸ 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.

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 and the possibility to extend QMV, the allocation of seats in the European Parliament (cf. Galloway)

¹¹ IGC – Intergovernmental Conference – “this means a conference at which the EU member states’ governments come together to amend the European Union Treaties” (http://www.europa.eu.int/abc/eurojargon/index_en.htm).

between 23 (the old blocking minority) and 26 (the new blocking minority), the Member States could request that the Council try to reach an agreement which would respect the old QM threshold” (Milton, 2005, p. 74). In fact, this clause describes a possibility to change ad hoc the level of the threshold.

3. The importance of vote weighting and vote power

The weighting of votes in the Council refers to the voting power that each of the members of the Council possesses in the decisions adopted by QM, involving each states level of influence in shaping the results of the decision. Following from this, there should be underlined the distinction between the voting weight and the voting power - “Voting weight refers to the relative voting strength accorded to any individual member state under a system of weighted votes, that is, the percentage of the total vote held by each member of the Council. Voting power refers to the ability of any individual member of the Council to cast a decisive vote for adopting or blocking a decision” (Galloway, 2001, p. 59) – and the implied significance of the QM threshold.

3.1. Vote weight

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. In the following table there are listened the visions that each country had on the QMV.

Table 3: Positions of different countries on QMV

	<i>QM Threshold</i>	<i>Countries ' Majority</i>	<i>% Population</i>
Germany	71%	Not necessary	60% minimum

OCCASIONAL PAPER

No. 4

UK	71%	Not necessary	Not less than today (58%) 60%
Italy	71%	Not necessary	Not less than today (58%) 60%
France	71%	Not necessary, but if majority of MS, will weigh down system from below. Means that smaller MS should lose proportionally more votes	Did not want it
Spain	c. 71%	No clear position	System based on grouping countries
Netherlands	c. 71%	Yes, but balance between them will be very important. Means that NL wants more votes than Belgium and Greece	Can discuss it
Greece	Prefers double majority	60%	60%
Belgium	Double majority	Could be variable	More than 50%
Portugal	71%	At least 50%	58% could be acceptable
Sweden	Revision of the current system with weights proportional to the square root of the population		
Austria	71%	At least 50%	58% acceptable
Denmark	c. 70%	At least 50%	58-60%, but lower if simple reweighting. Means that if the system finally chosen does not take into account the majority of MS, population criterion should be around 50%
Finland	71%	At least 50%	60% maximum

Ireland	71%	At least 50%	60%
Luxembourg	Prefers double majority. Otherwise, keep existing weights and add criterion of majority of population	50%	50%

Source: Tsebellis. "This table and the detailed positions of the Member States are a compilation of different working documents of the secretariat general (task force for the IGC) from May to November 2000. For a summary of the situation, see the Communication of Romano Prodi and Michel Barnier of 31 October 2000, *SEC* (2000) 1834/2" (Tsebellis, 2002, p. 292).

The table highlights the clash between the 'big' members, with preferences for higher thresholds – as a prevention against a possible coalition against them, and the 'small' ones, in favor for lower levels – a measure conceived to block a 'tyranny' of the great powers of the Union.

During the negotiation process, the solution of reweighting came 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 the 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 Luxembourg'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 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 is stipulated that the decision is taken *if* the number of votes equals or exceeds the QM threshold *and* a simple majority of the member states is in favor, there is also added a *safety net*, which means that any member state *can* ask for that particular decision to pass also a threshold of 62% of the Union's population. In reality, this facultative condition is as important as the first two.

Here are enclosed two tables reflecting the changes that appeared in the vote weightings from 1 January 2005. As they were stated at Nice, the first one is describing a Union not enlarged, with the old 15 members, and the second is detailing a situation of a Union including 27 members.

Table 4. Council vote weightings for EU – 15 from 1 January 2005 (No enlargement)

Members of the Council	Weighted votes	Votes %		
Germany	29	12.2		
UK	29	12.2		
France	29	12.2		
Italy	29	12.2		
Spain	27	11.4		
Netherlands	13	5.5		
Greece	12	5.1		
Belgium	12	5.1		
Portugal	12	5.1		
Sweden	10	4.2		
Austria	10	4.2		
Denmark	7	3.0		
Finland	7	3.0		
Ireland	7	3.0		
Luxembourg	4	1.7		
Total	237	100		
Total votes = 237	Votes	% Votes	Minimum number of members	Minimum % of population
Qualified majority	169	71.31	8	59.93 ^a
Blocking minority	69	29.11	3	13.80

^a This percentage result from the voting table. The figure set by the Treaty is 62%.

Source: Galloway (Galloway, 2001, p. 87) and Leech (Leech, 2002, p. 442).

Table 5. Council vote weightings for EU – 27 from 1 January 2005 (Enlargement by all 12 candidates)

Members of the Council	Weighted votes	Votes %
Germany	29	8.4
UK	29	8.4
France	29	8.4
Italy	29	8.4
Spain	27	7.8
Poland	27	7.8
Romania	14	4.1
Netherlands	13	3.8
Greece	12	3.5
Czech Rep	12	3.5
Belgium	12	3.5
Hungary	12	3.5

Portugal	12	3.5		
Sweden	10	2.9		
Bulgaria	10	2.9		
Austria	10	2.9		
Slovakia	7	2.0		
Denmark	7	2.0		
Finland	7	2.0		
Ireland	7	2.0		
Lithuania	7	2.0		
Latvia	4	1.2		
Slovenia	4	1.2		
Estonia	4	1.2		
Cyprus	4	1.2		
Luxembourg	4	1.2		
Malta	3	0.9		
Total	345	100		
Total votes = 345	Votes	% Votes	Minimum number of members	Minimum % of population
Qualified majority	255	73.91	14	58.29 ^a
Blocking minority	91	26.38	4	11.61

^a This percentage result from the voting table. The figure set by the Treaty is 62%.
Source: Galloway (Galloway, 2001, p. 88) and Leech (Leech, 2002, p. 443).

After a comparative analysis of the three additional acts of the Treaty of Nice, there some important observations to be made referring to each of the three conditions necessary for a QMV.

First, the threshold for a qualified majority. In the Enlargement Protocol¹², article 3, when referring to provisions concerning the weighting of votes in the Council, after the 1 January 2005, operates changes in the Treaty and set the number of votes at 237 for an EU – 15, with a QM of 169, which means 71.31%. Successive, in the Enlargement Declaration¹³, for an EU – 27 it is established a 345 total number of votes and a QM of 74.78%. In this case, the blocking minority of 88 votes would be very difficult to reach. These provisions are not the final ones, as we may think, because in the third additional document, the Threshold Declaration¹⁴, the maximum level for the threshold is fixed at 73.4%, which means that, at the end of the enlargement, the QM becomes 255 and the blocking minority 91¹⁵. The minimum coalition that will be able to block a decision should be composed by three larger states and a smaller one.

¹² Protocol on the Enlargement of the European Union.

¹³ Declaration on the Enlargement of the EU

¹⁴ Declaration on the QMV and the number of votes for a blocking minority in the context of enlargement

¹⁵ The level for BM is fixed at 91 and not at 93, as it will resulted form the threshold percentage.

Second, the simple majority of member states. This second condition in the process of decision-making by QMV reflects the request of the medium and small member states of the Union to compensate the reweighting of votes (made in favor of the major players) and to assure that no decision will be taken against their wish. In other words, in an EU – 27, if “fewer than 14 large member states can gather a QM of votes, it follows that a majority of small Member States can block decisions even if they do not have a BM” (Tsebellis, 2001, p. 287). This additional requirement makes even more difficult the decision-making process as the smallest 14 member states, with approximate 10% of the Union’s population can 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 a compensation offered for Germany for not claiming a different number of votes than France. Hence, this clause is simpler to obtain only if Germany is against, having in mind the fact that, together with one other larger country the threshold of 38% of the population is acquired, in order to block a decision. Anyway, the collective power to act is even more decreased by adding the safety net.

These complex rules, obstructing an efficient decision-making system by claiming for legitimacy or adequacy, are an answer of the opponents for the issue of QMV extension. They argue that the progressive raise of areas where QMV can be applied is touching their sovereignty and that there would be no need for their formal inscription into the Treaties if, in practice, “the Council tries as far as possible to avoid voting, preferring to reach compromises which are acceptable to all” (Milton, 2005, p. 57). An informal “preference for unanimity’ exists in Council decision-making” (Mattila, 2001, p. 40).

Is more always better than 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 is not of a qualified majority but of a blocking minority logic: “The

predominant attitude was not ‘how can my votes be made to count most effectively to attain a QM’, but ‘how can I best ensure that my votes can block decisions that might be contrary to my national interest’” (Galloway, 2001, p. 92).

Even if the Treaty contained significant improvements (as the extension of QMV area¹⁶), the feeling was of a failure: with the augmented veto power of the member states it would have been “almost impossible to alter 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, 1999, p. 68), 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.

The same problem of collective action transferred into the game theory¹⁷ would face some challenges in describing the type of the game played by the Council’s members. If it is common sense to agree that we should speak about coordination games¹⁸ (the repetition of the game being a factor that could led to an optimal

¹⁶ I will not discuss in this essay the particular problem of QMV extension, which is important by itself and the topic of this article would afford only some marginal references to the issue.

¹⁷ In the game theory, the agents are perfectly rational individuals which interact on the grounds of a common knowledge (as the others are rational actors too and everybody knows the rules of the game).

¹⁸ The difficulty of the cooperation between the all players could have been influenced, conforming to Axelrod’s opinion, by the labels that each actor inevitably had. We speak about “a given / fixed characteristic of a player [...] which can be observed by other player”. These labels can provoke some stereotyped patterns of actions” (Axelrod, 1984:148). In the EU negotiations, the rival labels “major power” – “minor power” negatively influenced indeed the whole process, enforcing one part’s status and constantly trying to disadvantage the other. Nevertheless, cooperation was intense between the two playing parts. The small players and also Spain and Poland succeeded to improve their condition by joint continuous actions designed to sanction the defection. They also improved this network cooperation by

equilibrium between the parts), the reality confronts us either with a “Prisoner’s dilemma” (summing up the individual results offers a lower figure than the one that would have been obtain by a collective action) or even with a “sex battle” (in the Hollis description of the situation, it is “rational” for some actors to act accordingly an unfavorable distribution of power. Hence, even the rewards are different, and, in repeated games, one part remains locked in a lower position, the situation is considered better than one obtained by alternative strategies – Hollis, 2001: 125, 135).

To summarize, 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 players¹⁹, was not the best solution for the Union as an entity.

3.2 Voting power analysis

One of the democratic principles requires, under the well known “one person, one vote” slogan, a formal equality of the a priori voting power of all citizens.

The *a priori* voting power is defined as a constituent part of *a posteriori* (or *actual*) voting power, deduced by the voters only form the decision regulation and the type of issues submit to vote. In other words, it is a “formal power as given by the constitutional rules of a collectivity” (Coleman *apud* Felsenthal, 2003, p. 474) and the analyses should concentrate on the constitutional architecture of a specific decision-

applying the idea of territoriality especially in the sense of an “abstract space of characteristics” (Cf. Axelrod, 1984:150–160)

¹⁹ “The larger member states achieved their goal of compensation for abandoning the right to nominate a second commissioner through a moderately substantial reweighting. Germany’s size was recognized by enabling it to form a blocking minority of three with any two other large member states [...]. Spain found itself in many respects on a similar footing to the large member states, although not exactly the same footing. The Netherlands achieved its long-standing objective of increasing its vote weight. All of the current member states achieved some measure of upgrading, with the exception of Luxembourg, although the Benelux states collectively have as many votes as a large member state (29). The less populous member states achieved a political safeguard for their interests since no decision can be taken without their collective consent, since the treaty now stipulates expressly that a QM requires the votes ah at least half of the members of the Council” (Galloway, 2001, p.89).

making structure. In this theory, founded by Penrose²⁰ in the '40s, the a priori voting power is conceived as *I-power*, “notion of voting power as a voter's degree of influence over the outcome - under a specified decision rule - of a division of a decision-making body²¹: [...] the a priori probability *A* that a decision-making body acting under a given decision rule will adopt a bill rather than blocking it”²² (Felsenthal, 2003, p. 476).

In the contemporary approaches of the theory, the attention is held by the weighted voting systems where the constitutional design causes, by different weights and rules, a different degree of influence of the decision-makers, quantified in *power indices*, more specifically in *a priori* power indices²³.

Defined as a “statistical measure for summarizing certain properties of a given voting game” (Felsenthal, 2003, p. 487), power indices are very useful instruments in conceiving weighted political systems or in determining the fairness of the existing procedures and offering solutions for a possible equalizing process of the voting power. Their role is extremely important as the inequalities in the distribution of voting power are disturbing both agenda setting and decision outcomes in favor of the actors with a great voting power.

In this respect, especially in the cooperative games, “power indices tend to represent the probability that each voter will determine the outcome of a particular voting game” (Passarelli, 2004, p. 4). Two observations are to be noticed here: first, the fact that the influence of an agent is only measurable when there is no other agent able to reach by itself a majority (no matter what of majority) of votes; second, to underline that a winning coalition means that it has reached the threshold to approve a decision.

²⁰ The most important contribution to Penrose's theory and indices was brought by J. Banzhaf and the index that he developed is known either as the Penrose-Banzhaf Index, either as simple Banzhaf Index.

²¹ A similar viewpoint is given by Banzhaf: “The voting power measure here is that inherent in the system and necessarily represents an average of a voter's effectiveness in a large number of equally likely voting situations.” (Banzhaf *apud* Felsenthal, 2003, p. 484).

²² Some of the scholars take into consideration, in analyzing the concept of power, only the F-power, “which regards a decision rule as a simple cooperative game with transferable utility and conceptualizes voting power as a voter's relative share in a fixed total payoff”. (Felsenthal, 2003, p. 474).

²³ There is also another kind of power index, an empirical one, designed in order to offer an expression of the behavior and the preferences of voters.

The most well-known and used indices are the resembling Penrose-Banzhaf (PB) index²⁴ and the Shapley-Shubik (SS) index²⁵.

In preparing the Union's institutional architecture for the enlargement challenges, the older EU members feared that the new comers would disturb to such an extent the existing distribution of power that the usual balances and the functioning of the decision-making procedures would have been weakening their particular national interests. As it was said in the preceding paragraphs, the simple reapportionment of votes would have led the new comers, small or medium sized countries, to an over-weighted status, accumulating nearly 40% of the total power, a situation unfavorable to the 'big players'. So, the question of how to adjust the existing distribution of power in such a manner that each actor would consider it has reached an optimal balance reach a solution in the triple majority criteria.

Many scholars, inspired by the voting power theory, were interested in learning how is affecting their new power distribution in the Council the outcome of the decision-making. In this respect, using the Shapley-Shubik and Banzhaf indices, by determining the number of possible winning coalitions, they proved that the possibility of a decision to pass was almost zero and if the threshold of the QMV remained untouched, the Council would "get bogged down in immobilism" (Felsenthal, 2003, p. 476)

Other areas of research were the equal voting weights of similar member states, deriving from the principle of a priori voting power, but also the correlation of this issue

²⁴ "The Banzhaf Index [...] aims to calculate the power of individual players by finding the ratio between the coalitions an individual player can make to win and all winning coalitions" (Aleksarov, 2002, p. 382).

"The Penrose measure of voter v 's voting power (under a given decision rule) is the a priori probability of v being *decisive*; that is, the probability of the other voters being so divided that v is in a position to determine the outcome of the division" (Felsenthal, 2003, p. 477).

²⁵ "The Shapley-Shubik index is a measure of the relative frequency with which a member country can determine the outcome of a particular vote if all possible coalitions of a fixed number of member states were equally likely to occur; and it is, in general, some function of the number of votes and the majority threshold" (Barr, 2004, p. 4).

"The Shapley-Shubik Index calculates the share of coalitions, which are winning due to the presence of party i in all coalitions, and prescribes a weight to a coalition in these calculations depending on its size" (Aleksarov, 2002, p. 382).

with the idea of equalizing the a priori voting power of the EU citizens, as a criterion of fairness²⁶ (purpose that would have led to an alternative decision-making design).

Let's look at the following tables.

Table 6. Power distribution in the European Council from 1995 onwards

Member State	Shapley-Shubik Index (1995)	Banzhaf Index (1995)
Germany, Italy, UK, France	0.119	0.112
Spain	0.093	0.092
Netherlands, Portugal, Greece, Belgium	0.056	0.059
Sweden, Austria	0.044	0.049
Denmark, Finland, Ireland	0.033	0.036
Luxembourg	0.021	0.023

Source: Aleskerov (Aleskerov, 2002, p. 384)

Table 7. Power distribution in the European Council in case of enlargement

Power Distribution		
Countries	Shapley-Shubik Index	Banzhaf Index
Germany	0.0872	0.0778
United Kingdom	0.0870	0.0778
France	0.0870	0.0778
Italy	0.0870	0.0778
Spain	0.0800	0.0742
Poland	0.0799	0.0742
Romania	0.0399	0.0426
Netherlands	0.0368	0.0397
Greece	0.0340	0.0368
Czech Republic	0.0340	0.0368
Belgium	0.0340	0.0368
Hungary	0.0340	0.0368
Portugal	0.0340	0.0368
Sweden	0.0281	0.0309
Bulgaria	0.0281	0.0309
Austria	0.0281	0.0309

²⁶ The principle of fairness requires a weighted votes' distribution in accordance with a proportional correspondence between one country's power index and its squared root of the population, in order to equalize the EU citizens voting power. Analyses of the current distribution of weights revealed that it has serious shortcomings in the fairness problem.

Following the method of *a priori* voting power analysis, another aim is to propose "a general procedure that could be applied in a more or less routine manner each time the membership changes: every time a new member country joins its voting weight can be calculated, and those of all existing members recalculated, by this algorithm in accordance with the agreed general criterion of fairness" (Leech, 2002, p. 438).

The Constitutional Treaty was also criticized (the so-called "mathematician protest") for not respecting the same criteria of fair weights.

Slovakia	0.0195	0.0218
Denmark	0.0195	0.0218
Finland	0.0195	0.0218
Ireland	0.0195	0.0218
Lithuania	0.0195	0.0218
Latvia	0.0110	0.0125
Slovenia	0.0110	0.0125
Estonia	0.0110	0.0125
Cyprus	0.0110	0.0125
Luxembourg	0.0110	0.0125
Malta	0.0082	0.0094

Source: Aleskerov (Aleskerov, 2002, p. 385)

After comparing the two situations, EU 15 and EU 27, we can emphasize that, even if the power indices of the previous EU members were decreased after enlargement, the proportion between their levels of influence continued to be similar and the acceptance of the new members was counterbalanced by the big players with significant less vote shares in the power distribution.

THE CONSTITUTIONAL TREATY – AN OVERVIEW

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 (the key players, the working procedures and, especially, the agenda meant to address fundamental questions for a regenerating Union).

The Constitutional Treaty's history has two main important sequences: the Convention and the Intergovernmental Conference.

1. The Convention

The voting system enforced by the Nice Treaty gave rise to a significant amount of critics. The Convention²⁷, 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 (Cf. Milton).

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, 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.

2. The IGC

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 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 favorable

²⁷ The Convention took place between the 28 February 2002 until June 2003. Milton speaks about three different phases of the process: the listening phase (Feb / July 2002), the analysis phase (Sep / Dec 2002) and the drafting phase (Jan / June 2003) (Milton).

outcome of the Convention concerned the fundamentals²⁸. However, even from the opening of the IGC²⁹, 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, some 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 draft³⁰. On the one hand, it was the opposition of Spain and Poland, countries who desired to maintain the privileged status obtained at Nice (their power to block a decision) and who strongly plead for a 70 % threshold of the population. Finally, they agreed on a percentage of 65%³¹.

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 lowers considerable the threshold for adopting a decision, only 58% of the population, 4% downwards difference form Nice). Secondly, the unequal level of thresholds constrained these states to ask for a minimum 5% difference between them. But, 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 be given an explanation: 15 states mean 60% of the Union's 25 certain members, in conformity with the requirement

²⁸ "Fundamentals are principally about clarifying the relationship between the Union and the Member States, and the structure of the Union itself. They include the decision to reorganize completely the existing treaties, to institute a single 'Union' in place of, rather than alongside, the existing European Community, to define in simple terms the powers of the Union, to simplify its instruments and procedures, to improve the efficiency and legitimacy of its decision-making, and last but not least, to give the end product the title of 'Constitution'" (Milton, 2005, pp. 47-48).

²⁹ The IGC lasted from the autumn of 2003 until June 2004.

³⁰ The voting system of the final version of the Constitutional Treaty was supposed to be in force since 1 November 2009.

³¹ One of the reasons for Spain's "retreat", as it was perceived, was the election of a new government party.

of only 5% difference between the thresholds. However, in EU – 27, the threshold would lower back at the formally established 55%.

These 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 opposes to a specific issue but it cannot reach a blocking minority, can suspend the decision-making process, invoking basic national inconvenient and handing the specific act back to the Council for its reconsideration. The European Council has the obligation to answer in a specific time limit. It is interesting that “this can only been triggered if there is an opposition to the measure in question form a group of member states representing at least $\frac{3}{4}$ of the population or at least $\frac{3}{4}$ of the number of member states necessary to constitute a blocking minority” (Milton, 2005, p.111); with different words, this clause reflect 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 which, according to the voting power theory, the Constitutional Treaty regulations preserve the blocking capability of the larger states³², enforcing their positions (mainly through the population criteria in the vote apportionment), and assure “the political leadership of the EU-15 within the EU-27” (Passarelli, 2004, p. 21).

CONCLUSION

Conceived as a key point in the institutional development of the EU, the Treaty of Nice and, later, the Constitutional Treaty, proved finally to be extremely contested for their provisions regarding the institutional change envisaged for an enlarged Union. Institutional arrangements for deciding the best frame for collective decision should take into account the context of the decision process and the outcomes coming up from the political game³³. Both QMV and double majority can imply: privileges for the status-

³² It has been said that main aim was to project Germany and France as the main players, the designed institutions being conceived as a legal framework of imposing some actors’ will over the others.

³³ One of the main critics addressed to the idea of supermajority voting methods follows May’s argumentation line in favor of the simple majority rule. If the probability that a majority is right increases exponentially, then, obvious, the probability that the minority is wrong becomes very high. A

quo³⁴; the exiting of a constant majority than can dominate the system or, by contrary, a strong minority that can abusively use its blocking power despite the collective interest; etc.

At the end of this paper we can drop some conclusions referring to the institutional change and the issue of rational collective output. “The institutions frequently become reified as rational actors themselves, rather than the reflections of the collective actions of the individuals within them” (Peters, 1999, p. 50). Changes in the regulations may occur, but sometimes they are, in reality, marginal. Lindblom analyzed two different methods of taking a decision: the Rational – Comprehensive (Root) approach, advocated in studies from different areas (politics, economics, bureaucracy applications etc.), and the one of Successive Limited Comparisons (Branch)³⁵. If we compare the negotiation process in both Nice and Constitutional Treaty, we can drop the conclusion that they present enough features to be enclosed in the second mentioned decision: the alternatives envisaged by the legislators were minimum, the degree of difference between the final outcomes were not very high, justifying the idea that the

supermajority rule demands that a specific level of the minority can block the process of decision – making, meaning that, higher the supermajority threshold required, lower the minority than can veto the course of the action (Dahl, 2002, p. 195). The defenders of the supermajority frame claim that there are not permanent majorities or permanent minorities.

³⁴ The status-quo, as Dahl proves, is not a neutral alternative not for the simple majority, despite May’s efforts to demonstrate its superiority.

³⁵ Here is the description of both methods:

“Rational-Comprehensive (Root)

Clarification of values or objectives distinct from and usually prerequisite to empirical analysis of alternative policies.

Policy-formulation is therefore approached through means-end analysis: First the ends are isolated, then the means to achieve them are sought.

The test of a "good" policy is that it can be shown to be the most appropriate means to desired ends.

Analysis is comprehensive; every important relevant factor is taken into account.

Theory is often heavily relied upon.

Successive Limited Comparisons (Branch)

Selection of value goals and empirical analysis of the needed action are not distinct from one another but are closely intertwined.

Since means and ends are not distinct, means-end analysis is often inappropriate or limited.

The test of a "good" policy is typically that various analysts find themselves directly agreeing on a policy (without their agreeing that it is the most appropriate means to an agreed objective).

Analysis is drastically limited:

- Important possible outcomes are neglected,
- Important alternative potential policies are neglected,
- Important affected values are neglected.

A succession of comparisons greatly reduces or eliminates reliance on theory” (Lindblom, 1959, p. 81).

‘objectives’ were not enough clear from the beginning and that the change of the status quo was, in fact, incremental if we think at the values that would have had to support this important process. Actually, “incrementalism in the large becomes potentially a major political orientation” (Lindblom, 1958, p. 312).

Politics is a never-ending story, the political issues being discussed and reviewed constantly accordingly to some given principles. However, the issue of power distribution into a voting system should be treated with more consideration for the idea of a rational collective outcome, because “groups cannot be legitimately personified – they may make decisions, but those decisions hardly constitute mandates or other reflections of a collective consciousness” (Shepsle and Boncheck, 1997, p. 194).

REFERENCES

1. Aleskerov, Fuad, Gamze Avci, Viatcheslav Iakouba and Z. Umut Türem. "European Union Enlargement: Power Distribution Implications of the New Institutional Arrangements". In *European Journal of Political Research*. Vol. 41. 2002. Pp. 379 – 394.
2. Axelrod, R. *The Evolution of cooperation*, New York: Basic Books, 1984.
3. Barr, Jason and Francesco Passarelli. *Who Has the Power in the EU?* Newark: Rutgers University. December 13, 2004.
4. Bărbulescu, I. Gh., *Uniunea Europeană: aprofundare și extindere. De la Comunitățile Europene la Uniunea Europeană*. Bucharest: Trei, 2000.
5. Bărbulescu, I. Gh. *UE de la economic la politic*. Bucharest: Ed. Tritonic, 2005.
6. Dahl, R. *Democratia și criticii ei*, Iași: Institutul European, 2002. Pp. 185 - 223
7. Downs, Anthony. "A Theory of Bureaucracy". In *The American Economic Review*, Volume 55, Issue 1/2 (Mar., 1965), 439-446.
8. Downs, Anthony. "An Economic Theory of Political Action in a Democracy". In *The Journal of Political Economy*, Volume 65, Issue 2 (Apr., 1957), 135-150.
9. Felsenthal, Dan, Dennis Leech, Christian List and Moshé Machover. "In Defence of Voting Power Analysis. Responses to Albert". In *European Union Politics*. Vol. 4 (4). 2003. Pp. 473 – 497.
10. Galloway, David. *The Treaty of Nice and Beyond. Realities and Illusions of Power in the EU*. Sheffield: Sheffield Academic Press, 2001.
11. Hollis, Martin. *Introducere în filosofia științelor sociale*. București: Editura Trei, 2001.
12. König, Thomas and Thomas Bräuninger. "Accession and Reform of the European Union. A Game - Theoretical Analysis of Eastern Enlargement and the Constitutional Reform". In *European Union Politics*. Vol. 5 (4). 2004. Pp. 419 – 439.
13. Leech, Dennis. "Designing the Voting System for the Council of the European Union". In *Public Choice*. Vol. 113. 2002. Pp. 437 – 464.
14. Levin, J. and B. Nalebuff. "An Introduction to Vote-Counting Schemes". In *The Journal of Economic Perspectives*, 9, 1 (1995).
15. Lindblom, Charles E. "Policy Analysis". In *The American Economic Review*, Vol. 48, No. 3 (Jun., 1958), 298-312.
16. Lindblom, Charles E. "The Science of 'Muddling Through'". In *Public Administration Review*, Vol. 19, No. 2 (Spring, 1959), 79-88.

17. Mattila, Mikko and Jan – Erik Lane. “Why Unanimity in the Council? A Roll Call Analysis of Council Voting”. In *European Union Politics*. Vol. 2 (1). 2001. Pp. 31 – 52.
18. Milton, Guy and Jacques Keller – Noëllet. *The European Constitution. Its Origins, Negotiation and Meaning*. London: John Harper Publishing, 2005.
19. Norman, Peter. *The Accidental Constitution. The Story of the European Convention*. Brussels: EuroComment, 2003.
20. Olson, M. *Creșterea și declinul națiunilor*, București: Humanitas, 1999.
21. Olson, M. *The Logic of Collective Action*. Harvard University Press, 1965.
22. Ostrom, E. *Governing the Commons*. Cambridge Univ. Press, 1990.
23. Passarelli, Francesco and Jason Barr. *Preferences, the Agenda Setter and the Distribution of Power in the EU*. Newark: Rutgers University. Working Paper #2004-012. June 2004.
24. Peters, G. *Institutional Theory in Political Science*. London: Pinter, 1999.
25. Selck, Thomas. “The European Parliament’s Legislative Powers Reconsidered - Assessing the Current State of the Procedural Models Literature”. In *Politics*. Vol. 24 (2). 2004. Pp. 79 – 87.
26. Shepsle, Kenneth A. and Mark S. Bonchek. *Analyzing Politics. Rationality, Behavior and Institutions*. New York: W.W. Norton & Company, 1997.
27. Tsebelis, George and Xenophon Yataganas. “Veto Players and Decision-making in the EU After Nice: Policy Stability and Bureaucratic / Judicial Discretion”. In *JCMS*. Vol. 40 (2). 2002. Pp. 283 – 307.
28. Tullock, G. “The economic theory of bureaucracy”. In *The Vote Motive*. London: Institute of Economic Affairs, 1976.
29. Verba, S. „Assumptions of Rationality and Non-Rationality in Models of the International System”. In *World Politics*, 14, 1 (1961).
30. Wallace, Helen, William Wallace and Mark A. Pollack. *Elaborarea politicilor în Uniunea Europeană*. 5th ed. Bucharest: Institutul European din România, 2005.
31. www.europa.eu.int