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The Treaty of Nice and the Future of Europe Debate

The Treaty of Nice was signed on 26 February 2001 and will come into force after all fifteen EU Member States have ratified it. The new Treaty amends the Treaty of Amsterdam provisions on the EU Institutions in order to prepare the Union for enlargement. It also increases the number of Treaty Articles that will be subject to Qualified Majority Voting rather than unanimity, and amends provisions on closer co-operation and a range of other Articles.

A Declaration attached to the new Treaty sets out four main areas of reform that should be tackled at the next Intergovernmental Conference to be launched in 2004.

The debate on the Future of Europe has been launched by the Swedish Presidency and contributions from governments, parliaments and the public have been forthcoming.

This Paper considers aspects of the new Treaty, the ratification process and some post-Nice scenarios.

The defence arrangements agreed at the European Council in Nice are discussed in Library Research Paper 01/50**,** *The European Security and Defence Policy: Nice and Beyond.*

Vaughne Miller

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Summary of main points

The Treaty of Nice was concluded on 10 December 2000 after a lengthy meeting of the Intergovernmental Conference (IGC) in Nice. The IGC session followed on from the European Council summit at which an agreement was reached on the European Security and Defence Policy (ESDP).

Formulas were agreed for the main institutional issues outstanding from the last IGC in 1996-97 that gave rise to the Treaty of Amsterdam (size of the Commission, weighting of votes in the Council and extension of Qualified Majority Voting), and amendments to a range of other Treaty Articles were also decided. The new Treaty aims to prepare the Union to expand to 27 members.

The Treaty was signed on 26 February 2001 and published in the UK in March as Command Paper 5090 in the European Treaties series (European Communities No.1 (2001)).

The European Commission and European Parliament were disappointed with the agreement reached in Nice, which they regarded as a somewhat weak compromise engineered to appease the larger Member States such as France and Germany. Among the Member States there was a general acceptance that the new Treaty was probably the best possible outcome, given the sensitivity of some of the subject matters. The applicant states were among the most positive about the Treaty.

The ratification process has now begun in the Member States and it will probably take about a year for all the instruments of ratification to be deposited in Rome. The Treaty is expected to come into force in early 2002.

Even before the Treaty of Nice had been signed, views were forthcoming on preparations for the next IGC. The Treaty includes a Declaration on some areas for the next IGC to consider when it opens in 2004.

On 7 March the Swedish Presidency launched an EU-wide consultation process, the "Future of Europe-Debate", to canvas opinion from political, business and academic circles, civil society and the general public. The applicant countries will also be involved. The Commission's *Futurum* website has attracted contributions on the future of the EU from various quarters .[1] This consultation is to continue until the IGC begins, although the format for the 2004 IGC negotiating process has not yet been decided.

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[1] See Europa website at: http://europa.eu.int/futurum/flash/flash_001open_en.htm.

CONTENTS

I The Nice Summit: success or failure?

The Nice European Council and IGC session from 7-10 December 2000 resulted in a marathon summit in which delegates first tackled the demanding European Council agenda and then negotiated an agreement on Treaty reforms concerning largely, but not exclusively, the adaptation of the EU's institutional framework to deal with an expanded Union. In terms of summitry, the Nice IGC exhibited serious organisational weaknesses. The physical and material limitations of the venue and the increasingly difficult working conditions over an extended period led the British Prime Minister, Tony Blair, to say that the EU could not go on doing business like this. The Treaty amendment agreed at Nice to hold one European Council meeting per Presidency in Brussels as from 2002, and all summits in Brussels when there are 18 members,[2] was perhaps the least controversial of all the amendments.

In some of the more difficult areas stated national preferences had barely yielded since the negotiations were launched in February 2000. The Conference reached agreement in the essential areas of institutional reform, the so-called 'Amsterdam leftovers',[3] and although there are strictly speaking no 'Nice leftovers', it is possible that the results might yet prove to be inadequate, either for a rapid expansion or for expansion beyond 27 members.

A. General and media comment

There was an immediate, critical reception to the Nice 'deal' from the press and European observers. Treaty-amending summits tend to give rise to criticism and achievements are rarely satisfactory for all parties. The European Parliament has generally been disappointed by the outcome of summits which have fallen short of granting it more power in the decision-making process. As one commentator has said: "One measure of the success of the summit is that no single state is entirely satisfied. That is as it should be; since nobody can claim victory, nobody has suffered serious defeat".[4] In December 1991 the twelve EC leaders were in fundamental disagreement over the future direction of Europe. They ended up with a compromise deal in the *Treaty on European Union* (TEU) which left everyone dissatisfied, and which passed national ratification procedures only with great difficulty. The near failure to ratify the TEU was related to the extent of its changes (e.g. the new Union structure bringing the Common Foreign and Security Policy (CFSP) into the 'Second Pillar' of the TEU). The Nice Treaty, by comparison, is far less radical.

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2 Declaration 22 "On the Venue for European Councils", Cm 5090, p.78.

3 See Library Research Papers in the IGC 2000 series for background to the IGC negotiations and institutional reforms (00/49, 00/83, 00/88 and Standard Note of 22 November 2000).

4 Allan Massie, *The Scotsman*, 14 December 2000.

The Amsterdam Treaty was negotiated in a much more open process than Maastricht and the negotiators were concerned to make the new text more coherent and more appealing to the electorate. This was achieved to some extent, heads of government returning home from Amsterdam to declare the new Treaty a success. However, it is full of complex protocols and declarations and is hardly popular reading.[5]

The Treaty reforms have been criticised for contradictory reasons. Commentators from the pro-integration school have described the outcome of Nice as 'minimalist', while the intergovernmentalists have attacked it for going too far. Some have criticised the French Presidency for being poorly prepared and self-seeking. A BBC report suggested: "Power, psychology, national pride and historical rivalries all intervened to prolong the arguments into the small hours".[6] In a policy brief on the Nice Treaty, the Centre for European Reform commented that the "final deal at the end of 2000 was little better than what looked within reach at Amsterdam in 1997".[7] The author criticised the French Presidency for "bullying the small countries" and for a "blatant attempt to force the applicant countries into a bad deal on both votes and number of MEPs". This criticism might be considered unfair, since these were difficult and highly sensitive issues, too difficult for the last IGC to settle, and the French were under considerable pressure to succeed where the Netherlands Presidency had failed. There is, after all, a new Treaty containing formulas for the issues that the IGC set out to resolve, albeit formulas that may need future revision.

Anne McElvoy of the *Independent* was critical of the Nice critics, but also of the Treaty and the EU processes that gave rise to it:

> A better-grounded objection to the Treaty of Nice is that it is messy and inconclusive and that … it may not appear so productive of European harmony in the weeks, months and years afterwards than in the dizzying spin of the immediate aftermath. The real weakness of the Union is not that it is driving inexorably towards a superstate, but that it persists in its habit of accreting powers to the centre without a clear idea of how the resulting sprawling institution will actually function.[8]

The *Economist* commented:

> Four broad conclusions seem justified. First, the agreement will see a shift in power within the EU towards the big countries (Germany, France, Britain, Italy, Spain and Poland, if and when it joins). Second, within this "directorate" of big countries, Germany has gained power, becoming "first among equals". Third, although political integration within Europe has once again advanced, with

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5 Amsterdam contains 13 Protocols, 51 Conference (i.e. unanimous) Declarations and 8 unilateral Declarations.

6 BBC News, 11 December 2000, at: http://news.bbc.co.uk/hi/english/world/europe.

7 Heather Grabbe, "What comes after Nice?", CER, January 2001.

8 13 December 2000.

> member countries giving up their rights to veto EU decisions in 29 new areas, the pace of integration has slowed, at least for the moment. Lastly, although the Treaty of Nice will make enlargement of the EU a little easier, it is far from a done deal.[9]

Simon Taylor suggested in the *European Voice* that Europe's 'political class' were embarrassed by the new Treaty for three key reasons:

> One, the large countries achieved a major power grab at the expense of their smaller neighbours in a manner which could poison relations for years to come. Two, the agreement fails to prepare the ground for enlargement because the new voting rules complicate decision-making enormously. Three, the role of Prodi and the Commission was reduced to that of the humble secretariat that Chirac proposed in his Berlin speech in June.[10]

B. Reaction of Commission and European Parliament

The Commission felt that its preferences had not been taken into account in the Nice Treaty. The Commission President, Romano Prodi, was critical of the British Government, attacking Mr Blair for refusing to abandon the national veto on tax and social security matters, and accusing him of a "self-serving lack of openness and understanding".[11] According to Mr Prodi, the Nice agreement generally "was characterised by the efforts of many to defend their immediate interests, to the detriment of a long-term vision".[12] The Commission and the European Parliament had hoped for more radical reforms than those achieved at the Nice summit. Mr Prodi believed that there had been no significant progress in preparing the EU for enlargement. He said that the Treaty was "not entirely satisfactory", but marked "a step in the right direction".[13] Quantitatively, Nice had been a success, as many new measures had been agreed, but qualitatively, it had been disappointing. This was largely due to the intransigence of certain Member States. He commented:

> At Nice, fifteen Member States, each focussing on its national interests, were able to reach only an imperfect agreement which did not go far enough. What is more, most heads of state or government were more concerned with blocking the future action of the Union than with seizing the opportunity of advancing the common venture. Nice was a clear demonstration of what is meant by agreement on the lowest common denominator.[14]

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9 16 December 2000.

10 *European Voice*, Vol.6, No.46, 14 December 2000.

11 *Guardian*, 13 December 2000.

12 *Ibid*.

13 Responding to the Swedish Presidency Programme in a statement to the EP, EP Minutes, 17 January 2001.

14 EP Minutes, 17 January 2001.

Britain was not the only Member State to stand its ground on issues of national importance. Germany held firm on a veto over certain asylum provisions, France on the cultural aspects of trade policy and Spain on regional funding (secured only until 2007).

The European Parliament was generally dissatisfied with the new Treaty, although there were divisions between and within the two main groups. The Socialists (PES) were largely in favour of the Treaty while the Christian Democrats/conservatives (EPP) were largely against it, and the Liberals were prepared to accept it conditionally. The EP representative at the IGC, Elmar Brok, initially threatened to reject it. His main complaint was that amendments to the decision-making procedures would make decision-making more complicated than it already is. The EP secured only a little more power and a minimal expansion of the co-decision procedure (i.e. it was not automatically linked to the extension of QMV). The Parliament's preliminary resolution on the summit stated that the IGC had resulted "in some improvements to the Treaties but falls short of what Parliament considered necessary to strengthen the Union's capability for enlargement and its democratic legitimacy".[15]

The EP has no formal power to prevent ratification and implementation of the Treaty but rejection of it could have political repercussions. The Belgian and Italian governments, for example, indicated initially that they would not ratify the Treaty if the EP rejected it, but their rejection is looking less likely as the EP tones down its criticism of the agreement.

C. Reaction in the UK

Tony Blair said that Nice had been "a very difficult and complicated negotiation" with a satisfactory outcome.[16] Mr Blair was generous towards the French Presidency in his statement to the House on the summit. He said that the goal of enlargement "had moved significantly forward at the Nice summit"[17] and that the French "did well in immensely difficult circumstances".[18] The Minister for Europe, Keith Vaz, was dismissive of negative press comments on the summit, stating that Nice had "secured all the objectives that the Government had and, indeed, went far beyond our expectations".[19]

The *Financial Times* commented on the Government's strategic 'success' at Nice. Britain:

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15 EP resolution, 12 December 2000.

16 Edited transcript of press conference given by Tony Blair and Robin Cook, Nice, 11 December 2000, FCO website at: http://www.fco.gov.uk/news/newstext.asp?4485.

17 HC Deb, 11 December 2000, c351.

18 *Ibid*.

19 Evidence to the European Scrutiny Committee, *Inter Governmental Conference 2001*, Minutes of Evidence, 10 January 2001, HC 119, p.1.

> …was able to hide behind some of France's manoeuvrings at Nice and consequently made the biggest strategic gains at the smallest cost. The outcome furthers its long-term aim of becoming an influential member of a wider union, rather than a latecomer to what once seemed a Franco-German club.[20]

Allan Massie commented:

> Nice by itself will do nothing to silence the Eurosceptics and Europhobes, but, in truth, only those who are viscerally opposed to our continued membership of the EU can pretend the outcome was bad for Britain.[21]

In his statement to the House on 11 December 2000, the Prime Minister said of the Treaty that the "primary objective in the negotiation has … been successfully accomplished."[22] He emphasised the achievement of "key British interests" in the areas in which the national veto had been retained and also in the defence agreement concluded by the European Council. He continued:

> The Europe that this Government are striving for is one of nation states with their own traditions, cultures and special interests which work together in their own interests and in those of Europe as a whole. That means, on the one hand, making common decisions at a European level where that makes sense and, on the other hand, making decisions at a national or, indeed, regional level where that makes sense. It means embracing all the countries of Europe - east and west - in a way that would have been unimaginable throughout most of the troubled history of our continent. That is a goal that moved significantly forward at the Nice summit. I commend its conclusions to the House.[23]

In the exchanges following the Prime Minister's statement, the leader of the Opposition, William Hague, was critical of what the Government claimed were Nice successes:

> Is not the truth, when we cut through the spin, that the agreement represents three more major steps to a European superstate? First, the Prime Minister has signed away the veto in 23 new areas - in fact, one Government official put the number of new areas that could now be decided by majority vote as high as 39. By doing that, has the Prime Minister not granted European institutions the opportunity to impose further integration in future?
> …
>
> Could it not be seriously against this country's interests no longer to have a veto over the appointment of the Commission President? Will the Prime Minister confirm that he has abandoned the veto on groups of countries integrating more closely - so-called "enhanced co-operation" - and that we cannot stop them, even

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20 Robert Graham and Brian Groom, *Financial Times*, 12 December 2000.
21 *Scotsman*, 14 December 2000.
22 HC Deb, 11 December 2000, c 349.
23 *Ibid*, c 351.

> when our national interest is being harmed? Can he confirm that the EU will now be able to fund European political parties directly, without a national veto?
> …
>
> The Prime Minister emerged with a treaty that takes Europe in the wrong direction, and a Conservative Government will not ratify it as it stands. If the Government wish to sign up to the three major steps, including the charter of rights and the European army, they should first consult the people of this country in a referendum.
>
> The Prime Minister has missed the best opportunity of his premiership to put the case for the sort of Europe that is supported by the majority of people in the United Kingdom. He has missed that opportunity because that is not the sort of Europe in which he believes. Instead, the summit has represented three more major steps on the road to a superstate. It will be up to us, the Opposition, to put the case for a different direction, for a modern, reformed and flexible Europe. It will be for us to put the case for a European Union that is right for Britain and for Europe as a whole; and to put the case for being in Europe, not run by Europe.[24]

For the Liberal Democrats, Charles Kennedy said:

> For Opposition Members who wanted the Nice summit to succeed, it is with a sense of relief, but not rapture, that we look at the outcome. It is good that an outcome was achieved; the alternative would have been a disentanglement of Europe. The Government should be complimented on maintaining the British veto in areas on which Labour and the Liberal Democrats agreed previously.

He added with reference to the stand of the Conservative leadership that it would be "completely illogical" to "deny the people of Britain a referendum on a single currency while imposing one in respect of the Treaty of Nice".[25]

D. Reaction in Member and Applicant States

At the signing ceremony of the Treaty of Nice in Brussels President Chirac is reported to have said that the outcome of the Nice negotiations had been at least partly constrained by the fierce defence of national interests by the French Presidency.[26] He admitted that France's insistence that Germany should not be given more votes in the Council to reflect its larger population had complicated the negotiations but insisted that the Treaty was "the best possible Treaty given the prevailing constraints".[27]

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24 HC Deb, 11 December 2000, cc 351 –353.
25 *Ibid*, c356.
26 *Financial Times*, 27 February 2001.
27 *Ibid*.

In Germany the Treaty received cross-party support. To some commentators, the German Chancellor, Gerhard Schröder, emerged as a one of the few leaders who defied Mr Prodi's charge of self-interest by withdrawing his claim for more votes than France in the Council. The *Financial Times* maintained: "He rightly sensed that this would upset the traditional balance of power in the EU".[28] Few would dispute, however, that Germany gained in other areas of Treaty reform. The British Liberal Democrat MEP, Andrew Duff, went so far as to say that the changes in voting rules and the increase in the number of German seats in the EP amounts to a "Germanisation of the Union" and "a significant defeat for France and for Great Britain".[29] In Germany, the conservative Bavarian CSU leader and possible opponent of the Chancellor in elections in 2002, Edmund Stoiber, said that the Treaty was a good one for Germany and for Europe.[30]

Franco-German relations, which appeared strained at Nice, are strengthening again. The leaders of the two countries held bilateral meetings in January 2001 in which they confirmed their position as the 'motor' of European integration and agreed to hold further bilateral meetings every six to eight weeks.[31] On 6 February Mr Fischer was named "European of the Year" by leading French journalists in a ceremony in the French Senate.

In Spain the Treaty received support from the opposition left-wing *PSOE* as well as the governing conservative *Partido Popular*. The government has said that it expects to ratify the Treaty by the end of this year, thus marking the beginning of the Spanish EU Presidency in the first half of 2002.[32]

The Dutch Prime Minister, Wim Kok, said that the reforms represented a "modest step forward but a step forward nevertheless".[33] The decisions on majority voting were 'disappointing', but, he added: "We knew in advance that a certain number of countries would not want to take this step".[34]

In Belgium the Prime Minister, Guy Verhofstadt, wanted to veto the whole Treaty. Mr Verhofstadt was the most outspoken critic of the Treaty, accusing large countries of putting their own interests before those of the Union as a whole. Showing altruism rarely seen on such occasions, Mr Verhofstadt accepted that Belgium could have less voting power than the Netherlands (Belgium will have 12 votes to the Dutch 13) and championed Romania and Lithuania, which had, he believed, received too few votes under the French Presidency's proposals.

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28 *Financial Times*, 12 December 2000.
29 *European Voice*, 15-21 February 2001.
30 *Daily Telegraph*, 12 December 2000.
31 *Frankfurter Allgemeine Zeitung*, 2 February 2001.
32 *El País*, 17 February 2001.
33 *Agence France Presse*, 11 December 2000.
34 *Ibid*.

The Greek Prime Minister, Costas Simitis, believed that the Treaty was very good for Greece, but that it could make the EU harder to run in the future because it complicated the decision-making processes.[35] The Greek press was critical of the "gulf between the interests of the small countries and the large ones".[36]

The Finnish Prime Minister, Paavo Lipponen, was "not at all satisfied with the result" and said that the QMV system would make it too easy for some countries to block decisions after enlargement.[37] The Portuguese European Affairs minister, Francisco Seixas da Costa, thought that the EU had not approached what would be needed for enlargement.[38]

The Polish Prime Minister, Jerzy Buzek, thought the Nice outcome was "exceptionally positive" for Poland, while the Czech leader, Milos Zeman, was disappointed that the Czech representation in the Council was the same as that of smaller countries such as Belgium, Greece and Portugal.[39] Hungary described the Treaty as a "significant step towards the goal of European unity" and the smaller applicant states were pleased to have each been granted a Commissioner. Estonia's foreign minister, Toomas Hendrik Ilves, thought that this made the prospects of joining the EU at the beginning of 2003 "much more real".[40]

II Structure of the Treaty

The full title of the Treaty of Nice is the *Treaty of Nice amending the Treaty on European Union, the Treaties Establishing the European Communities and certain related Acts*. The Treaty was published in the *Official Journal of the European Communities*[41] and as Command Paper 5090 in the UK in March 2001. Nice is an amending and not a primary Treaty: that is to say, it consists of amendments to the existing EC Treaty that will, after ratification, be incorporated into the latter.

The Treaty is divided into two parts containing substantive amendments in the first part and transitional and final provisions in the second. There are around 90 amendments in all to the *Treaty Establishing the European Community* (TEC) and the *Treaty on European Union* (TEU), and more if the European Coal and Steel Community and the Euratom Treaties are taken into account.

There are 6 Articles in **Part 1** dealing with amendments to the TEU (Article 1), to the TEC (Article 2), the European Atomic Energy Community (EAEC) Treaty (Article 3) and

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35 *Agence France Presse*, 11 December 2000.
36 *Ibid.*
37 *Financial Times*, 12 December 2000.
38 *Ibid.*
39 *Independent*, 12 December 2000.
40 *Ibid.*
41 OJC 80, 10 March 2001.

the European Coal and Steel Community (ECSC) Treaty (Article 4), the Protocol on the Statute of the European System of Central Banks (ESCB), the European Central Bank, ECB (Article 5), and the Protocol on the privileges and immunities of the European Communities (Article 6).

Articles 7-13, the transitional and final provisions, are in **Part 2**. These concern the repeal of the Protocols on the Statute of the Court of Justice and their replacement by the Protocol annexed to the Nice Treaty. They also set out the timetable for implementation of the Nice Treaty on the first day of the second month following the deposit of the last instrument of ratification.

The results of some of the most difficult and contentious discussions are to be found in the Protocols and Declarations appended to the Treaty. There are four legally binding Protocols:

- **Protocol A** contains provisions on institutional reforms to be introduced in 2004 and 2005 for the 15 Member States to take account of the accession of new member states, but not applicable to them. These include for the EU-15 a re-allocation of votes in the EP, a re-weighting of votes in the Council and provisions on the size of the Commission.
- **Protocol B** concerns the Statute, organisation and procedure of the European Court of Justice (ECJ) and the Court of First Instance (CFI).
- **Protocol C** concerns the financial consequences of the expiry of the ECSC Treaty on 23 July 2002, and the Research Fund for Coal and Steel, to which the ECSC assets will then be transferred.
- **Protocol D** concerns the move in May 2004 to voting by QMV for measures adopted under Article 67 and referred to in Article 66 (Title IV, visas, asylum, immigration and free movement of persons).

The Protocols are followed by the **Final Act**, 24 **Declarations adopted by the Conference** and 3 **Declarations of which the Conference took note**. The Declarations adopted by the Conference include the important *Declaration on the Enlargement of the European Union*, containing tables giving the allocations of seats in the European Parliament, the Economic and Social Committee and the Committee of the Regions, and weighted votes in the Council of Ministers, for the EU-15 and for all the applicant states with which accession negotiations have actually started. These texts express political intent, although their legal authority is debatable.

III Aims of the Treaty

The Treaty of Nice sets out to amend the EC Treaties in two main ways: one in order to fulfil the requirements of the *Treaty of Amsterdam* by introducing new institutional and decision-making arrangements to prepare the EU for enlargement of up to 27 members; the other to amend existing institutional arrangements where there have been perceived

weaknesses. The institutional changes required by the Amsterdam Treaty, the 'Amsterdam leftovers', concerned the size of the Commission, the weighting of votes in the Council of Ministers and the extension of Qualified Majority Voting (QMV). Other institutional issues, such as the future distribution of seats in the EP, also needed clarification.

Institutional changes linked to enlargement, but also to the way the Union operates at the moment, include the enhanced cooperation provisions, provisions governing the role and operation of the Commission and the powers of the Commission President, the Article 7 provisions on human rights violations by Member States, the operation of the European Central Bank, the organisation and operation of the European Court of Justice (ECJ) and the Court of First Instance (CFI), the inclusion of *Eurojust* in cooperative measures to combat organised crime and the introduction of a social policy committee.

These matters are discussed in more detail below.

IV The Commission

A. Size of the Commission

The size of the European Commission was one of the main Amsterdam 'leftovers', and had been problematic right up to the final stages of the IGC. Just days before the summit there was still no compromise proposal on the table. The main obstacle to agreement was the objection from smaller Member States to a proposal to abandon the traditional formula of one Commissioner per Member State in order to cap the Commission at a level that would be manageable in an enlarged EU. Even the French Presidency proposal for a smaller, rotating Commission in which **all** States would rotate a Commissioner (not just the smaller ones) was rejected by some of the smaller countries. The applicant states were also against this proposal, fearing a potential loss of influence as soon as they joined.

Article 4 of Protocol A sets out provisions on the size of the Commission. The Treaty will require the large Member States, the UK, France, Germany, Italy and Spain, to relinquish one Commissioner in January 2005, which is when the current Commission's term of office ends and is also around the time that the first new states are expected to join.[42] From this date, the Commission will include one national from each Member State.

When the Union expands to 27 members new provisions will apply, requiring the Commission to have fewer members than the number of Member States, who will be

[42] There is no set date for new accessions for Poland, Czech Republic, Hungary, Slovenia, Estonia and Cyprus, known as the 'Luxembourg Six', and it is possible that the first entrants will be ready earlier than 2005. The current unofficial target for the first entrants is in time for EP elections in 2004.

rotated "on the principle of equality". The Council will decide unanimously on the size of the Commission and on implementing measures.

B. Appointment of the Commission

New procedures for the appointment of the Commission by the Council are contained in amended Article 214.2 TEC. The nomination for the Commission President will be by the Member State governments acting by QMV rather than by unanimity and approved by the EP. The Council will adopt the list of nominees for Members of the Commission by QMV and by common accord with the nominee for President. The EP will still approve the Commission as a body, but the final appointment by the Council will be by QMV instead of unanimity.

The new rules mean that one State could not block the nomination of Commission President, as the British Government did in 1994 over the proposed appointment of the Belgian Prime Minister, Jean-Luc Dehaene.

C. Powers of the Commission President

Under amended Article 217 the Commission President acquires new powers to decide on rules for the internal organisation of the Commission, to reshuffle the allocation of Commission responsibilities and to require the resignation of individual Commissioners "after obtaining the collective approval" of the College of Commissioners. The President would be able to appoint Vice-Presidents only after obtaining approval from the whole Commission, which is not a current requirement.

V Council of Ministers

A. Weighting of Votes

This was one of the most contentious issues at Nice. Various combinations of weighted and dual majorities had been considered prior to Nice, all of which aimed to relate the number of votes more closely to the population of the Member States. The various proposals for dual majorities, although more representative of the size of the Member States, were complex and cumbersome. The double majority system favoured by the Commission, a majority of Member States representing a majority of the population of the EU, was criticised by some on the grounds that this could lead to an unacceptable predominance of a bare majority over a substantial minority.[43]

The *Declaration on the Enlargement of the European Union*, the so-called 'Enlargement Declaration', sets out a new weighting of votes in the Council. The final agreement

[43] This point was made by the UK's European Scrutiny Committee in HC 23-xvii (1999-2000) para. 64.

groups the four large States together again, with more votes (29 instead of the present 10), and allocates a range of votes for other States, depending on their size. There has been some post-Nice criticism of the vote allocation. Poland was initially allocated fewer votes than Spain in spite of its comparable population. This 'mistake' was remedied and both Spain and Poland have 27 votes in the table in the Enlargement Protocol.

The following table gives the old and new voting powers, with reference to population:

COUNTRY	POPULATION (,OOO)	CURRENT VOTE	NEW VOTE
Germany	82,083	10	29
UK	59,247	10	29
France	58,966	10	29
Italy	57,610	10	29
Spain	39,394	8	27
Netherlands	15,760	5	13
Greece	10,533	5	12
Belgium	10,213	5	12
Portugal	9,980	5	12
Sweden	8,854	4	10
Austria	8,082	4	10
Denmark	5,313	3	7
Finland	5,160	3	7
Ireland	3,744	3	7
Luxembourg	0.429	2	4
Applicant States			
Poland	38,667		27
Romania	22,489		14
Czech Republic	10,290		12
Hungary	10,092		12
Bulgaria	8,230		10
Slovakia	5,393		7
Lithuania	3,701		7
Latvia	2,439		4
Slovenia	1,978		4
Estonia	1,446		4
Cyprus	0.752		4
Malta	0.379		3

This allocation will alter the relative voting power of the Member States in favour of the smaller States in the EU of 27 members (the EU-27). At present the UK's 10 votes represent 11.4% of the total of 87 votes. The re-weighted vote of 29 in the existing EU-15

represents 12.2% of the total of 237 votes. However, in a Union of 27 the UK's re-weighted vote of 29 will represent 8.4% of a total of 345 votes. In a parliamentary answer in December 2000, the Government set out the relative voting influence of the UK:

> This is the first time that votes in the Council have been re-weighted and the effect that it will have on the UK's relative voting influence[44] is set out as follows: The vote weighting system is a compromise between one vote per member state and an allocation of votes proportional to population size. Smaller member states are therefore proportionately over represented and have ratios above one. The reverse is true of larger member states.
>
> **The UK's relative voting influence**
>
> | **Membership of EU** | **Current voting system** | **Nice agreement** |
> |---|---|---|
> | EU9 | 0.86 | 0.91 |
> | EU12 | 0.75 | 0.83 |
> | EU15 | 0.73 | 0.78 |
> | EU21[45] | 0.66 | 0.72 |
> | EU27[46] | 0.61 | 0.69 |
>
> Under the Nice agreement, the voting system will be supplemented by a population safeguard. When a decision is to be adopted by the Council by a qualified majority, a member of the Council may request verification that the member states constituting the majority represent at least 62 per cent. of the total population of the Union. If this condition is not met, the decision in question shall not be adopted.
>
> The effect of these changes is to ensure that in an EU of 27, a decision cannot be passed in the Council where QMV applies if the three largest member states - Germany, the UK and France - are opposed. The Nice agreement also stipulates that a majority of member states must support a qualified majority for a decision to be passed by QMV.[47]

Germany, with by far the biggest population, will have the lowest relative voting influence. Using the methodology quoted above, the figures for Germany would be:

EU-15	0.52
EU-21	0.55

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[44] Relative voting influence is a measure of the fairness of a member state's vote weighting. It is calculated as the ratio between a member state's percentage of the total number of votes and its percentage of the EU's total population.

[45] For the purposes of this calculation, EU21 includes Poland, the Czech Republic, Hungary, Slovenia, Estonia and Cyprus. EU27 then adds Latvia, Lithuania, Bulgaria, Romania and Malta. Of course other scenarios for enlargement are equally possible

[46] See Note 17.

[47] HC Deb, 14 December 2000, cc226-7W.

EU-27 0.49

Thus, although much of the press commentary on the Nice agreement suggested that the "big four" (Germany, France, UK and Italy) had fought to protect their power, their voting strength will be short-lived and will diminish as the Union enlarges.

B. Qualified Majority Threshold and the Blocking Minority

The *Economist* has commented:

> Sad to say, the agreement that was eventually reached is almost as hard to understand as it was to achieve. … It is safe to say that few of the "citizens of Europe" will understand this system, meaning that at least one of the aims of the Nice summit – to bring Europe "closer to the people" by making European decision-making clearer – has not been achieved.[48]

The new voting arrangements will make it more difficult to achieve a qualified majority and accordingly easier to gather a blocking minority. In an expanding Union this may slow down the decision-making process.

The current qualified majority is 62 votes out of a total of 87 (representing 71.3% of total votes), with at least 10 Member States in favour where the act is not adopted on a proposal from the Commission. The majority can be constituted by the votes of States representing 58.2% of the population of the EU-15. A blocking minority is currently 26 votes. Blocking minorities have generally represented around 30% of the total.

The new provisions on the QMV threshold for the EU-15 and the EU-27 are set out in Article 3 of Protocol A, the Enlargement Declaration and Declaration 21. The formula is complex, and forming a majority will require clearing at least two hurdles. The agreement takes account of the EU with and without enlargement, and is thus technically complicated. Under Article 3 of the Protocol, as from January 2005 and assuming no enlargement, Council Acts will require 169 out of a total of 237 votes, cast by a majority of Members on a Commission proposal. This will be equivalent to 71.7% of the vote in the EU-15. The blocking minority will be constituted by 69 votes.

Table 2 of the Enlargement Declaration provides for a total of 345 votes in a Union of 27, with a qualified majority of at least 258 votes cast by a majority of Member States (and cast by two thirds of Member States when adopting an act not based on a proposal from the Commission). The blocking minority would therefore be 88 votes under the present system of calculation (345 minus 258 + 1).

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[48] *The Economist*, 16 December 2000.

Declaration 21 states that in a Union of 27 the blocking minority will rise to 91 and the QMV threshold adjusted. This will make it easier to obtain a qualified majority. The Declaration states that as from 1 January 2005 a qualified majority will be lower than at present, but will increase in line with each enlargement until it reaches a maximum of 73.4%. This appears to be a last minute concession to the Belgian Prime Minister, who had fought for the smaller States to have greater weight in the Council.[49] Press reports indicate disagreement among the Member States over a blocking minority of 91 or 93, the latter reflecting more accurately the 73.4% of votes in the EU-27.

James Bevan, the Head of the European Union Department (I) at the FCO, explained the technicalities of the agreement "at its simplest" in evidence to the European Scrutiny Committee on 10 January:

> ... at EU 15 where we are now from 1 January 2005, provided there is no enlargement, the blocking minority will be 69 – that is 169 votes out of 237 will be necessary for a qualified majority. At the first enlargement, which might come before January 2005, the qualified majority will be set at just below that percentage level; the new EU 15 percentage level is 71.3 per cent and we will set it just below that depending on who comes in. Then, at each enlargement thereafter, the qualified majority threshold will be reset so that it gradually rises but it will not exceed 73.4 per cent of the total votes, and when we reach the denouement at EU 27, the qualified majority will be set at 255 out of 345 votes, which is a 74 per cent threshold with a blocking minority of 91.[50]

The calls to link the decision-making process to a demographic indicator resulted in an additional form of blocking minority in the Nice Treaty. Under a 'population safeguard', a Member State may request, in a QMV matter, verification that a decision has the support of countries representing at least 62% of the total population of the enlarged EU. If this condition is not met, the decision in question will not be adopted.

The relative voting strength of the larger States will fall as the EU enlarges. The four large States will not be able to adopt measures that do not have the support of at least some of the smaller States. The new mechanism will benefit the smaller States by allowing a majority of countries to block a decision, regardless of the weighted vote.

One critic accused President Chirac and the French Presidency of introducing a complicated and unfair system, serving French interests:

> First, he [President Chirac] managed to forge a united front among the four largest member states with his first proposals for a new share-out of votes in the Council of Ministers on Saturday morning. After that, he gradually picked off the

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[49] See *European Voice*, 14-20 December 2000.

[50] European Scrutiny Committee Minutes of Evidence, *Intergovernmental Conference 2000*, 10 January 2001, HC 119, pp 7-8.

> small and medium-sized countries one by one with a few extra votes here and concessions there, starting with the Dutch and finishing with Belgian Prime Minister Guy Verhofstadt, but not without furious clashes both in private and in public.
>
> Then, because he steadfastly refused to give up France's parity of votes with Germany, even when Chancellor Gerhard Schröder suggested that just one more would be enough, Chirac killed any chance of a rational deal on reweighting. To reflect Germany's 22 million extra citizens, Chirac tabled a plan which would allow Berlin to block decisions if it could club together with other large states representing 38% of the EU's population.[51]

VI European Parliament

Amended Article 230 will give the EP the right of redress before the European Court of Justice, along with the other Institutions and the Member States.

There was already a consensus on the need to cap EP membership at around 700, which was enshrined in the Amsterdam Treaty in Article 189 TEC. The Nice agreement limits the EP to 732 in a Union of 27, with specific arrangements for the number of seats allocated during the various phases of the enlargement process. The EP itself had proposed a re-allocation of seats which would have reduced from 6 to 4 the number of guaranteed seats for each Member State, and allocated the remainder according to a population key. An alternative proposal put to the IGC was a reduction of each State's allocation on a proportionate basis. The French Presidency proposed deciding the allocation for each State from within the range identified by the two models.

In the Treaty seats have been reduced for current Member States to allow for the seats of future acceding states. Although Germany did not gain more votes in the Council to reflect its greater population, it has been allocated more seats in the Parliament than the other Member States by way of compensation.

Protocol A, Article 2 gives the new seat allocation for the EU-15, while the Enlargement Declaration provides allocations for the EU-27. The new allocations for the EU-15 will take effect as of 1 January 2004, from the start of the next Parliament. It was also agreed that, pending the accession of all current applicant states, the reduction in seat allocations would be implemented only to the extent necessary not to exceed the limit of 732. The new allocations are as follows:

Member States (current)

Germany	99	Portugal	25

[51] Simon Taylor, *European Voice*, Vol 6, No.46, 14 December 2000.

UK	87	Sweden	22
France	87	Austria	21
Italy	87	Denmark	16
Spain	64	Finland	16
Netherlands	31	Ireland	15
Greece	25	Luxembourg	6
Belgium	25		

Member States (2004-2009)

Germany	99	Portugal	22
UK	72	Sweden	18
France	72	Austria	17
Italy	72	Denmark	13
Spain	50	Finland	13
Netherlands	25	Ireland	12
Greece	22	Luxembourg	6
Belgium	22		

Applicant states (as and when they accede)

Poland	50	Lithuania	12
Romania	33	Latvia	8
Czech Rep	20	Slovenia	7
Hungary	20	Estonia	6
Bulgaria	17	Cyprus	6
Slovakia	13	Malta	5

There has been further argument over the allocation of votes to Hungary and the Czech Republic, both of which have fewer votes than, but a similar population to, Portugal, Belgium and Greece. This allocation was evidently not a 'mistake', as some have suggested, and the figures were not 'corrected' before the Treaty was signed in February. As the Declaration has political rather than legal weight, it is possible that the allocations for Hungary and the Czech Republic could be amended before their accession. The Government pointed this out in a Memorandum to the Foreign Affairs Committee on 7 March:

> The figures for the applicant countries are contained in a Declaration annexed to the Treaty and do not therefore have legal force. They do, however, represent a political commitment and, as such, will be a guide for the accession negotiations.

> Any applicant country that feels it has been unfairly treated is free to raise the matter during these negotiations.[52]

VII Court of Justice and Court of First Instance

Some significant amendments have been introduced in the new Treaty. The Progress Report presented to the European Council in Feira in June 2000 considered changes to the ECJ and CFI to take account of the increase in litigation before the two Courts and the prospect of a further increase with enlargement. The IGC agreed that the Courts needed to be able to adjust to new circumstances without going through the Treaty amendment process, which requires the convening of an IGC.

The Nice Treaty formalises for the first time the right of each Member State to nominate a judge to the ECJ, thus ensuring representation of all the legal systems in the Union. Nice contains measures that aim to make the administration of justice more efficient by expanding the role of the CFI while leaving the ECJ to deal with more important issues. Under amended Article 223 the ECJ shall establish its Rules of Procedure requiring the approval of the Council acting by QMV, rather than by unanimity as at present. Likewise, amended Article 224 allows the Council to approve by QMV, instead of by unanimity, the Rules of Procedure of the CFI.

The British Government supports these changes and stated in its White Paper on the IGC that QMV in this area "would help the Court to make judgments more quickly".[53]

Amended Article 220 provides for the creation of "judicial panels to hear and determine at first instance certain classes of action or proceeding brought in specific cases", which may be subject to the right of appeal. Amended Article 225 gives the CFI the jurisdiction to give preliminary rulings, with certain restrictions, and to hear and determine other actions brought under Articles presently applicable only to the ECJ. This will alleviate the burden on the ECJ as litigation increases, and also raise the status of the CFI. In an editorial in the *Common Market Law Review* Arjen W.H.Meij commented on proposals made in the run-up to Nice on the transfer of powers to the CFI:

> Clearly, such a transfer only makes sense if the CFI continues its practice of hearing cases only in chambers of three or five judges, also for preliminary references transferred to it. Otherwise, such a transfer would amount to nothing but shifting the problem from one court to another. Such a transfer can only concern relatively technical matters, for which in fact specialized assistance will be needed, as is currently taking shape within the CFI for Community trademark

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52 Foreign Affairs Committee, Fifth Report, *European Union Enlargement and Nice Follow-up*, HC 318, 10 April 2001, 2000-01.

53 *IGC: Reform for Enlargement: the British Approach to the European Union Intergovernmental Conference 2000*, Cm 4595, February 2000, p.21.

> cases. Two major problems which remain are, on the one hand, how to select ex ante the cases to be transferred to the CFI and, on the other, how to preserve ex post the unity and coherence of Community law.
> …
> The best approach, because most practical in the short term, would probably be to make a modest, relatively experimental start by transferring to the CFI preliminary references in an area already within its jurisdiction, concerning questions submitted by the so-called Community trade-mark courts of the Member States, relating to disputes on the infringement and validity of Community trade marks. The second point, the ex post preservation of unity and coherence of Community law, raises its own problems, although it seems common ground that appeal from a CFI judgment to the Court under the present general rules must be excluded. … a transfer of preliminary jurisdiction requires *vis-à-vis* referring national courts, the unequivocal appearance of the Community courts as one , single institution Court of Justice, albeit composed of two different branches.[54]

VIII Committee of the Regions and Economic and Social Committee

Amendments concern the size of these institutions and the terms of office of their members. The maximum number of members for both institutions would be increased from 222 to 350.

Under amended Article 263 members of the Committee of the Regions (COR) would have to hold elected office in local or regional government. All members would either be directly elected or be "politically accountable to an elected assembly". This formulation would make it possible for politicians who are not directly elected (like mayors in the Netherlands) to become members of the COR.

The Government has noted that devolution in the UK will not alter the position with regard to the appointment of COR members. Mr Vaz said of the then draft amendment:

> The proposed amendment states that representatives to the Committee of the Regions will either hold a regional or local authority electoral mandate, or be politically accountable to an elected assembly. There would be no change to the present position in the UK.[55]

The new requirement is unlikely to alter the composition of the COR to any great extent since most of its members hold elected office in their home country anyway. It represents

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[54] *Common Market Law Review* Vol.37, No.5, October 2000, Guest Editorial, "Architects or Judges? Some comments in relation to the current debate", p.1043.

[55] HC Deb, 13 November 2000, c 30W.

an acceptance by Member States of the political legitimacy of the COR, which the body had been demanding for some time. The new provision has political weight too, as it supports the COR's claim to be the political institution that is the closest to citizens. From the time the Committee was established by the Maastricht Treaty in 1991, it has emphasised its political vocation and has tried to distance itself from the concept of being a purely technical body.

The new Treaty stipulates that the term of office of Committee members should end at the same time as their regional or local government term of office.

Nice also amends the appointment process for members of the Committee of the Regions and the Economic and Social Committee (ESC). The list of members of both institutions will now be adopted by QMV rather than unanimity. The list must 'conform' to the proposals made by the Member States (the final list of members is arrived at by combining the lists put forward by each Member State). Under Amsterdam each Member State was free to assess the lists put forward by other Member States. The change will have a greater impact on the ESC, as under current provisions Member States have to propose twice as many candidates as the number of seats allocated to the country in question.

The representative nature of the ESC has been clarified in so far as the Nice Treaty refers specifically to consumers in Article 257 TEC and stipulates that the ESC represents "the economic and social components of organised civil society".

IX Common Foreign and Security Policy

Amended Article 17(1)TEU makes explicit that the CFSP "shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework."[56] Most of the applicant states either already have or aspire to full membership of NATO. References to the Western European Union (WEU) are deleted in Article 17(1), but retained in 17(4) for bilateral cooperation.

The Treaty does not deal with the related question of the status of the European Security and Defence Policy (ESDP) vis-à-vis NATO. This matter is dealt with in a report attached to the Presidency Conclusions of the European Council, while a Declaration annexed to the Final Act of the Conference calls for the ESDP conclusions of that report to be implemented "as soon as possible in 2001" (i.e., without waiting for ratification of the

[56] Cm 5090, p.8.

Treaty of Nice). The Foreign Affairs Committee's Fifth Report on *European Union Enlargement and Nice Follow-up* concluded:

> It remains to be seen just how soon differing interpretations of the report's conclusions can be reconciled, and what the statement that EU-led military operations will take place only "where NATO as a whole is not engaged" will mean in practice.[57]

Amended Article 25 provides an enhanced role for the Political and Security Committee. This Committee (currently the Political Committee) will, under the authorisation of the Council, exercise "political control and strategic direction of the crisis management operations" and may, with Council authorisation, take decisions in this context.

The significant decisions on defence and security that were taken at Nice, but which do not form part of the Treaty, are not discussed in this Paper, but are the subject of Research Paper 01/50, *The European Security and Defence Policy: Nice and Beyond.*

X Extension of QMV

There was agreement on moving 31 Treaty Articles to QMV out of the 70 or so still requiring unanimity.[58]

The Government has not commented on all aspects of reform in this area, but has set out its general policy on extending QMV on numerous occasions, primarily in its White Paper of February 2000[59]: this is that where the extension of QMV was in the UK's national interest, it would be strongly supported, and where it was not, it would be firmly opposed.[60]

Of the existing areas that will move to QMV, three are within the exclusive competence of the Community (i.e. the individual Member States cannot act unilaterally in these areas). These are Articles 111(4) and 123(4) TEC concerning monetary policy and Article 133(5)TEC, which extends the Common Commercial Policy to trade in services and the commercial aspects of intellectual property, subject to unanimity in certain circumstances. All the other areas are either within the shared competence of the Community and the Member States or within the intergovernmental 'pillars' of the TEU (justice and home affairs or common foreign and security policy) where the concept of shared and exclusive

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57 Foreign Affairs Committee Fifth Report, *European Union Enlargement and Nice Follow-up*, HC 318, 2000-01, 10 April 2001.

58 The figure varies, depending on whether Articles or subsections of Articles are included. The Government has settled on 31 articles and 35 measures.

59 Cm 4595, *IGC: Reform for Enlargement: the British Approach to the European Union Intergovernmental Conference 2000.*

60 See also HC Deb, 30 October 2000, cc 234-8W.

competence is not relevant.[61] Some new Treaty Articles will also be subject to QMV. The Treaty requires the following Articles and/or sub-Articles to be subject to QMV. Those marked with an asterisk will become subject to co-decision with the EP. Government and/or other comment is included where it is available:

Article	**Areas covered (Treaty Establishing the European Communities TEC)**
13*	incentive measures in area of anti-discrimination, excluding any harmonisation of Member States' legislation.

Comment: In practice, this is likely to mean the exchange of information and best practice between Member States, which the Government has supported:

> Incentive measures, such as the exchange of best practice or information between member states, are exactly what we are encouraging the Commission to pursue. Extending QMV to these will facilitate co-operative action on non-discrimination. This is an agenda that the Government are keen to pursue. But, at our insistence, the Treaty makes explicit that QMV cannot be used for any harmonisation of national legislation or regulation.[62]

Two Directives agreed recently under Article 13 have led sceptics to fear that with QMV there will be an increase in legislation that will shift the burden of proof in discrimination cases. Lord Shore of Stepney raised this in a Written Question, to which Lord Davies of Oldham (Government Whip) replied:

> The Directive establishing the principle of equal treatment between persons irrespective of race or ethnic origin (2000/43/EC) and the Directive establishing a general framework for equal treatment in employment and occupation (2000/78/EC) agreed under Article 13 of the Treaty of the European Union [sic][63] both include provisions relating to the burden of proof in cases (other than criminal proceedings), of alleged discrimination. These provisions do not mean that defendants will be required "to prove their innocence" in such cases. Instead they stipulate that, where a claimant is able to prove facts from which the Court or tribunal can properly infer that discrimination has occurred, it will be for the defendants to show that their actions did not contravene the law. This is a shift rather than a

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61 See HC Deb, 12 February 2001, c 47W.
62 Keith Vaz, 21 December 2000, c342W.
63 This should be Article 13 of the Treaty Establishing the European Community (TEC).

reversal of the burden of proof and largely represents what already happens in practice in the UK in sex and race discrimination cases, following the judgment from the House of Lords in Zafar v Glasgow City Council (1998 IRLR 36). The Directive requires this approach to be formalised as a rule of law in the Race Relations Act 1976 and in the new legislation needed to give effect to Directive 2000/78/EC.[64]

18 measures to facilitate rights of citizens to move freely and reside within the EU.

Comment: The UK has an 'opt-in' to all aspects of the free movement Articles (see Section XIII, below).

67 Title IV: justice and home affairs
62.2.a: external border checks
62.2.b: certain rules relating to visas
62.3: conditions for freedom of movement for third country nationals
63.1.a,b,c,and d: measures relating to asylum
63.2.a: temporary protection of refugees
63.2.b: illegal immigration and residence
65.a,b,c: judicial cooperation in civil matters
66: cooperation between relevant national administrations

Comment: The UK has an opt-in arrangement to measures in Title IV, set out in a Protocol to the Amsterdam Treaty. None of these provisions apply in the UK unless the Government decides to opt in to them. The Treaty of Nice does not amend the provisions of this Protocol.

100 Economic and Monetary Policy: appropriate measures, including financial assistance, to aid Member States in severe difficulties

Comment: Two issues have been raised in this context: one linked to the UK's North Sea oil reserves and the other to the no bailout clause in Article 100(2). With regard to the former, there was no need for special provisions for North Sea oil as the UK has sovereign rights over its reserves under international law and the EC Treaty does not confer competence on the Community to claim ownership of or control over them.[65] The latter raised the possibility of some Member States having no veto over a decision to give financial

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64 HL Deb, 20 March 2001, c 150WA.
65 HC Deb, 21 December 2000, c341W.

assistance to other States with "severe difficulties" in the "supply of certain products". Critics suggest that this might be a matter of irresponsible financial management for which the prudent managers might have to pay the bill.

Mr Vaz sought to allay fears of costly bailouts for poor economic control by the Declaration the Government had obtained:

> The Government negotiated a specific declaration linking Article 100(2) TEC with Article 103. Article 103 makes clear that a member state shall not be liable for or assume the commitments of other member state Governments or other member state public bodies, except in the case of mutual financial guarantees.[66]

Declaration 6 states:

> The Conference recalls that decisions regarding financial assistance, such as are provided for in Article 100 and are compatible with the "no bail-out" rule laid down in Article 103, must comply with the 2000-2006 financial perspective, and in particular paragraph 11 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure, and with the corresponding provisions of future interinstitutional agreements and financial perspectives.[67]

111(4) EC representation at international level in EMU: formal agreements on exchange-rate system for euro in relation to non-EU states

Comment: This Article does not apply here unless or until the UK joins the single currency. Under Protocol 11.7 of the TEU "on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland", the UK's voting rights are suspended with regard to Article 111. Furthermore, Declaration 7 of the Nice Treaty, concerning Article 111 and the procedures for euro-area States to be involved in preparing the Community's position at international level, does not apply to the UK, which is not considered to be in the "euro-area".[68]

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66 HC Deb, 21 December 2000, c341W.
67 Cm 5090, p. 71
68 See HL Deb, 5 February 2001, c WA80.

123(4) rapid introduction of euro.

Comment: This Article does not apply here unless or until the UK joins the single currency.

133 extension of Common Commercial Policy to trade in some services and the commercial aspects of intellectual property rights.

Comment: QMV will be extended to the negotiation and conclusion of agreements relating to trade in services and the commercial aspects of intellectual property. Unanimity will be retained for specified matters, where unanimity is required for the adoption of equivalent internal EU rules or where the Community has not exercised related internal rule-making powers. In certain other areas, where competence will continue to be shared between the Community and Member States (i.e. trade in cultural, audio-visual, educational, social and human health services), decisions will continue to be made by consensus. The current transport arrangements will prevail. See also Section XV.

137(1)(k)* modernisation of social protection systems: provisions concerning health and safety at work; working conditions; information and consultation of workers; social exclusion (excluding harmonisation of Member States' legislation).

Comment: The Government commented on the need to extend QMV to this Article as follows:

> QMV under tiret (k) of Article 137 is limited to co-operation between the member states. Harmonisation of their laws and regulations is explicitly excluded. It makes sense to exchange information with our partners and encourage the development of modern and sustainable social protection systems. This was one of the goals we agreed at Lisbon. QMV will make it easier to bring it about.[69]

157(3)* Industrial policy: measures for action in support of industry (adjustment to structural changes; development of undertakings, particularly SMEs; cooperation between undertakings; fostering industrial potential in innovation, research and technological development).

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[69] Keith Vaz, HC Deb, 21 December 2000, c343W.

159(3)*	specific action to achieve economic and social cohesion outside Structural Funds.
161	from 2007 or from the next Financial Perspective, rules defining tasks, priorities and organisation of Structural Funds.
175*	some environmental measures (aspects of qualitative management or water resources).
181a	new Title XXI: economic, financial and technical cooperation with third countries.
190(5)	regulations and conditions governing duties of MEPs (MEPs' Statute). Unanimity retained for fiscal measures.
191(2)*	regulations governing political parties at EU level, in particular rules on funding (Statute for European Political parties), subject to a declaration that Community funds cannot be used to fund, either directly or indirectly, national political parties.
Comment:	See Section XIII.
207(2)	appointment of secretary-general and deputy secretary-general of Council.
210	salaries, allowances and pensions of Members and Registrar of Court of First Instance.
214	nomination of Commission President; adoption of list of Commissioners nominated by Member States; appointment of President and other Commissioners.
Comment:	The Government has said:

> In the White Paper "IGC: Reform for Enlargement" the Government made clear its commitment to the effective political and administrative leadership of the College of Commissioners. Making the appointment of the President of the European Commission subject to qualified majority voting will help to ensure that the best candidate, rather than the one most acceptable to all, is selected as the President.[70]

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[70] HC Deb, 16 January 2001, c166W.

215	appointment of new Commission member upon death or resignation of a Commissioner.
Comment:	See Section IV.
223	approval of Rules of Procedure of Court of Justice.
Comment:	See Section VII.
224	approval of Rules of Procedure of Court of First Instance.
Comment:	See Section VII.
225(a)	approval of the Rules of Procedure of judicial panels attached to the CFI.
247(3)	appointment of Members of Court of Auditors.
248(4)	approval of Rules of Procedure of Court of Auditors.
259(1)	appointment of Members of Economic and Social Committee.
263	appointment of Members and alternates of Committee of the Regions and replacement of same.
Comment:	See Section VIII.
279 (a and c)	from 2007, Financial Regulation for budget and accounts; rules on responsibility of financial controllers, authorising officers and accounting officers, measures for inspection.

Treaty on European Union

23(2)	appointment of special representative under CFSP.
24	conclusion of international agreements to implement joint action of common position in Title VI for adoption of internal decisions or measures.
Comment:	Where this might concern frontier controls, the Government has stated:

> The Government consider border controls to be the ability to control the flow of persons across the UK's frontiers. We have

> made clear we will insist on retaining unanimity for frontier controls.[71]

XI Enhanced Co-operation

A. General Principles and Rules of Application

The Nice Treaty amends Treaty Articles on enhanced co-operation[72] by removing the final reference for a decision to the European Council, acting by unanimity.[73]

Amended Article 43 (Title VII) lays down the general conditions for enhanced cooperation arrangements in both the TEC and the TEU. The existing requirements that enhanced cooperation must not affect the *acquis communautaire*, nor the interests of non-participating States, and must only be used as a last resort, that it must be within the limits of EC competence, and that it must not distort competition between Member States, are expanded. They now include the requirement that they should respect the single institutional framework, nor undermine the internal market or economic and social cohesion, nor prejudice the provisions of the Protocol integrating the Schengen *acquis*[74] into the EU framework; nor affect the competences, rights and obligations of non-participating States. This condition raises the question of whether the enhanced cooperation procedure would be used or usable any more in the future than it has been so far (i.e. not at all), given that it would almost always affect to some extent the internal market or the competences, rights and obligations of non-participating States.

The Amsterdam provisions require that "at least a majority" of Member States have to be involved, while amended Article 43 will require a minimum of 8 Member States. This is a simple majority of the current EU-15 membership, and thus would not alter the present requirement in practical terms, but it would represent less than half the States in an enlarged Union. Those favouring a lower threshold had argued that the requirement for a majority of Member States in a Union of up to 27 members would be unrealistic.

Amended Article 43a, the 'last resort' clause already present in TEU Article 43(1)(c) of the Treaty of Amsterdam, emphasises that enhanced cooperation arrangements should only be used when the objectives of the cooperation cannot be achieved "within a reasonable period" using the relevant Treaty provisions. There had been some concern that requests for enhanced cooperation might be made as soon as there was a disagreement in the Council of Ministers.

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71 HC Deb, 30 November 200, cc833-4W.

72 Also known as flexibility and closer co-operation.

73 For a discussion of the background to these proposals see Library Research Paper 00/88, *IGC 2000:Enhanced Co-operation*, 21 November 2000.

74 Schengen began life as an intergovernmental agreement among a group of Member States to abolish border controls between participating States.

Amended Article 43b provides that enhanced cooperation should be open to all Member States, even once it has been established. Articles 44, 44a and 45 deal with institutional procedures, financing and consistency with the policies of the Union.

Amended Article 11 sets out the procedure for cooperation under the TEC. Authorisation would come from the Council, acting by QMV on a proposal from the Commission and after consulting the EP. If the cooperation concerned a matter subject to the co-decision procedure, the EP's assent would be required. A Council member may 'request' that a matter be referred to the European Council, although there is no further provision on the role of the European Council in deciding whether or not to allow the arrangement. The final decision would appear to rest with the Council of Ministers, acting by QMV, regardless of whether or not the European Council reaches a consensus on the issue. Under existing provisions (Article 11.2), there is an 'emergency brake' procedure, whereby a Member State can declare that "for important and stated reasons of national policy" it will oppose the granting of authorisation by QMV, and a vote is not taken. The matter may then be referred to the European Council for a decision by unanimity.

Amended Article 11a sets out the procedure for a Member State wishing to participate in an established arrangement.

B. Second Pillar: Common Foreign and Security Policy

Cooperation in the CFSP area (Title V, second pillar of TEU) is established by Article 27a-e. Authorisation would also be from the Council acting by QMV according to Articles 43-45 and Article 23(2) of the existing provisions. There would appear to be an ambiguity here, in that Article 23(2) provides for an 'emergency brake' procedure, in the form of a final decision by the European Council by unanimity, whereas Article 43-45 do not. The Government is of the opinion that there remains a full emergency brake in the Second Pillar.[75]

Article 27b provides that cooperation in this area would apply to the implementation of a joint action or a common position, but not to "matters having military or defence implications". This exemption was secured at British insistence.

C. Third Pillar: Justice and Home Affairs

In the Justice and Home Affairs area (Title VI, third pillar of TEU) enhanced cooperation is established in Articles 40 and 40a-b TEC.

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[75] See European Scrutiny Committee, *Inter Governmental Conference 2000*, HC 119, 2000-01, Minutes of Evidence, 10 January 2001, p. 5.

The emergency brake in the Third Pillar, which at present requires a final decision by the European Council, has been replaced by a referral procedure. In both the First and Third Pillars there would be a right of reference to the European Council but not a veto.

XII Article 7: human rights violations by Member State governments

Article 7 of the Amsterdam Treaty provides for sanctions to be taken against a Member State government for a "serious and persistent breach" of human rights. It has not been used. However, in response to the Austrian inclusion of the neo-Nazi Austrian Freedom Party in the coalition government in 2000, some Member States, Belgium in particular, were keen for the EU to be able to act more quickly in the face of such a development in the future. A Belgian submission to the IGC proposed a mechanism for EU action upon the threat alone of a breach. The Austrian delegation, the Portuguese Presidency and the Commission also made contributions on this subject.[76]

A majority of Member States supported amending Article 7, but some, including Britain, Germany and Denmark, were concerned about the Belgian proposal, in particular with regard to what constituted a threat and the low threshold of two-thirds of Member States to trigger the mechanism. The Nice solution is a compromise. The Council of Ministers may determine by a majority of four-fifths of its Members, after obtaining the assent of the EP, that there is a "clear risk of a serious breach by a Member States of the principles mentioned in Article 6(1),[77] and address appropriate recommendations to that State". The new Article proposes a mechanism which would require the Council to hear from the State confronted with a human rights charge and which allows for a report on the situation by independent persons "within a reasonable time".

XIII Articles 190 and 191: MEPs and political parties at European level

The Treaty of Nice provides a legal basis for a Statute to lay down regulations governing political parties at European level and in particular rules regarding their funding. The legal basis for the Statute under Article 190(5) was moved from unanimity to QMV, with the exception, at British insistence, of the taxation element.

Amended Article 191 adds:

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[76] See: CONFER 4782/00, 5 October 2000.

[77] Article 6(1): "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rules of law, principles which are common to the Member States".

> The Council, acting in accordance with the procedure referred to in Article 251 [co-decision], shall lay down the regulations governing political parties at European level and in particular the rules regarding their funding.[78]

While the majority of MEPs and the European political groups have supported calls for more transparency in funding, the EP had adopted a resolution on the IGC on 13 April 2000 calling for a more radical approach. Article 8.2 of the resolution stated:

> European political parties which do not respect democratic principles and fundamental rights, may be the subject of proceedings in the Court of Justice of the European Communities, at the request of the Commission, after consulting the European Parliament and the Council, to suspend their EU funding; the suspension procedures that may be applied pursuant to this Article shall be adopted, within twelve months of the entry into force of this Treaty, on a proposal from the Commission, by a decision of Parliament and the Council adopted in accordance with the procedure laid down in Article 251;[79]

Concern was expressed about the 'threat to democracy' and the possibility of the EU banning parties of which it disapproved. The *Daily Telegraph* reported on 13 April 2000:

> … it is proposed that 'political parties which do not respect democratic principles and fundamental rights may be the subject of suspension proceedings'. Under the cover of acting against extremism, the parliament is seeking to outlaw any group that defies the consensus on Europe - an objective made more or less explicit in a letter to Romano Prodi from the leaders of the four main groups in the European Parliament. This was, of course, the technique used by Communist parties in eastern Europe: they did not ban elections, they simply outlawed 'extremist' parties.

EU funding for EP party information activities is already subject to the condition that parties must demonstrate "a clear link between [these] activities and the Community and its policies"[80], i.e. including respect for democracy and human rights. The EP resolution is thus not entirely surprising. However, the Nice amendment does not propose suspension procedures.

European political parties have close links with their respective groups in the EP and in the absence of any form of regulation, there has been some 'leakage' of Community funds for MEPs to the European political parties. This was criticised by the European Court of Auditors in 2000, which recommended that a Statute should regulate European political parties and ensure transparency in their funding:

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78 Cm 5090, p.22.

79 A5-0086/00 (Resolution Dimitrakopoulos/Leinen), 13 April 2000.

80 Rules laying down the procedures for utilising the appropriations set aside for information activities in Item '3708 of the budget of the European Parliament, PE 158.828/BUR/Annex II.

> Pending adoption of a statute for European political parties, and of procedures for funding them at European level, Parliament will have to establish the following transparency measures through the various sets of rules:
>
> - contributions to European political parties paid by the parliamentary groups will have to be set out in their respective budgets, and the amount of those contributions will have to be capped,
> - direct or indirect funding of parties, political groupings or organisations affiliated at national level will be prohibited.
>
> European political parties which receive such contributions will have to publish their accounts and indicate their sources of funding.
>
> Parliament will have to establish the limits of and conditions for the use of the technical facilities (conference rooms and interpretation) made available to the European political parties under the rules applicable to European political groups.[81]

The Nice Treaty provides in Declaration 11, The *Declaration on Article 191*, a response to the UK's and other Member States' concerns about the proposed amendment. It states:

> The Conference recalls that the provisions of Article 191 do not imply any transfer of competence to the European Community and do not affect the application of the relevant national constitutional rules.
>
> The funding for political parties at European level provided out of the Community budget may not be used to fund, either directly or indirectly, political parties at national level.
>
> The provisions on the funding for political parties shall apply on the same basis to all the political forces represented in the European Parliament.[82]

The Declaration, secured at British insistence, ensures that the provisions of the Statute would not conflict with the *Political Parties, Elections and Referendums Act 2000*,[83] which bans foreign parties; nor would it discriminate against European political parties on account of their attitudes to European integration.[84]

A European Foundation Working Paper analysis of the Nice Treaty by William Cash was sceptical of the amended Article and the Declaration:

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81 Court of Auditors Special report No 13/2000 on the expenditure of the European Parliament's political groups, together with the European Parliament's replies, OJC 181, 28 June 2000, p.15.

82 SN 533/00, p.44.

83 Chap 41, 2000.

84 See European Scrutiny Committee Tenth Report, HC 28-x, 2000-2001, 28 March 2001.

> Despite the reassurances provided in the [Declaration], this article appears to mean that there will be some restriction on how political parties will be funded, potentially jeopardising free speech. The article … might also conceivably be interpreted as giving the Council the powers to ban political parties it dislikes. Furthermore, the Treaty fails to define what is really meant by "political parties at European level". Is the Conservative Party "a European" party because it fields candidates at European elections? Why bother to make these additions to the Treaties if "the provisions of [the new] Article 191 do not imply any transfer of competence to the European Community?"[85]

Mr Cash also suggested that the conditions for funding:

> … implicitly reinforces calls for pan-EU parties that are totally separate from national parties – there would be a Europe wide Christian Democratic party funded by the EU and the UK Conservatives would be potentially cut out of the European Parliament altogether.[86]

The adoption of a Statute both to regulate MEPs and political party funding has been broadly welcomed in the Member States. Keith Vaz said in a Parliamentary Answer:

> European political parties already exist and are recognised in the EC Treaty. The proposal for a legal base to allow the establishment of a statute to regulate these parties is intended to ensure the transparency of their funding. We strongly support this aim.[87]

Mr Vaz commented on the Nice amendment to Article 191 to the European Scrutiny Committee, as follows:

> We welcome this, It will help tighten up on the present system. The regulations will, at our behest, make clear that Community funding for political parties at European level may not be used to fund national political parties.[88]

The EP has not waited for Nice to be implemented before moving to adopt the Statute.[89] Negotiations between the Council and EP on its terms have been problematic in a number of areas and no agreement has yet been reached. A Commission proposal for a Council Regulation on the Statute and financing of European Political Parties has been put forward under Article 308[90] of the Treaty, requiring consultation of the EP and unanimity

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85 European Foundation Working Paper Number 5, *Not Nice at all revisited: A preliminary analysis of the Nice Treaty*, William Cash, MP, March 2001.

86 European Foundation Working Paper Number 5.

87 HC Deb, 2 November 2000, cc 607-9W.

88 European Scrutiny Committee Second Report, HC 28-ii, 10 January 2001.

89 The Statute also aims to establish a salary for MEPs, Community taxation for salary and pensions and a reimbursement of expenses based on real costs.

90 Article allowing for EC action to achieve the objectives of the common market where the Treaty has not provided the necessary powers.

in the Council. Adoption of a Statute before implementation of Nice would allow the regulations to be in place before the next EP elections in 2004. The current proposal would expire at the end of the second financial year following its entry into force, and would be succeeded by a definitive Statute under amended Article 191.

The draft Statute makes the following provisions:

- Any European political party or union of European political parties may register a Statute of a European political party, subject to certain criteria:

  - it must either be established in the EU as a political group in the EP, or intend to establish such a group, or to participate in an existing group; and
  - its programme and activities must respect the fundamental principles of democracy, human rights and the rule of law, and establishment as a political group in the EP.

- Access to funding from the general budget of the EC may be granted to European political parties which have elected representatives in at least five Member States, or which have received at least 5% of the vote in the most recent EP elections in at least five Member States. 85% of the funding would go to parties in the EP, in proportion to their numbers;

- 15% of the annual amount should be distributed in equal shares among the parties that satisfy the conditions set out above and which make a 'duly substantial' request. Furthermore, a European pollitical party may not receive funds unless it can prove that it receives at least 25% of its budget from sources other than the general budget of the EC; and

- Accounts must be published and submitted to the Court of Auditors.[91]

The Financial Statement attached to the proposal provides for 7 million euros to be made available which would be divided between the five existing European political parties (Socialists, Christian Democrats/Conservatives, Liberals, Greens and Communists). This figure is drawn from estimates of the cash and 'in kind' donations currently given to the EPPs by political groups in the EP.[92]

The European Scrutiny Committee, which did not clear the document, questioned the Treaty base for the proposal, stating in its Tenth Report that Article 308:

> does not appear to us to conform to the requirements of that Article, in that it does not concern any of the objectives of the Community referred to in Article 2 EC,

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91 See European Scrutiny Committee Tenth Report, HC 28-x, 28 March 2001.

92 *Ibid*, p.xxvii.

> or any of its activities as set out in Article 3 EC. Neither does it appear to us to have any real connection with the operation of the common market.[93]

Failure to adopt the proposal on these grounds could mean a delay in introducing the Statute until the Treaty of Nice, which provides a specific legal base for the Statute, comes into force.

XIV Visas, Asylum, Immigration and Freedom of Movement of Persons (Title IV)

The Treaty of Amsterdam split the former 'Third Pillar' justice and home affairs matters, into two. Some aspects remained essentially intergovernmental as 'Third Pillar' matters in the amended TEU, while others were moved into the main TEC and became subject to EU decision-making processes and the jurisdiction of the ECJ. The Treaty of Nice introduces changes in both the TEU and TEC justice and home affairs areas.

Title IV TEC contains measures on cooperation between Member States in matters concerning visas, asylum, immigration, border controls and other policies related to the free movement of persons, with the aim of creating progressively "an area of freedom, security and justice". At Nice Member States agreed to give up the national veto in Article 65 (TEC), with the exception of family law, when the Treaty comes into force.[94]

Article 65 states:

> Measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article 67 and insofar as necessary for the proper functioning of the internal market, shall include:
>
> (a) improving and simplifying:
> - the system for cross-border service of judicial and extrajudicial documents;
> - cooperation in the taking of evidence;
> - the recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases;
>
> (b) promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction;
>
> (c) eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.

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93 *Ibid*.

94 See section X on extension of QMV.

Other provisions in this Title introduce QMV but deferred until a later date. Article 67 currently provides for a transitional period of five years for measures in this title, during which the Council acts by unanimity. QMV with the co-decision procedure will apply **after** the Council adopts unanimously legislation laying down common rules and basic principles concerning the subjects in Article 63(1) (a, b, c, d) and 63(2)(a), all measures relating to asylum and/or refugees. In Nice **Declaration 5** the Council undertakes to do everything possible to ensure that co-decision with QMV applies from 1 May 2004 to Article 62(3), conditions governing the free movement of third country nationals, and Article 63(3)(b), measures relating to clandestine immigration. It also ensures that QMV with consultation of the EP will apply from 1 May 2004 to Article 66, cooperation between appropriate departments of Member State administrations, and that QMV applies to Article 66(2)(a), the procedures relating to checks at external borders, as soon as there is agreement on the scope of measures concerning the crossing of external borders by persons. Some or all of the other provisions in Title IV will become subject to Article 251 (co-decision) from the same date as soon as possible, if the Council takes a corresponding decision.

A Protocol to the Amsterdam Treaty governs the relationship of the UK and Ireland to Title IV. The basic provision in Articles 1 and 2 is that the UK and Ireland will not take part in this Title and that nothing agreed under it will apply to them. This exemption is explicitly made to encompass any relevant decisions of the Court of Justice. These do not apply to the UK or Ireland, nor will they enter into the *acquis communautaire* or the corpus of community law as far as the UK and Ireland are concerned. Thus the UK and Ireland do not only remain outside the existing Schengen arrangements, for example, but they are also fenced off from the future development of these arrangements under this Title, unless they choose to opt into them.

To summarise, the Treaty of Nice would make Articles in Title IV that are currently subject to unanimity, subject to QMV after the Council adopts unanimously the legislation laying down common rules and basic principles governing areas covered by Articles 6 (asylum and refugees). From May 2004 QMV will apply to Article 62(3) relating to the free movement of third-country nationals, and Article 63(3)(b), measures relating to illegal immigration. These provisions will not affect the UK unless the Government chooses to opt in to them under the provisions of the Protocols described above.

In March 1999 the Home Secretary, Jack Straw, set out those areas in this Title that the UK wanted to opt in to:

> Subject to the Amsterdam Protocol, the United Kingdom wishes to approach participation in Schengen and the Free Movement Chapter positively. Indeed we are keen to engage in co-operation in all areas of present and future JHA co-operation which do not conflict with our frontiers control. We are therefore ready to participate in law enforcement and criminal judicial co-operation derived from the Schengen provisions, including the Schengen Information System. We have been in the forefront of European Union co-ordination in the fight against crime and drugs and we shall maintain that position. We are also interested in developing co-operation

> with European Union partners on asylum - a European Union-wide phenomenon - and in the civil judicial co-operation measures of the Free Movement Chapter. Our intention to maintain our frontier controls has implications for our participation in the direct operation of external frontier controls. For similar reasons, enhanced visa co-operation raises difficulty for us. But, within this constraint, we shall seek discussions with European Union colleagues to maximise the scope for mutual operational co-operation in combating illegal immigration, without prejudice to the maintenance of our national immigration controls. We shall also look to participation in immigration policy where it does not conflict with our frontiers-based system of control.[95]

A Lords Written Answer in March 2001 details the proposed measures under Title IV that the Government intends to opt in to:

> … the UK has notified its intention under Article 3 of the Protocol on the position of the United Kingdom and Ireland to participate in the application and adoption of the following proposed measures under Title IV of the treaty establishing the European Community:
>
> *Asylum and Immigration Measures*
>
> Regulation: Commission proposal for a Council regulation concerning the establishment of 'Eurodac' for the comparison of the fingerprints of applicants for asylum and certain other aliens (title subsequently amended to "Council Regulation concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention").
>
> Directives: Initiative of the French Republic for a Council Directive defining the facilitation of unauthorised entry, movement and residence;
>
> Commission proposal for a Council Directive on minimum standards on procedures in member states for granting and withdrawing refugee status;
>
> Initiative of the French Republic for a Council Directive concerning the harmonisation of financial penalties imposed on carriers transporting into the territory of the member states third country nationals not in possession of the documents necessary for admission;
>
> Initiative of the French Republic for a Council Directive on mutual recognition of decisions concerning expulsion of third country nationals;
>
> Commission proposal for a Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance between member states in receiving such persons and bearing the consequences thereof.

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[95] HC Deb, 12 March 1999, cc. 380-2W.

Decision

Commission proposal for a Council Decision establishing a European Refugee Fund.

External measures

Commission proposal for a Council Decision on the conclusion of an agreement between the European Community and Republic of Iceland and Kingdom of Norway concerning the criteria and mechanisms for establishing the state responsible for examining a request for asylum lodged in a member state or Iceland or Norway. (The UK also notified its intention to participate at an earlier stage when the Commission brought forward its proposal for a negotiating mandate.)

Recommendations for Council Decisions authorising the Commission to negotiate readmission agreements with Sri Lanka, the Kingdom of Morocco, the Islamic Republic of Pakistan and the Russian Federation.

Civil Judicial Co-operation Measures

Regulations: Commission proposal for a Council Regulation (Brussels I) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;

Initiative of the French Republic for a Council regulation on the mutual enforcement of judgments on rights of access to children (Brussels IIbis);

Initiative of the Federal Republic of Germany for a Council regulation on co-operation between the courts of the member states in taking evidence in civil and commercial matters;

Commission proposal for a Council regulation extending the programmes of incentives and exchanges for legal practitioners in the area of civil law (Grotius - Civil);

Initiative of the Federal Republic of Germany and the Republic of Finland for a Council regulation on insolvency proceedings;

Commission proposal for a Council regulation on the service in the member states of judicial and extrajudicial documents in civil or commercial matters;

Commission proposal for a Council regulation (Brussels II) on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children.

> Decision: Commission proposal for a Council Decision establishing a European judicial network in civil and commercial matters.[96]

XV Police and Judicial Cooperation in Criminal Matters (Title VI, Third Pillar)

The Treaty of Nice will include specific reference to the European Judicial Cooperation Unit or *Eurojust* in amended Articles 29 and 31.

The TEU established the objective of combating organised crime in order to provide EU citizens with a high level of safety within an area of freedom, security and justice. The Tampere European Council in October 1999 agreed on the setting up of Eurojust. The Tampere Conclusions stated:

> … that a unit (Eurojust) should be set up composed of national prosecutors, magistrates or police officers of equivalent competence, detached from each Member State according to its legal system. Eurojust should have the task of facilitating the proper coordination of national prosecuting authorities and of supporting criminal investigations in organised crime cases, notably based on Europol's analysis, as well as of cooperating closely with the European Judicial Network, in particular in order to simplify the execution of letters rogatory. The European Council requests the Council to adopt the necessary legal instrument by the end of 2001.[97]

Agreement was reached at Tampere on the shape of a provisional unit which in its final form would bring judicial cooperation up to the level of police cooperation.

The French IGC delegation proposed that *Eurojust* be given the same weight in the new Treaty as the European Police Office, *Europol*, to ensure a balanced and consistent approach to judicial cooperation and police cooperation in the legal basis. In a submission in November 2000, they proposed referring specifically to Eurojust in the Treaty.[98] The final text of amended Article 29 TEU states that the Council shall promote "cooperation through the European Judicial Cooperation Unit ("Eurojust")".

Amended Article 31 TEU includes Eurojust in the scope of common action on judicial cooperation in criminal matters in three main areas:

- Enabling Eurojust to facilitate coordination between Member States' national prosecuting authorities;

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96 HL Deb, 1 March 2001, WA152-153.

97 Presidency Conclusions, European Council, Tampere, 15-16 October 1999. The Tampere decision is recalled in Declaration 2 of the Treaty of Nice.

98 CONFER 4806/1/00, 19 November 2000.

- Promoting support by Eurojust for criminal investigations in serious cross-border crime, particularly organised crime, using Europol analysis;
- Facilitating close cooperation between Eurojust and the European Judicial Network,[99] especially to facilitate the execution of letters rogatory and extradition requests.

The Government set out its position on Eurojust in the following Parliamentary Answer:

> The Government fully support the decision to establish Eurojust and is actively participating in the current work to negotiate the necessary legal instrument. In discharging the remit from Tampere, the Government believe that Eurojust should co-ordinate and facilitate cross-border investigations, but without directing the national authorities involved. In addition to dealing with other types of serious crime, the Government consider that Eurojust should take an active part in the investigation and prosecution of cases of fraud against the finances of the European Union. Eurojust will also need to establish close links with Europol to enable the two organisations to co-operate fully in the European Union's fight against organised crime. The Government have fully supported the decision to establish a Provisional Judicial Co-operation Unit in Brussels in the interim period before Eurojust is established. A similar method was used successfully when Europol was established, and experience gained from the operation of the Provisional Unit will feed into the negotiations on Eurojust itself.[100]

Eurojust initiatives from the Member States and the Commission were discussed during 2000, based on the Tampere proposal but also drawing on national expertise and experience.[101] Since agreement on the Nice Treaty, Council proposals put forward under Articles 31 and 34(2)(c) of the Treaty (TEU)[102] have raised concerns in the UK relating to the powers of Eurojust, to the degree of influence the body is intended to exercise over national prosecution decisions, to the relationship between Eurojust and the Commission and to data protection.

The Government has said that it "could not accept any wording that accorded the Commission any 'operational' role in national investigations or prosecutions."[103] Referring to Articles Y and Z of Eurojust 21, the most recent Eurojust proposal, the Home Office Minister, Barbara Roche, commented:

> Articles Y and Z set out the differentiated powers of Eurojust when it is acting collectively (or 'formally') or 'informally' through its national members. The main point to note is that Eurojust acting collectively can ask, but not order, Member States to undertake certain actions and can expect to be told the reasons

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99 Set up by Joint Action 98/428/JHA adopted by Council on 29 June 1998 (OJL 191, 7 July 1998, p.4).
100 HC Deb, 22 November 2000, c210-1W.
101 The background to Eurojust proposals is summarised in European Scrutiny Committee Scrutiny Sixth Report *European Judicial Cooperation Unit (Eurojust)*, HC 28-vi, 2000-2001, 14 February 2001.
102 Draft Council Decision setting up Eurojust, see European Scrutiny Committee Sixth Report.
103 *Ibid.*

> if the Member State concerned declines. This power is not available to national members acting informally without the backing or authority of Eurojust acting as a unit.[104]

With regard to data protection the Government commented that it had:

> … made clear during negotiations that currently the regime lacks any provision relating to individuals' rights to gain access to the data held about them, lacks oversight by a national supervisory authority of the processing done by a Member State and lacks oversight by an EU-wide supervisory authority of the processing done by Eurojust itself.[105]

The Scrutiny Committee concluded:

> 2.19 We consider that a key aspect of the Eurojust proposal is the effect the creation of the unit may have on the discretions vested by national law in the prosecuting authorities. With this concern in mind, we welcome the Government's view that it could not accept any wording which accorded the Commission any operational role in national investigations or prosecutions.
>
> 2.20 We also note the Government's view that Eurojust should be an organisation which would co-ordinate and facilitate cross-border investigations without directing the national authorities. We agree with this view, but we consider that the current text is ambiguous on the degree of influence which Eurojust is expected to exercise. The requirement that a prosecuting authority in a Member State should be obliged to account to Eurojust for its reasons for not complying with a request to prosecute, or for not complying with a request to co-ordinate prosecutions with those of another Member State, suggests to us that Eurojust is intended to have some influence over prosecution discretions; otherwise there would seem to be little point in asking for the reasons to be stated. We invite the Minister to explain why it is thought necessary to include this requirement.[106]

XVI Common Commercial Policy (CCP)

At present trade in services is an area of so-called ‘mixed competence’, which means that Member States take full part in individual bilateral negotiations with other World Trade Organisation (WTO) Members, but the European Commission acts as lead negotiator and speaks on behalf of Member States in the WTO. Common positions are agreed unanimously with all EU Member States with respect to trade in services.

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[104] European Scrutiny Committee Sixth Report: http://esd.hclibrary.parliament.uk:8051/ESDHTML/esd.html

[105] *Ibid*.

[106] European Scrutiny Committee Sixth Report: http://esd.hclibrary.parliament.uk:8051/ESDHTML/esd.html

In contrast, for negotiations concerning trade in goods, the Commission has had 'exclusive competence'. This means that it has the power to negotiate agreements with international organisations on behalf of the Member States under Articles 133 and 300 of the EC Treaties.

There has been some pressure to extend the Community's competence to include other areas, notably the trade in services. The role of the Community, represented by the Commission, in negotiating the Uruguay Round GATT Agreement was the subject of an Opinion of the ECJ in 1994. The Court rejected the Commission's contention that the Community had exclusive external competence in all matters covered by the GATT Agreement, including services, transport and intellectual property. It concluded:

1. The Community is solely competent under Article 113 of the Treaty to conclude the multilateral agreements relating to trade in goods.

2. The competence to conclude GATS (i.e. the agreement which relates to trade in services) is shared between the Community and Member States.

3. The competence to conclude TRIPS (i.e. the agreement which concerns intellectual property rights) is also shared between the Community and Member States.[107]

In other words, as a result of this Opinion, the exclusive competence of the Community, in which ratification by the Member States is not required, was limited to the area of trade in goods. This was a landmark ruling by the ECJ and settled various long-standing disputes between the Commission and the Council of Ministers, as well as becoming a main point of reference for future questions concerning Community competence. It was, however, disappointing for the Commission, which had for many years asserted exclusive external competence on the basis of its broad interpretation of Article 13 and the scope of the Common Commercial Policy.

The 1994 Opinion confirmed that where external competence is not expressly provided for in the Treaty (as in Article 13), the existence and extent of implied external competence would be determined in accordance with the well-established principles of earlier ECJ case law. Once the Community has adopted common internal rules, Member States may no longer undertake international obligations which affect or contradict these rules. To this extent, the Community then acquires exclusive competence. In the areas in which the ECJ said the Community did not have exclusive competence, exclusive external competence is being acquired incrementally with the adoption of common internal Community rules.

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[107] ECJ Opinion 1/94, 15 November 1994, OJC 386, 31 December 1994.

On 9 November 1999, before the IGC 2000 was launched, the European Parliament's Committee on Constitutional Affairs adopted by 20 votes to 3 with 2 abstentions a proposal on institutional reform with regard to the IGC. An amendment by the Dutch Liberal MEP, Elly Plooij-van Gorsel, called for the extension of Commission powers to negotiate on intellectual property and services at the WTO and elsewhere. On 18 November 1999 the EP in plenary adopted by 359 votes to 62 (with 57 abstentions) the report by the German CDU MEP, Konrad Schwaiger, on the Commission's strategy for the Millennium Round negotiations in the WTO. One of the main elements of the EP's position concerned institutional reform. It called for Treaty changes to be made at the IGC to extend the Commission's prerogatives to areas other than goods alone, especially to services and intellectual property.[108]

Proposals to the IGC on the CCP included specific mention of the EU's position at WTO negotiations, but the WTO is not mentioned in the new Treaty. Article 133 is amended to include the negotiation by the Commission and the conclusion by the Council, acting by QMV, of external agreements relating to the trade in services and the commercial aspects of intellectual property. Unanimity would apply where internal Community rules are decided by unanimity or for areas in which the Community has not yet adopted internal rules.

At French insistence, agreements relating to trade in cultural and audiovisual services, educational services and social and human health services will require unanimous agreement and would continue to be matters of 'shared competence' in which agreements would be concluded jointly by the Community and the Member States.

In a speech to the EP on 12 December 2000, the Commission President, Romano Prodi, said:

> I would … like to take the opportunity to thank President Chirac and Lionel Jospin for making it possible to end the main ambiguities affecting our commercial policy. A good balance was struck between the legitimate concerns surrounding issues like cultural diversity, on the one hand, and efficient powers for negotiating with our trading partners, on the other. [109]

XVII The Ratification Process

A. Timetable

The Treaty text agreed in Nice was subject to legal and linguistic editing for several weeks. The final text was signed in a fairly low-key ceremony in Brussels on 26 February

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[108] This particular proposal was approved by 361 votes to 99 with 12 abstentions.
[109] RAPID, speech 00/499, Strasbourg, 12 December 2000.

2001. It was published as Command Paper 5090 (European Communities 1(2001)) in the UK in March 2001.

The ratification process has now begun in the Member States, and will be carried out in accordance with their respective constitutional traditions. This could take a year or more to complete. The various national treaty ratification procedures are described briefly below.

Various elements in the Treaty do not require immediate implementation and will come into force at a deferred date (e.g. voting weights in the Council, EP seats etc). The whole Treaty will therefore come into force over time, rather than upon ratification by the Member States.

Failure to ratify and implement the Treaty within the next 12-18 months could have repercussions for the enlargement process, particularly if rejection of the Treaty meant that parts of it had to be renegotiated, as in 1992-93 after the negative Danish referendum on the TEU. The winding up of the European Coal and Steel Community (ECSC), the Treaty on which is due to expire on 23 July 2002, might also be jeopardised. The Protocol annexed to the Nice Treaty "on the financial consequences of the expiry of the ECSC Treaty and on the research fund for coal and steel" will be the legal basis for proposals already made by the Commission.[110] If the Treaty is not ratified by 23 July 2002 "the post-ECSC legal situation could prove very uncertain".[111]

B. Ratification by the United Kingdom

1. The background[112]

Treaties are ratified on behalf of the UK by the Foreign Secretary or his representative, acting on the residual authority of the Crown (the so-called Royal Prerogative). However, this statement must be qualified in three ways to be applied to the Treaty of Nice:

i Starting in the 1920s, and continuously since the 1930s, there has been a constitutional practice (not a law) known as the Ponsonby Rule which requires that all treaties subject to ratification should be laid before Parliament for information and to give Parliament an opportunity (not always taken) to debate them. The formal submission of the treaty text to Parliament as a Command Paper, together with the debates on the *European Communities (Amendment) Bill* cover this requirement for European Community treaties.

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[110] COM(2000)519; COM(2000)520 and COM(2000)21.

[111] *European Report*, 14 March 2001.

[112] Adapted from Research Paper 97/112, *The European Communities (Amendment) Bill: Implementing the Amsterdam Treaty*, 5 November 1997.

ii When the UK joined the Community in 1973, accession was preceded by the passing of an Act of Parliament which made the Treaty and the law deriving from it applicable within the UK. This was the *European Communities Act 1972*. On all subsequent occasions when new treaties have been agreed, including treaties of accession, there has been new legislation in the UK to amend the *European Communities Act* so that those parts of the new treaties which are intended to have domestic legal effect are also made applicable within the UK. Consequently similar legislation is required to cover all parts of the Nice Treaty which are intended to have direct legal effect within the Member States. These parts are also sometimes described as forming part of the "Community legal order". Under British constitutional practice the passage of the implementing legislation is not formally part of ratification, but it will have to precede ratification.

iii Under the *European Parliamentary Elections Act 1978* the British Parliament introduced a specific limitation to the freedom of the government to ratify treaties on the basis of the prerogative power. Under this Act, Parliament has to give its explicit approval (by Act of Parliament) to any future treaty or other international agreement which increases the powers of the European Parliament. The extension of co-decision in the Nice Treaty makes it such a treaty and therefore it will have to be approved by the British Parliament for this purpose.

2. Could there be a referendum?

There is no constitutional requirement to hold a referendum for any purpose in the UK, but Parliament is free to legislate for a referendum on any question at any time. Parliament cannot be formally bound by the outcome of a referendum, but a referendum could be made to have other legal effects. For example, referendum legislation might stipulate that, depending on the outcome, a minister will lay before Parliament an Order in Council which would either bring into force or repeal an Act of Parliament. Such a provision could, if Parliament so decided, be added to a European Communities (Amendment) Bill relating to the Treaty of Nice.

The Leader of the Opposition, William Hague, called for a referendum on the Amsterdam Treaty at the Scottish Conservative Party conference on 27 June 1997. The demand for a referendum was repeated by the then shadow Foreign Secretary, Michael Howard MP, at the Conservative Party Conference on 8 October 1997. Mr Hague has said that a Conservative government would not ratify the Treaty of Nice as it stands.[113]

The Prime Minister, Tony Blair, rejected calls for a referendum on the Amsterdam Treaty in parliamentary answers of July 1997,[114]and does not intend to hold one on the Treaty of Nice.[115]

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[113] HC Deb, 11 December 2000, c353.
[114] HC Debates, 2 July 1997, c289 and 9 July 1997, 933.

The Prime Minister, Tony Blair, rejected calls for a referendum on the Amsterdam Treaty in parliamentary answers of July 1997,[114]and does not intend to hold one on the Treaty of Nice.[115]

3. European Communities (Amendment) Bill

A European Communities (Amendment) Bill will be introduced to amend the *European Communities Act 1972* (ECA) to approve those parts of the new Treaty that need to have legal effect in the UK and in UK courts. The Bill will probably be short, consisting of only two or three clauses. The purpose of the Bill will probably be to "make provision consequential on the Treaty",[116] but there will be no reference to ratification in the Bill because the ratification of treaties by the UK is a matter for the Crown. Successive European Community (Amendment) Bills have been designed to make all the legislative provision necessary for the implementation of the new Treaty in question, clearing the way for the Government to deposit an instrument of ratification after the Bill has received the Royal Assent and become an Act of Parliament.

The Bill, if passed, will amend the *European Communities Act 1972,* i.e. the statute governing the fundamental relationship between the UK and the European Communities. There has been no move to alter the name of the 1972 Act to reflect the creation in 1993 of the European Union because the British Government has regarded the Union as essentially inter-governmental. The *European Communities Act 1972* gives legal effect in the UK only to the main Community Treaty (TEC), along with the treaties on the European Coal and Steel Community and the Atomic Energy Community. Any Treaty of Nice amendments in second and third pillar TEU areas will be like other international treaties which are binding externally on the UK, but not enforced internally by British courts.

Members of Parliament have expressed concern that new procedures introduced for Government bills at the beginning of the current session might affect the debate on the Bill. Under new procedures, most Government bills are now subject to timetabling after the Second Reading debate. This matter was raised at the Foreign Affairs Select Committee evidence session on 7 March 2001. Sir John Stanley asked whether this constitutional bill would be guillotined at the end of Second Reading, as far as the subsequent Committee stage was concerned, to which Mr Vaz replied that "all the proper procedures … will be followed, in respect of this Bill".[117] He continued:

> We will follow all the procedures, we will give enough time for a proper, thorough debate on these issues, as we have always done. I cannot tell you now

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[114] HC Debates, 2 July 1997, c289 and 9 July 1997, 933.

[115] HC Deb, 11 December 2000, c356.

[116] See *European Communities (Amendment) Bill* to approve Treaty of Amsterdam in 1997, Bill 71, 1997-98.

[117] Keith Vaz, Minutes of Evidence, Foreign Affairs Committee, 7 March 2001.

> and deal with any questions about the guillotine, or about how long it is going to take to get through.[118]

The Government also insists that it would like to ratify the Treaty as quickly as possible.

C. Ratification in the other Member States

Most other Member States will ratify the Treaty via a parliamentary process, although Ireland will hold a referendum on ratification in May 2001.[119] Below is a synopsis of the ratification procedures in the EU Member States.

Austria
There is likely to be a vote on the Nice Treaty in the National Council, for which a two-thirds majority will be required. A referendum would only be necessary if the Treaty could be termed an amendment to the Constitution as a whole.

Belgium
EC/EU treaties are generally considered to be "composite" treaties, that is to say, they do not deal exclusively with matters of either community, regional or federal competence as set out in the Belgian constitution. Arrangements for the ratification of such treaties are laid down in a cooperation agreement between the federal authorities and the regional and community authorities and are designed to strike a balance between the autonomous prerogatives of the different components of the state. All parties at national and sub-national government levels are involved on an equal footing at each stage of the ratification procedure, although the whole process is co-ordinated by the federal Foreign Affairs Ministry. Composite treaties are signed by the federal minister for foreign affairs and the minister designated by the government of the regions and/or communities concerned.

Germany
The *Bundestag* and the *Bundesrat* will need to approve the Treaty by a two-thirds majority vote. The resulting law is then signed by the President. However, the German Constitutional Court (Article 93(1)) may have to take a decision on the constitutional implications of the Treaty, a process that could take around six months. Referendums are ruled out in principle by the German Constitution, unless the matter at issue relates to re-organisation of the federal Länder. The whole ratification process could take around one year. The *Länder* are unlikely to reject the Treaty given the Annex IV Declaration pledging future action on the delimitation of competences.

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[118] Keith Vaz, *Ibid.*

[119] "The Government have decided that a Referendum will be held here, in view of the fact that ratification of the Treaty will require constitutional change", *Treaty of Nice White Paper*, Pn 9544, 28 March 2001.

Denmark
On 27 February the Danish Ministry of Justice report confirmed that the Nice Treaty did not involve a transfer of power to a supranational organisation and could therefore be passed by a simple majority in the unicameral parliament, the *Folketing*.[120]

There are two possible routes for ratification according to the Danish Constitution. In order to ratify a treaty which involves the transfer of powers to a supranational organisation like the EU, there must be either a five-sixths majority in the *Folketing*, or, if there is a smaller majority in the *Folketing*, ratification can take place if the Bill is confirmed in a referendum. Had the Treaty been deemed to require a constitutional amendment, the procedure would have been even more demanding. This would have to be passed by two successive parliaments, with intervening elections, and then confirmed by at least 40% of the electorate. As there is still a strong EU opposition movement in Denmark, a referendum could have presented difficulties for the government.

Spain
The ratification of the Treaty of Nice will take place according to the special procedure laid down in Article 93 of the Spanish Constitution, which requires an absolute majority in the Congress of Deputies.

Finland
Treaties which enter into the domain of the legislative power of Parliament require approval by Parliament. Parliamentary approval is by a simple majority of the votes cast in the final, third reading of the Bill concerning the Treaty. However, if the provisions of the Treaty are at variance with the Constitution, the Bill has to be approved by a majority of two thirds of the votes cast in the third reading. The final decision on which procedure to apply will be made by the Constitutional Law Committee of Parliament.

Obligatory referendums do not exist under the Finnish Constitution. An optional referendum may be held for consultative purposes.

France
It is the President of the Republic who ratifies treaties, but parliamentary authorisation is necessary for treaties which relate to international organisations. There is no obligation to hold a referendum, although a referendum was held on the Maastricht Treaty. The governing left-right cohabitation 'delivered' the Nice Treaty as a success and has promoted it in a positive light. Still scarred by the narrow referendum vote on the TEU, the government is unlikely to submit the new Treaty to a referendum.

Greece
According to the Greek Constitution, the Treaty requires parliamentary ratification (simple majority). Article 44 of the Constitution allows the possibility, in the case of vital

[120] *Agence France Presse*, 27 February 2001.

national interests, for the President of the Republic to call a referendum after a resolution supported by a majority in Parliament on a proposition from the Council of Ministers.

Ireland

If ratification of an international treaty requires changes to the Irish Constitution, then a referendum is certain. Ireland is to hold a referendum on the Treaty of Nice (and on three other matters which will, it is hoped, boost turnout) on 31 May 2001.[121]

Traditionally Ireland has been among the most enthusiastic of EU Members, but there is now a well-organised anti-EU campaign led by Anthony Coughlan.[122] Sinn Fein has also called for a no-vote on the grounds that the Treaty would endanger Irish neutrality and relegate the country to the EU 'second division'.[123]

The referendum will be the first test of public attitudes towards the EU since the dispute between the government and the EU Commission over Ireland's budget and compliance with the Maastricht EMU criteria. By 2004 Ireland is predicted to become a net contributor to the EU budget. The government has appealed to the Irish electorate to acknowledge that it has benefited from EU membership and should now support the Treaty and EU enlargement so that other states will be able share the benefits they enjoyed and which helped to boost the economy.[124]

Italy

Under the Italian Constitution, both the Senate and the Chamber of Deputies must authorise the ratification of the Treaty, on a vote by simple majority. This procedure could take an estimated six to twelve months. The Constitution does not provide a basis for a direct obligation to hold a referendum on ratification of the Treaty.

Luxembourg

According to the terms of Article 37 of the Luxembourg Constitution, the Grand Duke concludes treaties, but they are not effective until they have been approved by the Chamber of Deputies. The Luxembourg Constitution does not make provision for referendums as an instrument of ratification of international treaties.

Netherlands

The ratification of the Treaty of Amsterdam requires the vote of the national parliament, by a simple majority of votes.

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[121] The government is considering postponing this until early June because of the foot-and-mouth crisis. Fine Gael have called for a postponement until the autumn.

[122] There have been press reports of support for Mr Coughlan's campaign from Conservative eurosceptic organisations such as the European Foundation.

[123] *Irish Times*, 9 April 2001.

[124] *Irish Times*, 10 April 2001.

Portugal
Ratification is completed by means of a decree adopted by the Assembly of the Republic, following a report by the competent Standing Committees. A referendum might be held. A new Constitution came into force in October 1997, and established that a referendum can be held on questions of relevant national interest that concern international conventions. The result of the referendum is legally binding when the number of votes is superior to half the number of electors. Ratification by the Portuguese Parliament will follow, having taken account of the result of the referendum.

Sweden
The approval of the *Riksdag* (the Swedish Parliament) by three-quarters of those voting is required if a treaty relates to a subject over which the Parliament has competence.

XVIII The Post-Nice Agenda

At the request of Germany it was agreed that another Intergovernmental Conference should be convened in 2004 to tackle issues raised by the Nice process and matters that will become more urgent as enlargement begins. Candidate states would be invited either to participate or to observe, depending on progress in their accession negotiations. The Nice Treaty, like its Maastricht and Amsterdam predecessors, includes a provision on the timing of the next IGC. The IGC process itself is becoming institutionalised, which is justified largely, but only temporarily, by the enlargement process. One commentator charts the almost relentless timetable for the European reform process over a much longer period:

> The process initiated at Fontainbleau in 1984 led to the Single European Act that came into force in July 1987. In June 1988 the Hanover European Council asked Jacques Delors to chair a group on Economic and Monetary Union, which led to the Maastricht Treaty, which came into force in November 1993. In June 1994 the European Council at Corfu appointed a reflection group chaired by Carlos Westendorp to prepare a new conference, which led to the Treaty of Amsterdam, which came into force in May 1999. In June 1999 the Cologne European Council called a new intergovernmental conference. This leaves only nineteen months in sixteen years free from treaty-linked activities.[125]

A Declaration in Annex IV of the Nice Treaty concerns EU developments beyond the Treaty of Nice and seems to be aimed at changing and widening the IGC process by bringing in the views of the public. The European reform process is to be continued via discussion and consultation during the current and next EU Presidencies (Sweden and Belgium). The Swedish Presidency will report to the European Council in Göteborg in June 2001, and this will be followed by a declaration "containing appropriate initiatives

[125] *Common Market Law Review*, Vol.37, No. 4, August 2000, Footnote to guest editorial, Philippe De Schoutheete, "The Intergovernmental Conference", p.845.

for the continuation of this process".[126] The process is to consider *inter alia* the following:

- A more precise delimitation of competencies between the EU and the Member States in accordance with subsidiarity;
- The status of the Charter of Fundamental Rights, which was 'proclaimed' at Nice;
- A simplification of the Treaties to make them clearer and accessible without affecting their meaning;
- The role of national Parliaments in the European architecture.

The '*inter alia*' element will, of course, develop and expand. It could eventually include, for example, new provisions on the Common Agricultural Policy, including fisheries; the organisation of EU relations at world level and a reconsideration of how the single market operates within WTO standards; and defence and military ambitions and how these take account of NATO.

There has already been some criticism of the timing of the next IGC, as there will also be EP elections in June that year, thus adding to an already heavy European agenda. On the other hand, it could be argued that an IGC debate at this time would offer the European electorate a broad range of topical issues on which to base their voting preferences, thereby giving the IGC process a greater degree of democratic legitimacy.

The four main agenda items for 2004, as set out in the Nice Declaration, are considered below.

A. Delimitation of competences

This was discussed in relation to the debate on subsidiarity during the Maastricht negotiations. The inclusion of Article 3b (now Article 5) was the first step towards a delimitation of powers between the Union and the Member States. It enshrined in the Treaty a presumption in favour of action at national, rather than Community, level: except in those areas in which the Community had exclusive competence, it would act only if it could be shown that action at EU level would be better than at national level. It also endowed the EC Treaties with the first real mark of a constitution.

Germany would like the next IGC to clarify the constitutional architecture of the EU. The German government, which has been under pressure from the state or *Länder* governments to seek a more defined role for the regions in a future delimitation of powers, proposed renewed discussion of this issue at the next IGC. The *Länder* governments threatened not to ratify the Treaty of Nice in the *Bundesrat* unless this subject was tackled at another IGC. A text is envisaged that will set out responsibilities in areas either of exclusive Community competence or of national competence. In spite of

[126] SN 533/00, Annex IV, p.83.

the *Länder* insistence, the text would probably not include an allocation of competences at a sub-national level. This would still be for the national governments to decide.

This idea might appeal to both European integrationists (or 'federationists', as they are also called) and Eurosceptics for different reasons. Eurosceptics might take heart from the German *Länder* governments, which are keen to resist encroachment from Brussels. For integrationists who want to see the EU evolve along federal lines, a strict delimitation of powers might resemble the kind of Union set out by German Foreign Minister, Joschka Fischer, in his far-reaching speech in May 2000.[127] On the other hand, integrationists might be alarmed rather than encouraged, because a clear, fixed division of competences might prevent change if it was not used to roll back the frontiers of policy and the *acquis*.

Samuel Brittan, writing in the *Financial Times*, suggests there is an inherent incompatibility between the *acquis communautaire* and subsidiarity. He points out that the *acquis* tends to "entrench the status quo and place an obstacle in the way of those who would like to repatriate aspects of policy, such as the Common Agricultural Policy, to the national states".[128] He concludes that a "sensible aim" for the 2004 IGC would be to:

> … try to transform the mishmash of treaties that now make up the EU into a coherent constitution. That is by far the best way of limiting the ambitions of those who want to give the central organ more power over, for instance, taxation or labour conditions than the Washington administration has in the individual states of the US.[129]

There has been very little debate on this subject in the UK to date. Jeremy Smith, director of the Local Government International Bureau, tackled the question of delimited competences in a speech on 16 March. In his view there is "an unanswerable case to clarify the powers, or competences, of the EU and EC", but a "quest for a strict division between the EU's competences, and those of the Member States, is doomed to failure, as well as being undesirable".[130] Since a large majority of the EU's powers are shared with the Member States, "to separate them out would mean we end up with an EU that bears no resemblance to the existing one". He also points out that "the more we break down competences into micro-competences, the less flexibility we have to address new issues, new challenges, as they arise".[131] He favours a broader definition of competences that would set out for EU citizens which competences carried with them the power to make regulations and/or the power to issue directives. He also calls for "clarity about the type

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[127] Speech to Humboldt University, Berlin, "From Confederacy to Federation – Thoughts on the finality of EU integration". Full text can be found on German Embassy website at: http://www.derman-embassy.org.uk.

[128] *Financial Times*, 26 April 2001.

[129] *Ibid*.

[130] Jeremy Smith, "European Governance: moving towards a better use of subsidiarity and proportionality", European Commission public hearing, 16 March 2001.

[131] Jeremy Smith, Local Government International Bureau, 16 March 2001.

of issue requiring a regulation, and those requiring directives" and concludes that "by defining competences broadly, we have room for future flexibility. [132]

As the Treaty stands there could not be a clear division of competences, as there is, for example, in the German constitution. The Preamble to the Treaty sets out in general terms the political, economic and social objectives of the Union, and this, combined with the effect of Article 308,[133] means, for example, that the Council may in fact legislate in matters outside the general competence of the Community but which are relevant to the single market. Although possible in theory, in practice it would be very difficult to present a positive listing of national or EU competences. A negative listing, setting out those areas in which the EU or Member States could not act, might be more realistic.

The British Prime Minister supports the idea of a clearer delimitation of competences to be contained in a politically important, but not legally binding, set of principles. He said in a speech in Warsaw in October 2000:

> What I think is both desirable and realistic is to draw up a statement of the principles according to which we should decide what is best done at the European level and what should be done at the national level, a kind of charter of competences. This would allow countries too, to define clearly what is then done at a regional level. This Statement of Principles would be a political, not a legal document. It could therefore be much simpler and more accessible to Europe's citizens.[134]

B. Status of the Charter of Fundamental Rights

The Charter of Fundamental Rights was officially 'proclaimed' at Nice on 7 December 2000 and the Treaty Declaration requires that the status of the Charter be considered at the next IGC (in line also with the Conclusions of the Cologne European Council in June 1999). There was disagreement among IGC delegations as to the future status of the Charter, which was being drawn up in a separate but simultaneous process. Some Member States, headed by Germany, favoured a legally binding instrument incorporated into the Treaty and made subject to the jurisdiction of the EU courts. Others, headed by the UK, wanted a declaratory text that would provide a standard for human rights but would not have legal force. There was concern that the Charter might detract from the effectiveness of the Council of Europe's *European Convention on Human Rights*, to which all Member States are parties.[135] Its impact in the post-Nice period is somewhat

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[132] *Ibid*.

[133] "If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures."

[134] FCO website, http://www.fco.gov.uk/news/speechtext.asp?4215.

[135] For background to the Charter and the arguments surrounding incorporation, see Library Paper 00/32, *Human Rights in the EU: the Charter of Fundamental Rights*, 20 March 2000.

unclear. The uncertainty over its status leaves the ECJ with a creative role with regard to human rights in the Member States, as well as an interpretative one. The Charter is not legally binding, is of uncertain political value and is not internally justiciable because it is outside the remit of EC competence. However, it is unlikely that the ECJ will ignore its provisions, particularly as the EU moves towards a more human rights-based constitutionalism.

The British Government's position on the status of the Charter has been set out in its White Paper and in parliamentary answers, including the following:

> Promotion of human rights is something to be proud of. The charter sets out for the first time, clearly and in a single document, a range of fundamental rights, freedoms and principles recognised within the EU. People need to know their rights, and the EU institutions need to respect them. The charter will help on both counts. The charter is a political declaration; it is not legally binding. It was neither incorporated, nor attached nor referred to in the treaties, just as we said.
>
> The Government have made clear their support for the charter. We have also made clear our view that it should remain a political declaration.[136]

C. Simplification of Treaties

The need to simplify the Treaties to make them more accessible and comprehensible has been raised at successive European Councils and IGC summits and has been the subject of a number of reform proposals.[137] Various codified versions of the Treaty were produced after Amsterdam, although it was also argued that it would be impossible to make the Treaties more readable without changing their meaning. One format that was much discussed was for a two-part Treaty comprising in the first part a 'proto-constitution' setting out the aims, objectives and principles of the Union; and in the second part more detailed subject-based provisions. The first part would be subject to the full ratification procedures of the Member States, while the second would be subject to a less rigorous amendment process. This raises a number of questions as to how, when and by whom such a such a revision would be co-ordinated.

A similar formula was proposed by Romano Prodi in a speech in March 2001 to the EP Constitutional Affairs Committee and national parliamentarians, in which he also emphasised the role that national parliaments might play in future treaty revision:

> Perhaps, and particularly to enable national Parliaments to play a more significant role in developing general policy and carrying out democratic controls, it would

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[136] Keith Vaz, HC Deb, 23 January 2001, c554W.

[137] For information on proposals in 1995 see Research Paper 95/123, *Towards the IGC: Weighing the Options*, 5 December 1995. 1996-7 IGC documents on this subject are IGC CONF/97. Docs: 3838, 3849, 3901, 4100, 4101, 4105, 4106, 4111, 4112, 4113, 4116, 4122, 4123, 4124, 4125, 4130 (1, 2, 3), 4131, 4134, 4135, 4136, 4139, 4141, 4151, 4152, 4153, 4154, 4159.

> be a good idea to split the Treaties into two sections: a brief, comprehensible and transparent basic text containing primary legislation and an implementing text containing the other provisions. While the former should be ratified in the traditional manner by all Member States, revisions of the second part could use a simplified mechanism, with the Member States taking decisions by majority and, for example, national Parliaments giving Governments their tacit assent or prior authorisation.[138]

In the Amsterdam Treaty the Articles were renumbered to make consultation easier. However, the Treaty remains complex in its structure, incorporating as it does both amendments to the TEC and the TEU in one treaty, with renumbering for each distinct amending text. In a joint declaration attached to the Treaty of Amsterdam, it was decided that work on consolidating the Treaties should be continued so as to incorporate the amendments to previous Treaties made by the Treaty of Amsterdam. The aim was to produce legal texts that were clear and comprehensible to everyone.

Speaking to the Commons Scrutiny Committee in January 2001 about the Declaration on the future of the Union, the FCO official, James Bevan, set out the Government's position on the simplification of the Treaties:

> The aim that we support is as is written in the conclusions from Nice, simplification of the Treaties so that ordinary people can better understand what they mean without changing the meaning. There is another agenda which some of our partners are pursuing which is simplifying the Treaties to change the content, which we are reticent about, and/or simplifying the Treaties so that you can make it easier to amend them without having to have an IGC and without the agreement of all Member States. That is obviously something that we completely reject.[139]

D. Role of National Parliaments

A second EP chamber was one of the institutional reforms proposed for renewed debate in 2004. The rationale for this has been the need to remedy the perceived democratic deficit in the EU decision-making machinery and counter the shift of power away from national parliaments to the governing bureaucracy in Brussels. Although Treaty changes have improved communication between the two, there has been relatively little direct involvement of national parliaments with the EU institutions.

TEU Declaration 14 had invited the EP and national parliaments to "meet as necessary as a Conference of the Parliaments", known as the "Assises". The one and only such meeting in November 1990, before the opening of the Maastricht IGC, was not considered to have been a great success and there has been some reluctance to

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[138] Speech 01/128, 20 March 2001.

[139] European Scrutiny Committee, *Inter-Governmental Conference 2000*, Minutes of Evidence, HC 119, 10 January 2001, p 11.

institutionalise it. At Amsterdam it was proposed that the *Conférence des Organes Specialisées dans les Affaires Communautaires* (COSAC, the Conference of European Affairs Committees) might become a second chamber representing the Member State Parliaments.

Amsterdam gave Treaty status to COSAC in Protocol 13 and allowed it to comment to EU institutions on legislative texts, especially as regards subsidiarity, or on proposals related to the establishment of an area of freedom, security and justice which might bear on the rights and freedoms of individuals. The COSAC provisions reflected a compromise between those States that wanted a formalised COSAC with some of the functions of a second chamber, and those that saw its strength in its informality.

Romano Prodi outlined in his March speech to the EP Constitutional Affairs Committee and national parliamentarians proposals for the greater involvement of national parliaments in EU decision-making, particularly in influencing the Council:

> At national level, we need to examine whether the various mechanisms by which national Parliaments control Governments meeting in the Council of Ministers are adequate and fully meet the requirements of democracy or whether they need strengthening.[140]

The British Government supports the idea of a new institution representing the national parliaments. In an interview with the *New Statesman* in August 1998 the Foreign Secretary, Robin Cook, discussed the idea of a stronger link between national parliaments by setting up a new European forum:

> We need to look at ways in which the national parliaments meet together regularly. For instance, if there were to be a code of subsidiarity, it surely would be logical for a forum to be created in which national parliaments could meet to make sure these principles of subsidiarity were being observed and scrutinise the details. At the moment there is not an adequate basis for representation from national parliaments to come together to discuss Europe – and somewhere within the broad family of European institutions there should be room for that. If we do want Europe to thrive, if we do want popular support for Europe, we must develop some way to link in the parliaments of the member states.[141]

More recently the Prime Minister expressed his support for a second chamber his Warsaw speech in October 2000:

> I also believe that the time has now come to involve representatives of national parliaments more on such matters, by creating a second chamber of the European Parliament.

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[140] Speech 01/128, 20 March 2001.
[141] *New Statesman*, 14 August 1998, p.11.

> A second chamber's most important function would be to review the EU's work, in the light of this agreed Statement of Principles. It would not get involved in the day-to-day negotiation of legislation - that is properly the role of the existing European Parliament. Rather, its task would be to help implement the agreed statement of principles; so that we do what we need to do at a European level but also so that we devolve power downwards. Whereas a formal Constitution would logically require judicial review by a European constitutional court, this would be political review by a body of democratically elected politicians. It would be dynamic rather than static, allowing for change in the application of these principles without elaborate legal revisions every time.
>
> Such a second chamber could also, I believe, help provide democratic oversight at a European level of the common foreign and security policy.[142]

It has been argued that the European Council, which meets two or three times a year, has begun to represent a second EU (rather than EP) chamber, albeit one composed of national government, rather than parliament, representatives. In so far as a second EP chamber might concentrate on monitoring the application of subsidiarity and proportionality, the heads of state and government could also perform this function. The European Council has a role in the wider decision-making process by deciding the overall legislative aims and principles of the Union, and the direction it will take on global issues and in the international arena. It does not have a say in the adoption of individual legislative proposals, but it is unlikely that there would be agreement on a second chamber with direct influence in this area for fear of delaying agreement.

E. The Future of Europe Debate

On 7 March 2001 the Swedish Presidency launched the consultation process that will continue until the next IGC and involve EU-wide input from political, business and academic circles as well as civil society, the general public and the applicant states.

In his inaugural speech, the Swedish Prime Minister, Göran Persson, opened up the debate to everyone in Europe, emphasising that further reforms were needed to make the EU Treaties and processes understandable to all EU citizens. He made some suggestions as to how the consultation might be made more effective:

> One idea would be to invite representatives of civil society to debates and hearings in the Council of Ministers. Another would be to make the thematic debates of the Council more open and more frequent, and address issues from new angles. We should also review the time given to national parliaments to respond to initiatives before the Council and the European Parliament take decisions.[143]

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[142] From FCO website at: http://www.fco.gov.uk/news/speechtext.asp?4215.
[143] From: http://europa.eu.int/futurum/flash/flash_002persson_en.htm.

On 6 February the IGC Commissioner, Michel Barnier, addressed the EP Constitutional Affairs Committee about the future integration process in Europe. He proposed that Member States should choose whether or not they wanted more integration, leading eventually to a constitution. He told the Committee that it was perhaps time "to lift the current ambiguities about the Union's final destination"[144] and that the Laeken European Council should test the resolve among Members for further integration. He continued:

> Simplification of the treaties and integration of the Charter of Fundamental Rights would seem to be highly legal exercises. But when it comes to the division of powers or the place of the national parliaments, I hope we will be fully aware of the potentially regressive nature of these issues, if they are not addressed properly.
> ---
> More integration would also mean the Member States accepting the emergence of a real common foreign and security policy. All the Member States must make an effort, those who are not keen on Europe's power being directed by just a few of the Member States, as well as those who fear that European power might weaken their national room for manoeuvre.
>
> What we have to make people understand is that, in moving towards a real European foreign policy, everyone stands to win. We owe it to public opinion, which tends to get more and more disaffected with Europe when we appear to be powerless to intervene in a real international crisis.
>
> On this fundamental issue of integration, it is perhaps time to do away with the current ambiguities concerning the aims of European Union. These ambiguities, this hybrid nature of Community integration, have enabled us to make spectacular progress in the past. Europe is a federal entity: look at its currency. Europe is an open entity: look at its market. And yet there is a clear feeling that the virtues of this creative fuzziness are beginning to fade. And that, with enlargement, unless Europe is prepared to say what it is setting out to do, it will fail to recognise what it is.
>
> The Laeken declaration, with all its ambitions for the future of Europe, could be the right opportunity to show how much the Member States want integration. It will be the opportunity, to some extent, to say clearly what we want and, I hope, to rally as many people as possible around this project a project for re-founding Europe.
>
> Then and only then should we be asking what kind of institutions we need to bring this project to fruition. It will be a question of their legitimacy, their effectiveness, and their competencies.

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[144] 6 February 2001, Speech 01/54 , "Reflections on the Future of Europe". From Europa website at: http://europa.eu.int/rapid/start/cgi/guestfr.ksh?p_action.gettxt=gt&doc=SPEECH/01/54|0|RAPID&lg=EN

> We shall have to bear in mind the conclusions of the White Paper on governance, to spell out more clearly who does what and how. This approach is distinct from, but complementary to, the legal and technical debate on the practical arrangements for delimiting powers and securing the means to enforce them.
>
> The question of a European constitution will come up; this is not something to be feared, but a matter to be addressed from a non-ideological standpoint. And I should appreciate it if people could reflect on what these words mean. And on the advantages and disadvantages of moving on from a developing system, that is, what Europe is today, to a completed system.[145]

In a speech on 20 March 2001 Mr Prodi emphasised the "even more active role" that national parliaments would have to play in preparing for the next Treaty revision on the basis of methods to be set out at the Laeken European Council in December 2001.[146]

The British Prime Minister sees the next IGC as an opportunity to set limits to the powers of the Union in a stricter adherence to the principle of subsidiarity, and also to repatriate competences:

> The important thing about this new debate is that it is about the issue of subsidiarity and the definition of the competencies between the European Union and the nation state. There was a very broad acceptance around the table of the fact that there are areas in which Europe has to co-operate--indeed, co-operate more closely together--but that there are also areas in which the European Union does not need to be present. There are, indeed, areas in which some of its powers could be returned to the nation state. Therefore, that argument is of crucial national importance for the future of this country and of Britain in Europe. As a result of what we have agreed, we should be able to participate in that process. The right hon. Gentleman was quite right to say that Britain and Germany in particular have many interests in common there.[147]

The Commission's *Futurum* website at http://europa.eu.int/futurum/, to which contributions are invited from individuals, governments and parliaments, has already become a forum for a wide-ranging debate. Professor Clive Church, the Jean Monnet Professor of European Studies at the University of Kent at Canterbury, noted the "lack of self confidence and constructiveness" in the British contributions and commented:

> … too many seem willing to ignore the opportunity to help design an improved structure for the Union - perhaps because it disproves the charge that the EU will not accept criticism. Not to respond means ignoring ideas which fit in with much

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[145] 6 February 2001, Speech 01/54 , "Reflections on the Future of Europe"..
[146] Speech 01/128, 20 March 2001.

> British thinking: delimiting powers; involving national parliaments more; clarifying the obligation of EU institutions to respect fundamental rights simplifying the treaties; and encouraging local decision making and enlargement. These issues have many technical and political problems and need a lot of work, little of which seems to be being undertaken in the UK. This suggests that, yet again, the UK will fail to influence change when it can do so, exposing itself as in 1950, 1957 and 1990 to waking up, too late, to the fact that our partners had produced something which we did not like.[148]

On 29 April Chancellor Schröder proposed an overhaul of the EU's powers and institutions to make them more democratic. Mr Schröder's plan is contained in one of five policy papers being prepared for the SPD party conference in November. An SPD policy resolution on European governance is to be adopted at the autumn conference and a draft of the resolution, reported to have been drawn up under the Chancellor's guidance, is to be discussed by party leaders on 7 May.

A report in *Der Spiegel* on 30 April states that the draft envisages a clear division of powers between the three main institutions. The Commission would become the EU government, a strong executive with wide-ranging powers. It would be accountable to a two-chamber EP similar to the German parliament. The second chamber would be formed from the present Council of Ministers and would be composed of government representatives from the Member States. It would thus resemble a senate in which national leaders would be 'Euro-senators'.

The Commission would be headed by a president elected by one or both chambers in the remodelled EP. The EP would have control over the central government's budget and spending.[149]

The paper also calls for a repatriation of some EU responsibilities to national governments, mentioning in particular agricultural policy and aid for infrastructure projects.[150]

The British Government has apparently welcomed the intervention, but conceded that it is opposed to some of the ideas, in particular the proposal that the Council of Ministers should become a second parliamentary chamber.[151] There has been a cautious and non-committal response from France, while the Belgian government found the ideas 'interesting' and the Dutch described them as "well prepared and well thought-out".[152]

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147 HC Deb, 11 December 2000, c 358.

148 "Positivism Please", Future of Europe debate, 23 April 2001, *Futurum* contributions at: http://fe.lrt.be/Public/MessageGet.cfm?&Thread_ID=1&Message_ID=314.

149 See reports in *Guardian*, *Independent* and *Daily Telegraph*, 30 April 2001.

150 *Financial Times*, 1 May 2001.

151 *Ibid*.

152 *Ibid*.

An editorial in the *Financial Times* suggests that "such a blueprint may be inappropriate for the EU, which is a hybrid of inter-governmental and federal structures", but approves the opening of a debate on this subject by the SPD, in spite of the irritation it might cause to governments preparing for elections this year or next (including the UK, France and Germany).[153]

F. The IGC Process

Almost all the EU leaders agreed after the Nice summit that the way treaty negotiations are conducted should be changed. There is as yet no clear indication as to how any consultation process would feed into the IGC itself in 2004. Although a variety of organisations as well as the Member States and applicant states contributed to the Nice IGC process, the final agreement seemed to take little account of these contributions. Two methods have emerged as a basis for discussion: the convention and the forum methods, which are described briefly below:

1. The Convention Method

A 'convention' process has been proposed similar to that used to draw up the European Charter of Human Rights.[154] This method appears to have had the overwhelming support of Member States for the Charter, although it might not be appropriate for the kind of wide consultation that has been proposed for the IGC. The 'convention' would include representatives from existing and candidate states, national parliamentarians and MEPs. Concern has been expressed that this might become too unwieldy to be effective in working out and agreeing the detailed, technical issues such as simplification of the Treaties and defining competences. Such a body might have at least 100 members, possibly more if coalition and opposition party representatives were included. Although the convention method might put governments and parliaments on an equal footing during the consultation period, the final decisions would in all likelihood, and for practical reasons, be taken by governments alone. Mr Prodi has said that a convention method for this purpose would have to be "a tighter, more effective circle, a circle that will not necessarily be unanimous in its deliberations".[155]

2. The Forum Method

At the EP's Constitutional Affairs Committee on 5 February 2001 Commissioner Barnier suggested a year-long 'forum' process leading up to the next IGC. The EP, Commission, Member States, national parliaments and civil society would come together to discuss the future of Europe, but unlike the convention method, no decisions would be taken in the

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[153] *Financial Times*, I May 2001.

[154] For background, see Library Research Paper 00/32, *Human Rights in the European Union: the Charter of Fundamental Rights*, 20 March 2000.

[155] Speech to national parliaments and EP Constitutional Affairs Committee, 20 March 2001.

forum. It would be a way of debating issues and detecting trends, and its conclusions would be 'phased into' the work of the IGC.

3. Commission View

Romano Prodi envisages a three-phased process leading up to the next IGC, involving all the Member States and the applicant countries, with the objective of achieving by 2004 "a balanced and stable system which will allow an enlarged Union to operate democratically, legitimately and efficiently".[156] The first phase would be one of "open reflection" on the future of Europe, including "the widest possible debate at all levels of civil society and in political and scientific circles". Discussions should go beyond the subjects laid down at Nice for the 2004 IGC. The second phase, which would begin at the Laeken summit in December 2001 (at the end of the Belgian Presidency), would be an open "structured reflection" which should "crystallise around an operational synthesis of representative opinions canvassed in the previous phase". The third "and unavoidable" phase would be the IGC itself, which, given the groundwork he envisaged, could be brief.

[156] Speech to EP, 17 January 2001.