



## **Council Voting in the Constitutional Treaty Devil in the Details**

**Richard Baldwin and Mika Widgrén**

### **Abstract**

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

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

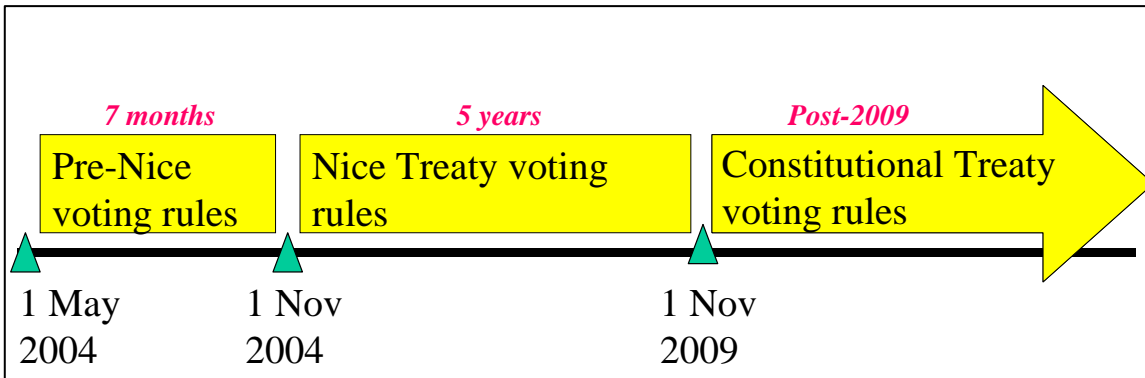
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## 2 | COUNCIL VOTING IN THE CONSTITUTIONAL TREATY

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

Figure 1. Timeline for the various voting rules agreed at the June 2004 summit



### 1. What did they do?

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

**Up to November 2004**, the pre-Treaty of Nice rules apply, i.e. qualified majority voting with weighted votes and the old majority threshold of 71% to win. The numbers of votes for the incumbent 15 member states are unchanged; those for the 10 newcomers are a simple interpolation of EU-15 votes as specified in the Accession Treaty.

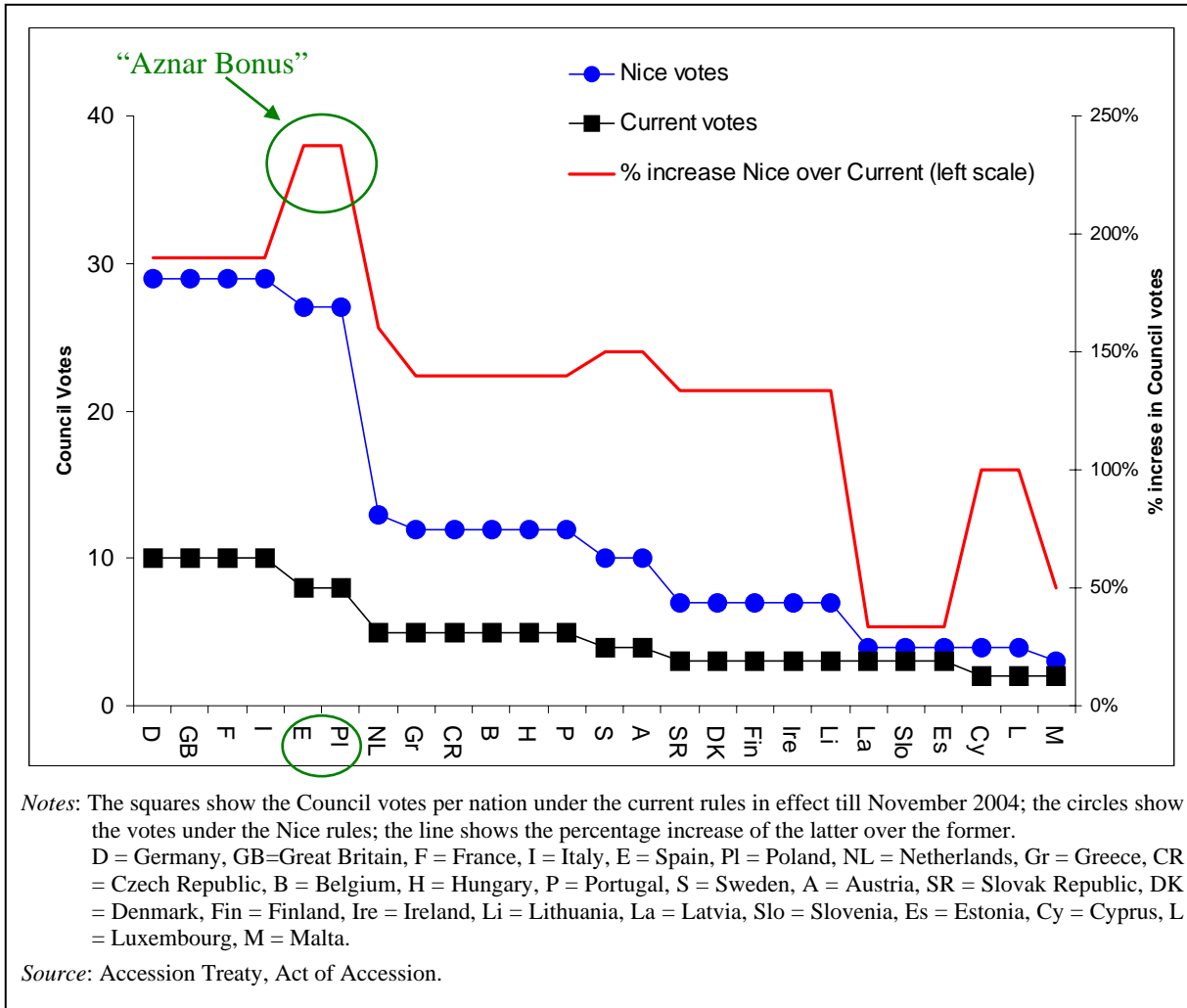
**From November 2004 to October 2009** the Nice Treaty rules apply (as per the *Draft Council Decision relating to the implementation of Article I-24*).

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

**From November 2009**, the new Constitutional Treaty (CT) rules will apply; weighted voting is out and double-majority is in. A winning coalition must represent at least 55% of EU members and 65% of the EU population. As a constraint on the blocking power of the biggest members, a blocking coalition must have at least four members (Germany plus any two of the six largest EU-27 members could block anything on the 65% threshold). This means that a qualified majority can be formed by a single, super majority consisting of all members but three. A last-minute summit compromise inserted the requirement that at least 15 members vote yes, but this is irrelevant; 15 members of 25 is 60% and thus greater than 55%, yet by the time these rules take effect, the EU should have 27 members and 55% of 27 is 15 (Bulgaria and Romania are pencilled in for membership in 2007). Thus the 15-member rule will be redundant when it takes effect.

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

Figure 2. The Treaty of Nice and Accession Treaty reweighing of Council votes



## 2. Analysis of power and efficiency

### 2.1 Winners and losers

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

Here we present our calculations for a specific numerical measure of power, the NBI.<sup>2</sup> The general idea behind the NBI is simple. We use a computer to look at how likely it is that each member's vote is crucial on a randomly drawn issue – crucial in the sense that its vote can make or break a winning coalition. We note that we used this measure to predict (in June 2003) that Valéry Giscard d'Estaing's draft Constitutional Treaty would be rejected.<sup>3</sup>

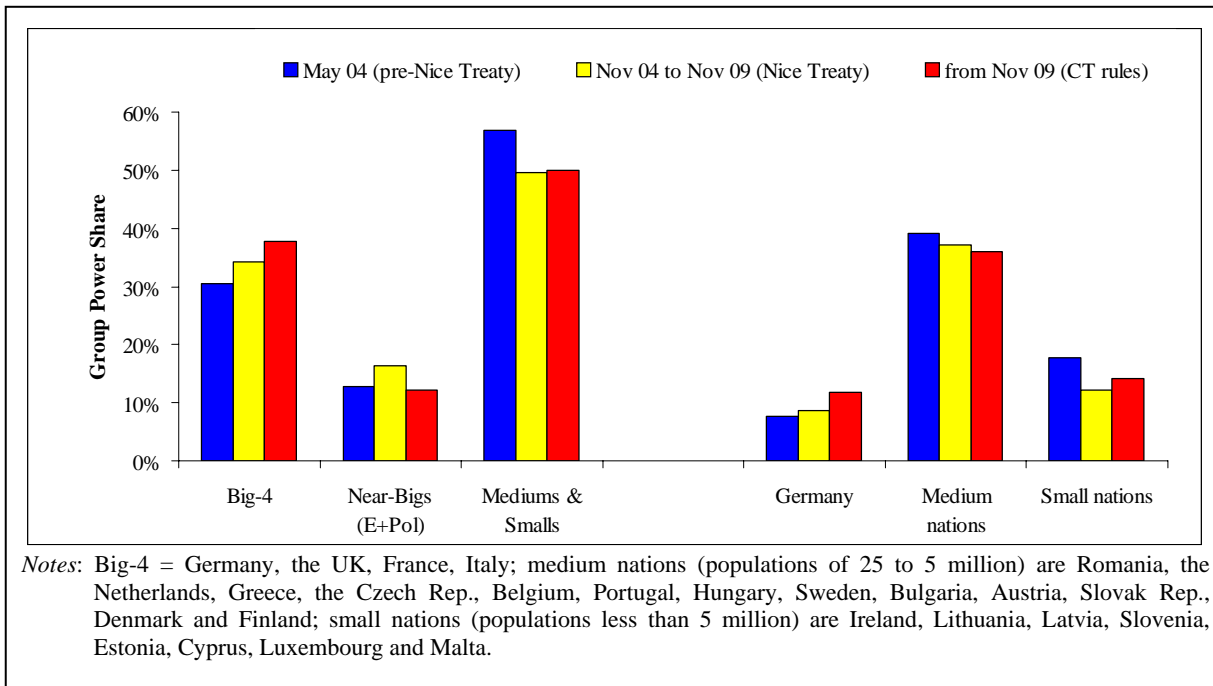
**Nice Treaty power changes.** The Nice Treaty rules will shift a great deal of power from small and medium-sized member states to the big and near-big member states (see Figure 3 for group definitions). While it was agreed in 2000, this power-shift kicks in only at the end of 2004. Spain and Poland as a group see their slice of the 'power pie' rise by about 3.5 percentage points – this is the fruit of the vote bonus agreed by Spanish President José María Aznar. The big-4's slice expands by about the same amount. The extra power for the bigs and near-bigs comes at the expense of the mediums and smalls.

<sup>2</sup> The particular measure is the 'normalised Banzhaf index' (NBI) invented by Penrose (1946) but named after its re-inventor, Banzhaf (1965). This measure cannot be worked out by hand since in the EU-25, there are over 33 million different line-ups of yes- and no-voters. In the EU-27, there are over 134 million.

<sup>3</sup> For a fuller explanation this and other technical issues, see Baldwin and Widgren (2004), *Winners and Losers under Various Dual-Majority Rules for the EU's Council of Ministers*, CEPS Policy Brief No. 48, CEPS, Brussels, April.

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Figure 3. Winners and losers, big versus medium-sized and small member states



**Constitutional Treaty power changes.** The Constitutional Treaty shifts even more power to the big-4, but this time, the near-bigs pay for the big-4's gain (the big-4's gain almost exactly matches the Spanish and Polish loss). We call this drop in Spanish and Polish power, agreed by the new Spanish President José Luis Rodríguez Zapatero, the 'Zapatero compromise'. When the Zapatero compromise kicks in after 2009, it will more than completely reverse the Aznar bonus, leaving these two near-big nations with a small drop in their combined power share. Small and medium-sized nations see little change in aggregate, but power shifts moderately from the mediums to the smalls.

### To summarise:

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The two-step voting-rule changes in the Nice and Constitutional Treaties will greatly boost the power of the EU's four largest members (Germany, the UK, France and Italy). The 2004 jump in big-4 power will come at the expense of small and medium-sized members. The 2009 jump in big-4 power will come at the expense of Spain and Poland.

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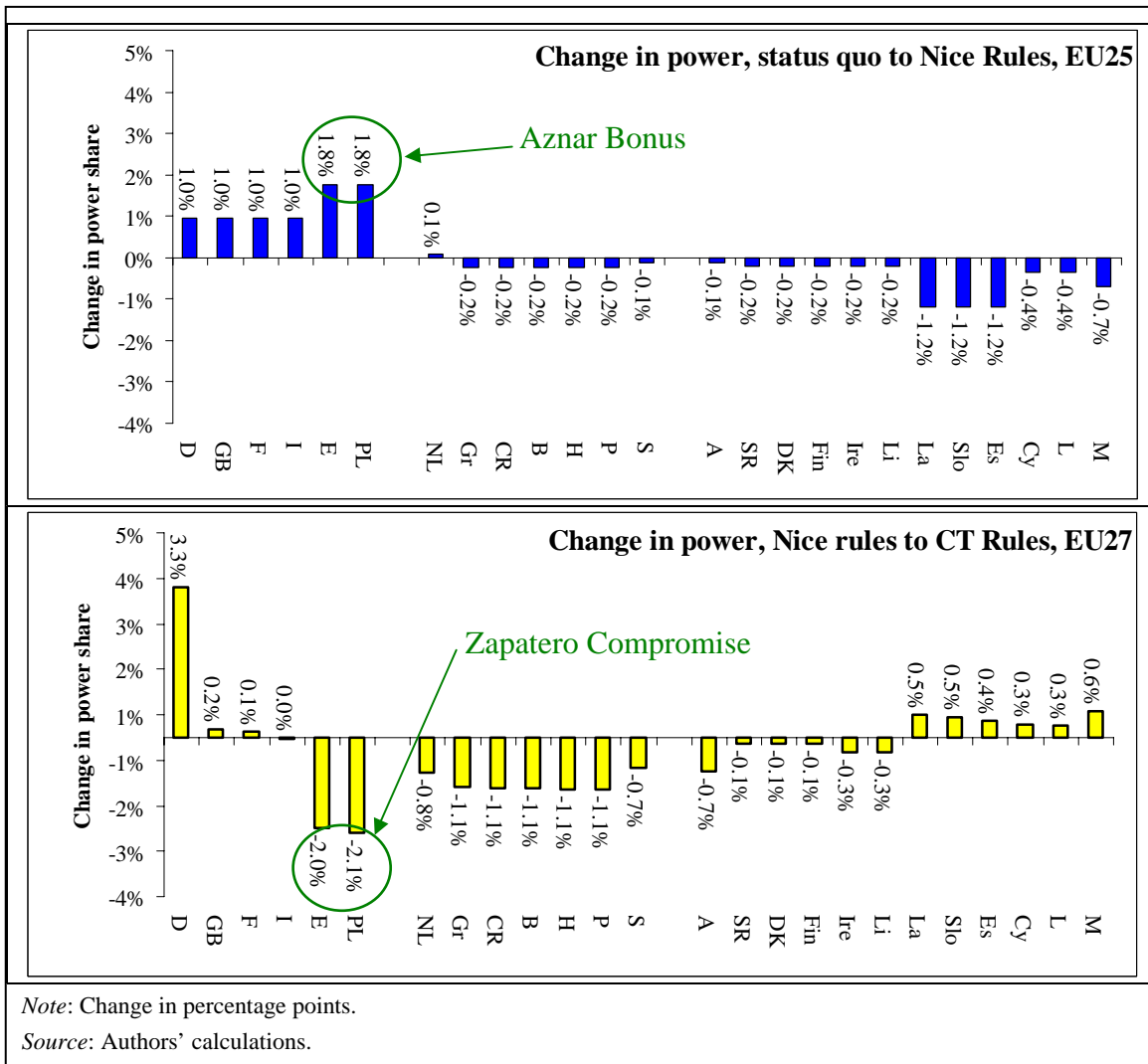
### Results by nation

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

**Changes in November 2004.** The top panel of Figure 4 shows that each of the big and near-big members will see their power boosted substantially at the end of this year. By contrast, all the mediums and smalls will lose with the cuts being particularly marked for the Latvia, Slovenia and Estonia. The extra-large losses to these three nations are because of their low allocation of votes under the Nice rules. The Nice Treaty allocated votes 'by hand' and these three nations – with 1 to 2 million people – were not at the table to argue their case. Without a natural benchmark-member at the table to fight for votes, these three fall-between nations were short-changed in the vote allocation undertaken by EU-15 leaders.

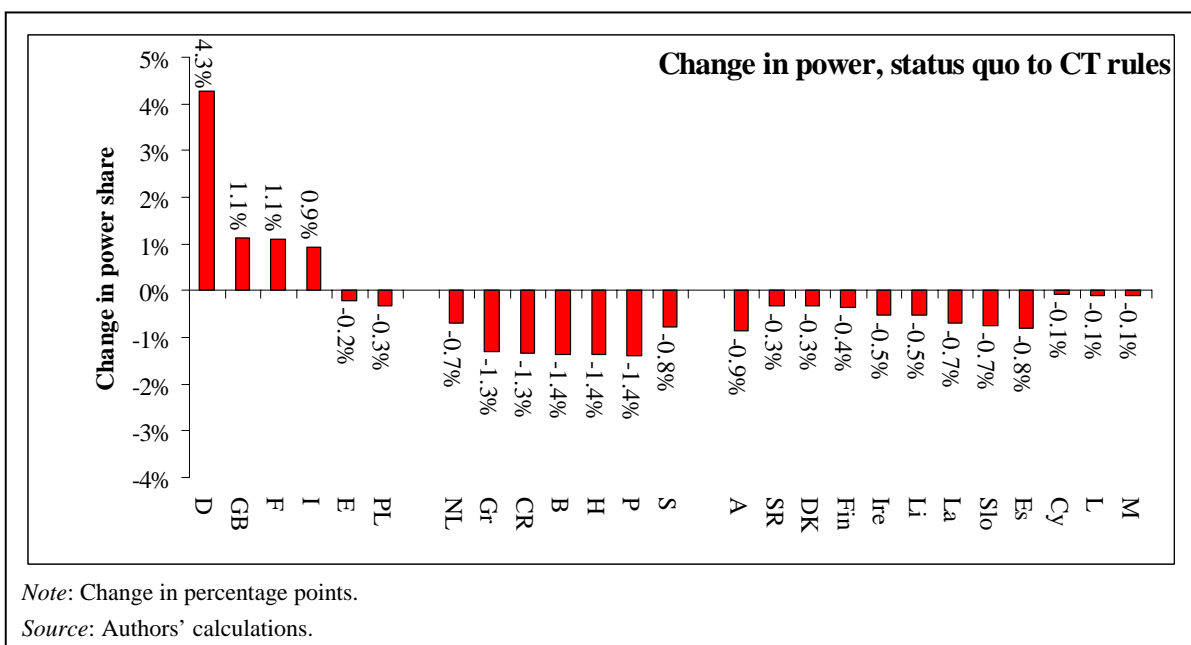
**Changes in November 2009.** The bottom panel of Figure 4 shows that the CT rules will shift even more power to Germany while taking a great deal of power away from Spain and Poland. In short, the Aznar bonus (Spain gained almost twice as much as France in the Nice-Treaty negotiations) will be more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

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



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

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



## 6 | COUNCIL VOTING IN THE CONSTITUTIONAL TREATY

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

- The big-4 and especially Germany are the big winners from the piecemeal voting reform that has been going on since the IGC 2000.
- The biggest overall losers are not Spain and Poland, since the Zapatero compromise merely undoes the Aznar bonus. The biggest losers are the medium-sized members – nations with populations in the neighbourhood of 10 million.
- The near-big status that Spain and Poland won at Nice will be reversed; France, for example, will have about 40% more power than Spain.
- The Franco-German power equality will be ruptured; Germany will have about a third more power than France. The duo that drove European integration in the past will become an unequal partnership with France as the junior partner. Of course, French President Jacques Chirac, who agreed to this, is likely to be out of power by then – having finished out his term with Franco-German equality.

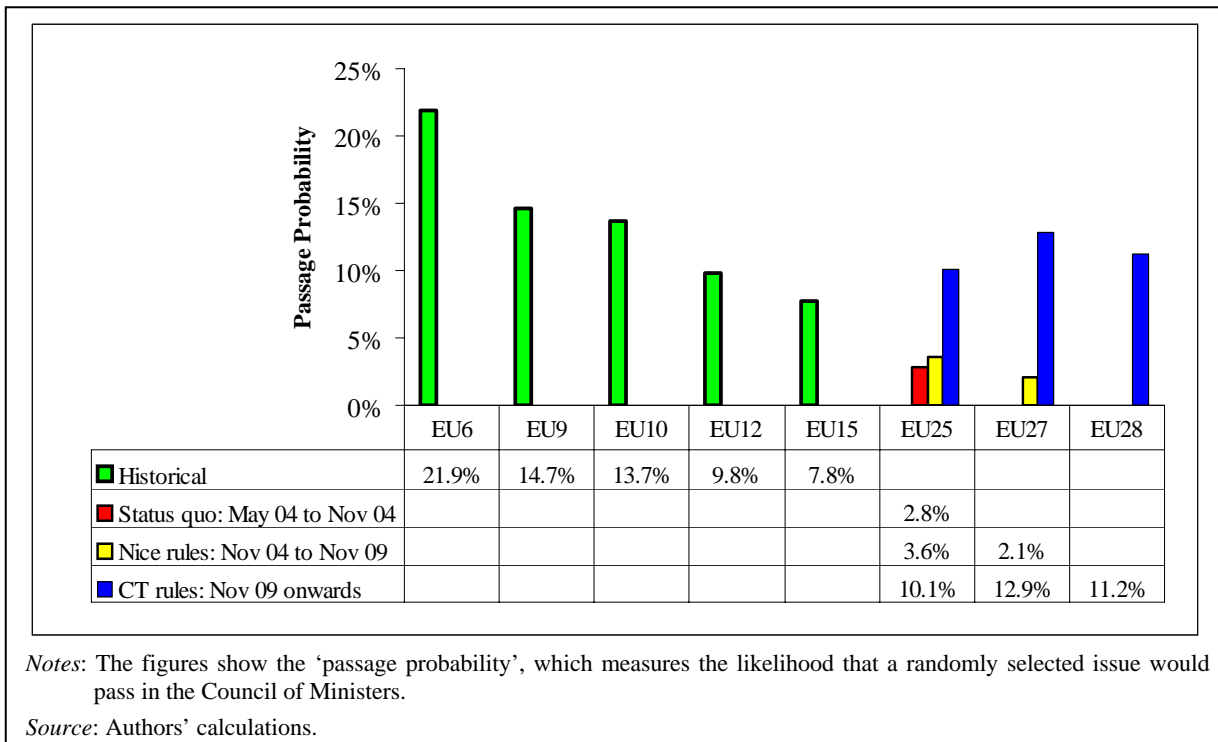
**To summarise:**

The Constitutional Treaty rules will break the traditional Franco-German power equality, making France the junior partner in the Franco-German alliance. Spain and Poland will lose the near-big status they won in the Nice Treaty. The biggest losers are the medium-sized members (with about 10 million citizens). The chief winners are the big-4 – Germany alone wins more than the other big-4s combined.

### 2.2 Ability to act: Decision-making ‘efficiency’

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

Figure 6. The enlarged EU’s ability to act



It is widely appreciated that the Nice Treaty rules cripple the EU’s ability to act since they make it very difficult to find winning majorities.<sup>4</sup> Figure 6 confirms this. To provide some historical perspective, the five leftmost bars in the figure show the passage probability for qualified majority voting in historical EUs. Efficiency has been declining but past enlargements

<sup>4</sup> For a complete analysis, see Baldwin et al. (2001), *Nice Try: Should the Treaty of Nice be Ratified?*, CEPR, London.

only moderately hindered decision-making efficiency. The last enlargement lowered the probability from 10% to 8%, and the Iberian expansion lowered it from 14% to 10%. The figures also hide the fact that the Single European Act, which took effect in 1987, greatly boosted efficiency by implementing majority voting for Single Market issues.

Looking forward, the figure shows that the EU is in for a big drop in its ability to act in normal Council matters, i.e. matters where qualified majority voting is in effect. We calculate that it will be about twice as hard to find a qualified majority in the enlarged EU as it was in the EU-15. The southeastern enlargement foreseen in 2007 will make matters slightly worse. Note that the Nice Treaty rules (as per the Accession Treaty) are slightly more efficient than the current rules since the massive concentration of power in the hands of the bigs and near-bigs improves efficiency (the six biggest nations in the EU-25 have half the power).

By contrast, when the Constitutional Treaty's rules come into force, the EU's ability to act will soar. According to our calculations, the CT rules will make it easier to pass a proposal in the EU-27 than it was in the EU-12. The entrance of Turkey would do little to change this assessment.

For comparison, we show how efficient the CT rules would be if they were applied immediately to the EU-25 instead of in 2009. As the third set of bars from the right show, the CT rules would make it dramatically easier to obtain decisions in the Council of Ministers.

**To summarise:**

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The Nice Treaty voting rules defined in the Accession Treaty that will apply until the end of 2009 will lower EU decision-making effectiveness to unprecedented levels in the EU-25 and EU-27. Finding a qualified majority in the enlarged EU will be about twice as hard as it was in the EU-15. The switch to the CT rules in 2009 will involve a quantum leap forward in decision-making efficiency. It will be less difficult to find a qualified majority in the EU-27 than it was in the EU-12.

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### 3. Concluding remarks

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

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

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

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

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<sup>5</sup> See the December 2002 Danish Presidency Conclusions, Annex 1; on structural spending see European Commission, COM(2003) 34 final, Table 11.

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