



What comes after Nice

- The Treaty of Nice is not a grand plan for the European Union, like the Single European Act or the Maastricht treaty. This treaty revision finally cleared the leftovers from the Amsterdam Treaty, and set the shape of the institutions for the medium term – for better or for worse. The deal is inadequate for integrating all the would-be members, but enlargement will have to start within this framework.
- In the Nice summit's final marathon, most of the leaders' energy went on establishing the pecking-order between member-states. Now the EU will have to return to fundamental issues. A broad re-think of governance is starting, which will go far beyond the tinkering at Nice. It is a debate in which the members-to-be must participate fully.

THE OUTCOME: OBSCURITY AND COMPLEXITY

Both the outcome at Nice and the methods used to achieve it have left widespread dissatisfaction. Any deal would have been good for enlargement, in allowing the EU to move ahead. But the unseemly spectacle of 15 countries scrambling for position was hardly a shining example of inter-governmentalism at work. And power-grabbing by the large states has caused wariness among their smaller counterparts, both current and future members.

The final deal at the end of 2000 was little better than what looked within reach at Amsterdam in 1997, even after many months of deliberation and hours of prime ministerial time (see box overleaf for the key deals). In the post-Nice fatigue, many agreed with Tony Blair that "We can't go on like this!". The inter-governmental conference (IGC) format is reaching its limits, with 15 countries in the ring but without a joint Franco-German stand to push for a settlement. More members and greater diversity after enlargement will make the European Council even more unwieldy.

The outcome on institutions will add to the pressure to simplify EU procedures. The rules on decision-making have become even more complex, rather than more streamlined. Now many measures will have to pass a "triple majority", based on 62% of the population, votes in the Council, and an absolute majority of member-states. This innovation is intended to make decisions nominally more representative of population, while ensuring the small member-states have a voice. But the balance is at the expense of transparency – and the changes hardly bring the Union closer to its citizens. Adding further complications makes the EU even more obscure and difficult to understand, and will not increase its popularity.

WHAT NICE REVEALS ABOUT THE STATE OF THE UNION

Nice gave the lie to the claim that the EU is rushing towards becoming a super-state. The Commission was sidelined, with inter-governmentalism centre-stage. There was no extension of majority voting in sensitive areas (like tax and social security), and no attempt to bring currently inter-governmental areas into the remit of Community institutions. Moreover, it will actually become harder to pass new laws thanks to the extra hurdles introduced in voting.

Instead, Nice revealed the divisions between Europe's leaders about the kind of Union they desire. In particular, it showed that the Franco-German *couple* – always in a marriage of convenience – is increasingly living separately. Far from working as a team at Nice, French and German leaders engaged in a series of acrimonious rows. Unlike at earlier summits, where the agenda was set by a joint Franco-German letter, there was no pre-cooked deal to present for agreement. Indeed, Germany presented a joint document with the UK (on institutions) for the first time ever at Nice.

France was widely criticised for its ham-fisted diplomacy. Bullying the small countries nearly scuppered the whole deal when several of them threatened to walk out. France's blatant attempt to force the applicant countries into a bad deal on both votes and number of MEPs did not make Paris any new friends either. Even France's victory in remaining on a par with Germany in voting power in the Council of Ministers came at a heavy price in deals on population and MEPs.

What does a Franco-German divorce mean for the EU? Nice showed how messy decision-making can become in the absence of a driving

coalition. Nice also showed up the size divide between countries. Member-states rarely divide into big and small camps in EU business, where alliances are fluid and often last just for a single issue. But in determining institutional structures (as opposed to policies), the “Big Five” countries will stick together to protect their power. The Big Five often disagree in their fundamental policy approaches, but increasingly they are forming alliances with one another on particular issues (e.g. Spain and the UK on labour markets). This shifting constellation of large countries might eventually emerge as the EU’s dominant grouping – but there would have to be much greater convergence of interests over substantive issues first.

NO URGENCY FOR ENLARGEMENT

Enlargement was the ostensible reason for holding yet another inter-governmental conference, but the 2000 IGC stuck to the left-overs and did not come up with radical new recipes for the future. Nice showed that enlargement is not yet urgent enough to force countries to take a broader view of their common interests.

Nice is a holding position for the current members, not an adequate settlement for enlargement. It merely remedies some of the problems in the existing framework, creaking under the strain of 15 countries whose approaches to many policy challenges continue to diverge. Now a major constitutional debate is about to begin (even if an EU constitution is not yet on the cards). The conference in 2004 will consider not only delimiting competences between EU institutions and member-states, but also simplifying the treaties, the status of the Charter of Fundamental Rights, and the role of national parliaments.

This agenda could add up to a major change in the EU’s structure. But there are some downside risks as well: simplifying the treaties could have unexpected consequences if it means unravelling complex bargains of the past. However, simplification would have the enormous benefit of making the EU more transparent and comprehensible to its citizens. The risk in defining competences is that the EU could become inflexible if it means setting in concrete the powers and responsibilities of different levels of government, once and for all, and in precise detail. The dilemma for 2004 is that a legally binding text would look remarkably like a constitution, whereas a mere political declaration would quickly be forgotten (Does anybody remember the 1992 Birmingham Declaration?).

DEBATING THE FUTURE AMONG TWENTY-SEVEN

The behaviour of the new member-states will be determined to no small degree by their treatment as candidates. The most unpleasant sight at Nice was France’s naked attempt to allocate future members

fewer votes than their populations merit. This exploitation of power to diminish their future status reinforces the view of many east Europeans that the EU is ungenerous and not to be trusted. The next “constitutional conference” for 2004 should involve the candidates fully, and right from the start. It should not consult only those that have finished negotiations – contrary to the decision at Nice just to invite them as observers. Negotiations with Slovakia, Lithuania and Latvia probably will not have finished in time, but these three countries could come in quite soon after their neighbours that are currently ahead in negotiations. It would be ridiculous to exclude them from the conference on such a technicality. The new members’ views on European integration will inevitably be influenced by their role in the debate about the EU’s future. Disillusionment among both populations and policy-makers would push new members’ leaders to fight hard to protect entrenched interests. Even EU-friendly governments can not make necessary compromises if their voters are opposed, as the UK and Denmark have found. It is vital not to start the new members off on this track.

The current 15 have shown little real desire to solicit the views of those still outside the club about its future rules. This has caused resentment, but generally candidates still want to be good citizens and helpful new partners once inside. There is little desire to become as difficult as the UK or Denmark, but much rhetoric about following Ireland and Portugal to prosperity, and increasing their influence through membership. Nevertheless, several of the applicants (perhaps most likely are Poland and the Czech Republic) could yet be forced into a more obstructionist and marginalised position if they are kept outside the debate. So far, the justification has been that club rules must only be set within the club. But the EU is embarking on a much wider debate about the future of the EU: its *finalité* (both political and geographic), its functions and competences, and its governance in the widest sense. These are fundamental issues for members-to-be.

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The key deals at Nice

- *Re-weighting gives more votes to the big countries, and represents populations better in the Council of Ministers. Germany gets no more votes than France, Italy or the UK, despite having a third more people. However, size of population will matter more in decision-making.*

- *The number of commissioners will be capped at 27, with the large member-states losing their second commissioner in 2005.*

- *Unanimous decision-making has been lifted in 29 new areas, including appointments (e.g. the Commission’s president), European Court of Justice rules, external border control procedures, and trade in most services. The veto is maintained in taxation, social security, immigration, movement of professionals, trade in cultural and audio-visual services, and allocation of cohesion funds (until 2007).*

- *The rules for “enhanced cooperation” are changed so that a group of eight or more member-states can proceed with an initiative without the others – but not in a project with military or defence implications. The “emergency brake” has been reduced so that it is harder for any one country to block such initiatives.*

- *A new conference will be held in 2004 to define the division of powers between the EU and the member-states, the status of the Charter of Fundamental Rights, simplification of the treaties, and the role of national parliaments..*

- *A “yellow card” procedure is introduced to sanction a country that risks breaching fundamental EU principles. The Council of Ministers (acting with a four-fifths majority) can issue recommendations to such a country and ask for an independent report on it.*

- *The presidency conclusions express the “hope” that new members can take part in the next European Parliament elections, implying that some should join in 2004.*