

The EU Must Concentrate its Constitutional Reform on a Few Essentials

The EU is set to enlarge for the fifth time. One cannot foresee how many member countries will make up the European Union in the course of the next century. But it is certain that the number will exceed 30 and that the process of enlargement will take place in stages, the first most likely between 2003 and 2005, depending on the state of preparedness of the Union and the accession countries.

There is general agreement that the EU must put its house in order before any further enlargement. But views differ on the scope and the substance of the changes which will have to be made.

The European Council has decided to limit the reform to three issues: the size and composition of the Commission, the weighting of the voting power in the Council and the possibility of extending majority voting.

The present paper advocates solutions to each of these three questions which go deliberately beyond traditional patterns of thinking.

I.

Qualified Majority Voting in the Council

The most important reform in view of the future enlargement concerns the way in which the Council will take its decisions.

Maintaining the rule of unanimity will be fatal for the functioning of the enlarged Union. It would allow any member state to delay legislative acts or political decisions indefinitely or to blackmail the majority of member states. The history of the EU is full of examples of important dossiers having been blocked for years and of costly and painful compromise enforced upon member states because of the unanimity rule.

It is therefore vital for the Union to agree on generalising the possibility of deciding by qualified majority before any further accession of new member states.

This will have to go for:

- all legislative acts (there are still more than seventy articles which require decisions to be taken by unanimity);
- all decisions taken in the field of Justice and Home Affairs, Immigration, Visa, Asylum, Foreign Policy, Security Policy;
- all other decisions taken by the Council or the European Council, e.g.. nominations;
- treaty changes.

The most important, but also the most controversial of these four categories is the possibility to agree on constitutional changes by qualified majority (as is the case in all member states).

The Union will continue to need adaptations of its constitutional framework in order to respond to new unforeseen challenges. With more member states it will become even more difficult than at present to obtain unanimity on such adaptations.

In order to facilitate an agreement among the 15 member states on such a sweeping change:

- transitional periods of 5-10 years might be foreseen before the new rules will fully apply;
- super-qualified majorities in both the Council and the Parliament, e. g. 75% of the EU population, might be required.

What is essential is that the principle of abolishing unanimity decisions will be agreed and codified in the new Treaty right now: once the Union has 12 additional members such a change will probably never be agreed upon.

Moreover, if the European Council fails to tackle this issue with political courage and determination, the Parliament might withhold its assent to both the revised Treaty and further enlargement.

II.

Weighting of the Voting Power in the Council

At present, the relative voting power of the small member states substantially exceeds their relative population. This imbalance will further increase with the accession of 12 additional member states, ten of which with populations of less than 10 million.

It is therefore understandable that the bigger member states insist on a re-balancing of the relative voting powers in the Council prior to enlargement.

It will not suffice to address this issue only in the Council. Also in the European Parliament do the smaller member countries have more seats relative to their population than the bigger ones.

Allowing relatively more voting power in the Union's legislature to the smaller member countries is contrary to the basic principle of democratic legitimacy.

It is, however, easier to put up with such imbalance in the Council than in the Parliament. This is also reflected in most federal constitutions, most notably in Germany and the United States.

For these reasons, the following package might constitute a compromise between the conflicting interests:

- The present voting pattern in the Council is extended to the enlarged EU, possibly subject to some minor adjustments for member countries with less than two million people.
- The Parliament's future composition should reflect member countries' populations. This means that ideally in a future EU of 27 member states with almost 500 million people, each of the 700 MEPs should be elected in one of about 700 constituencies, representing roughly 700 thousand people each.
- The Parliament should be given full legislative powers: in the future, all legislation should be approved by both the Council and the Parliament according to the co-decision procedure.

III.

Size and Composition of the Future Commission

The size of the Commission should remain limited to 20 members.

Even in an enlarged Union, there is no scope for more than 20 portfolios. Any further increase of the number of commissioners will reduce its effectiveness and prevent the Commission from focusing on its missions.

The argument that each member state must be represented in the Commission is fallacious: the Commission has to define the overall European interest which is more than the addition of individual member states' interests. Member states have to rely on their 'permanent representative' in Brussels in order to defend their specific interests.

How should Commissioners be appointed in the future?

A simple, but effective system might be as follows:

- The President will be appointed as foreseen by the Amsterdam Treaty, except that a qualified majority will suffice.
- As to the Commissioners, each member state will be free to propose one candidate. The designated President will choose his team among those candidates; it will depend on his political skills to compose this team so well balanced in terms of professional qualification, political conviction and regional background, so as to obtain the agreement of member states, by qualified majority, and the Parliament's confidence vote.
- The President should be free to consider Junior and Senior Commissioners, Commissioners without portfolios or even a system of rotation.

This proposal runs against established habits. But it is the one which is most likely to assure the future Union the benefit of a strong Commission. As member states can no longer take a Commissioner of their nationality for granted, they will try much harder than in the past to propose top candidates.