

# Institutional Change within a Turbulent Political Environment: the EU's Decisiveness according to Lisbon

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*Among the institutional reforms of the European Union stipulated by the Treaty of Lisbon, the modification of the voting rules in the Council of Ministers is considered urgent, as it is supposed to reduce the veto power of small groups of Member States. This contribution elaborates upon this point by employing some elementary concepts in n-person game theory. A change from the current rules adopted in the Treaty of Nice to those of Lisbon would indeed increase the Council's capacity of taking decisions. This reform should therefore be enacted even if most of the other provisions of the Lisbon Treaty are not implemented. It has no implications for the debate about federalism versus intergovernmentalism. It merely increases the decisiveness of the Union.*

*Unter den institutionellen Reformen der Europäischen Union, die im Vertrag von Lissabon vorgesehen sind, gilt das veränderte Abstimmungsverfahren im Ministerrat als besonders dringlich, da davon ausgegangen wird, dass dadurch die Vetomacht kleiner Gruppen von Mitgliedstaaten sinkt. Der vorliegende Beitrag untersucht diese Annahme unter Anwendung grundlegender Konzepte der Spieltheorie. Ein Übergang von den derzeit gültigen Regeln des Vertrags von Nizza zu denen des Vertrags von Lissabon würde in der Tat die Entscheidungsfähigkeit des Rates erhöhen. Diese Reform sollte daher auch dann vollzogen werden, wenn die meisten anderen Bestimmungen des Lissabonner Vertrags nicht in Kraft gesetzt werden. Sie hat keine Auswirkungen auf die Debatte zwischen Föderalisten und Intergouvernementalisten, sondern erhöht lediglich die Entscheidungsfähigkeit der Union.*

## I. Introduction

Institutional change in the European Union has turned out to be unpredictable in the early 21<sup>st</sup> century, whereas in the past it was merely slow and cumbersome. The Irish “No” to the Lisbon Treaty will not be easy to overcome or to turn around into a “Yes” somehow. Thus, there will be considerable delay before the Union will operate according to some of the rules already laid down in the Constitutional Treaty, and later transferred to the Lisbon Treaty.

The Lisbon Treaty from 2007 was an attempt to salvage the aborted constitutional document enacted in Rome in 2005. It focussed upon a few institutional changes considered of utmost relevance and urgency for the Union. Thus, the Lisbon Treaty kept the proposal for a permanent EU presidency and an explicit Union foreign ministry. However, the most relevant proposal was the overhaul of the voting regime for the Council, making it more efficient.

In the Lisbon regime, it is suggested that the EU would combine its two, competing, foreign policy posts. At present, the Union has a foreign policy chief with a tiny staff and small budget representing the Member States. It also has an external relations commissioner controlling billions of Euros. Putting the money and the commission's offices around the globe at the disposal of one person would enhance policy consistency. Yet, Lisbon would get rid of one form of duplication, but create another. Lisbon established a new, single foreign affairs chief, but it also created a full-time president of the European Council, designed to replace the six-month rotating presidency of the EU. This proposal would support policy stability, undoing the fact that the European leadership is continually changing.

Yet, the most important institutional reform in Lisbon was the far-reaching changes in the voting scheme for the Council – the chief decision-making body of the Union. Lisbon would have replaced the Nice regime with a more efficient voting system. We suggest that the Union concentrates upon making the shift from the Nice to the Lisbon voting system for the Council in the near future. This institutional reform makes sense. Let us explain why.

## II. Did the EU Really Need a Constitution?

The “EU-Constitution” according to its final version as agreed upon by the Intergovernmental Conference received two entirely different interpretations by scholars interested in constitutional matters. On the one hand, the anti-federalists claimed that this “Constitution” was too open ended, providing too much power to the Union at the expense of the so-called nation-states of Europe. On the other hand, the complete opposite position also had its adherents among the federalists, namely that the Constitution was too weak, not providing enough competences to the Union in, for instance, the field of social policy. The aim of this contribution is to make a few remarks upon this constitutional ambiguity as well as to underline what in the authors' view was a key element of the Constitutional Treaty, viz

the increase in group decisiveness ( $\delta$ ) – constituting a clear improvement over to the Treaty of Nice.

One may of course start by asking oneself whether the European Constitution from 2005 really amounted to a constitution in the sense of constitutional law. A constitution according to the established definition in law is not merely a document outlining competences and rights. The constitution must also comprise rules, which restrain the employment of public power. And in relation to the EU Constitutional Treaty one may ask whether it really outlined future institutions restraining the use of public power. Perhaps it is merely a treaty like all the other EU or EC treaties, speaking in a lofty manner of the European Union, about hopes ambitions and objectives. As a matter of fact, both interpretations, the one that argues that it empowers the Union too much and the one that argues that it empowers the Union too little, may come to the conclusion that the Constitutional Treaty was not a real constitution. It fails because it does not outline enough the institutional setting or it fails because it outlines that in too vague a manner. We are not sure whether there is one single format for a constitution. Whether the Constitutional Treaty was to be understood as a true constitutional document or not, might, therefore, be a matter of language or definition. There are so many different constitutions in the world that it seems arbitrary to hold up one format as the only one. More important is the underlying reality and here the crucial matter of whether any institutional reform enables the Union to take action.

A written constitution comprises at least four elements:

- a preamble that identifies the nature of the state;
- a list of civil and political rights, which may be either short or long;
- a list of competences allocating power onto organs and jurisdictions; and
- a set of rules for how to make changes to the constitution.

The Constitutional Treaty satisfied these requirements. But the groups of scholars who deny that it is a “true constitution” argue that the framing of these elements is not acceptable. Astonishingly enough, one finds within this group of analysts both arguments, viz the “Constitution” renders too much to the Union as well as that it gives too little to the Union.

One is, of course, free to use the word “constitution” as one wishes. The etymology of the word goes back to Latin; in the Roman Empire a constitution was a decree by the Emperor. It was during the period of the Reformation that Calvinist resistance scholars, such as *Theodore Beze* in Geneva, started to use the word

“constitution” to identify a legal order that restrains power. This institutional interpretation has become the leading one, but there are, of course, constitutions in the world which do not restrain much.<sup>1</sup> It has been suggested that the Constitutional Treaty was not really a constitution, as only states can enact such documents – and the Union is not yet and might perhaps never become a state.

The Constitutional Treaty was, therefore, perceived as merely another treaty, replacing Nice with a new framework of institutions. According to this view, it offers at best a regime, not a constitution. Whether one wants to call the Treaty a constitution or a regime, it remains critical to understand what the new rules entail. To scholars with a background in constitutional law, the key point is whether there is a difference between the formally enacted and written constitution and the effective constitution, i.e. the rules as they are enforced through institutions. Constitutional reality is not the formal set of rules, whatever they are called by the real rules enforced via the juridical machinery.

It seems somewhat arbitrary to deny the Constitutional Treaty a constitutional import. The Union is after all a well-established regional coordination mechanism with public competences, a structure of different organs including a strong legal machinery, a list of human rights and a defined procedure for how to make changes to its legal order. Since European law is now an established element within the legal orders of the Member States, in both common law and public law countries, it hardly surveys any purpose to dispute that the Treaty could be perceived as a constitution, if indeed being ratified and, then, enforced.

Instead of questioning whether it is a constitution or not, it might be more interesting to try to understand why it is interpreted so differently by commentators. It is argued in the following that both contradictory interpretations make a critical assumption that is not to be taken for granted, namely about the capacity of the Union to act: its  $\delta$ .

The scholars who feared the “Constitution” focussed upon a number of features of the constitutional document, predicting that they will lead to an increase in Union power beyond what is desirable or validated in the documents themselves, maybe called anti-federalists. They claimed somewhat exaggerating:<sup>2</sup>

- Subsidiarity does not restrain the Union;

1 Lane, J.-E.: *Constitutions and Political Theory*, Manchester, 1996.

2 Bartolini, S.: *Restructuring Europe: Centre Formation, System Building, and Political Structuring Between the Nation State and the European Union*, Oxford, 2007.

- the Court can interpret the constitution as it wishes;
- Qualified Majority (QM) and Double Qualified Majority (DQM) might force dissenting countries to leave the Union;
- the new permanent officers reduce state influence too much;
- there is no protection any more for state sovereignty; and
- the Union receives an unrestrained domain of competences.

If this is true, then the Union could become a Leviathan. However, this line of argument presupposes that the Union possesses a high degree of decisiveness, meaning a capacity to act and to change the status quo (SQ). Yet, the Draft Constitution would not have changed matters dramatically, as the Member States still legislate and make budgets.

Whether real constitution or living constitution depends on how the Treaty is implemented through decision-making. And decision-making remains in the hands of the Member States. They nominate the Commissioners, they elect the Parliamentarians and they vote in the Council. The Constitutional Courts of the Member States retain the final say over the interpretation of the constitution by the Court. If the Union turns into a Leviathan, then the Member States would have to have allowed it to become that monster.

Although the Constitutional Treaty introduced QM and DQM on a grand scale, the Member States could still easily create a counter-coalition which defeats a proposal, whether originating from the Commission or the Council itself. The blocking power remains high. The Union needs, however, a specific degree of decisiveness if it ought to be able to act. As a result of the Treaty, this decisiveness is in a group of 25–27 states being increased, though this does, of course, not equal the coming of Behemoth.

The worries of the anti-federalists may be contrasted with the teachings of the federalists about the Union being locked into so-called decision traps, plagued by veto players and reduced to simple intergovernmentalism.<sup>3</sup> According to the position of the federalists, the Union ought to engage in large-scale welfare state policies. Thus, to them the Constitution is not socially oriented enough. In addition, these analysts want to see the Union pursue active New Keynesian economic policies to protect work and reduce unemployment. Their worry is the delocalisation wave that is again hitting Europe weakening its industrial base.

3 *Scharpf, F. W.*: *Governing in Europe: Effective and Democratic?*, Oxford, 1999.

However, one may debate the pros and cons of industrial policy or a Union welfare state development without making use of the constitutional arena.

The anti-federalist critique of a future EU Leviathan is as little relevant as the federalist unrealistic dream concerning a Constitutional Treaty empowering the Union to sit upon the Member States. Our basic point is that the EU does not really need a constitution, because it is merely a collaborative mechanism amidst now 27 sovereign states, all having their own distinctive constitutional framework or something similar. What the EU badly needs, however, is to empower its chief decision-making body, the Council, by raising its capacity to take action, i. e. its  $\delta$ .

### III. The Key Institutional Reform: the European Union's $\delta$

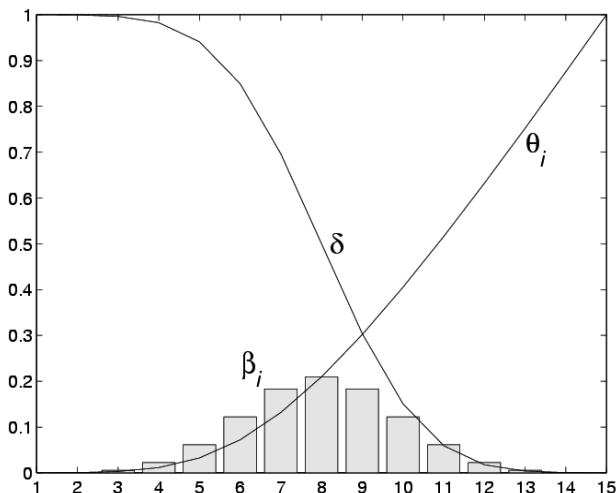
It seems farfetched to argue that the Constitutional Treaty allowed for an unrestrained federation, given all the complexity that characterises Union decision-making. Equally, it hardly seems adequate that the Constitution should have a bias in favour of one of the major ideologies in Western Europe, i. e. social democracy. What the document is all about is to codify the present Union as it operates on the basis of rule of law, while at the same time correcting a major drawback due to the Nice Treaty, namely the lack of decisiveness.

There has been a strong continuity among the various Treaties of the EU, the Dublin Treaty no exception. It added some changes to the overall framework, which has emerged over time in successive additions to the Rome Treaties. It could not constitute a threat to the rule of law which the EU incorporates to a high degree. Instead, its significance lies elsewhere, namely in the reform of the Nice voting rules that were deficient already when enacted.

The Union must have some capacity to act. Its key decision-making body is the Council. In a group of size  $N$  there are three key aspects of power when a group of members make collective decisions by voting:

- the overall decisiveness of the group:  $\delta$ ;
- the capacity of an individual member to block:  $\theta_i$ ;
- the overall voting power of a member:  $\beta_i$ .

The relationship between these aspects can be stated by means of *Penrose-Banzhaf* voting power scores in a simple way (see *Figure 1*).

Figure 1:  $\delta$ ,  $\theta_i$  and  $\beta_i$  in a Decision Group of 15 Members

Notes: x-axis: group members; y-axis: decision rule.

Source: Lane, J.-E./Maeland, R.: Constitutional Analysis: The Power Index Approach, in: European Journal of Political Research, 37/1 (2000), 31–56.

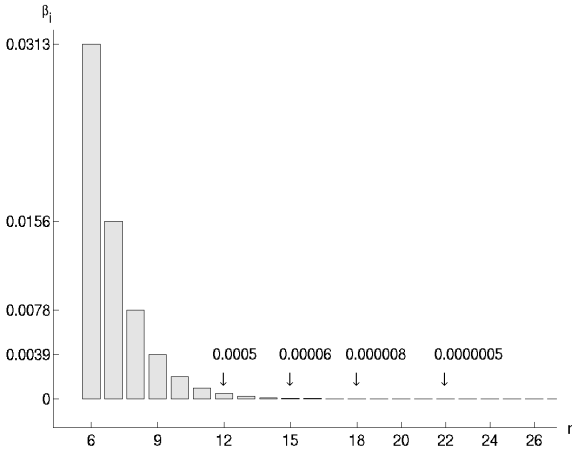
Again, the Union cannot handle common matters unless it possesses a certain level of decisiveness. Member States will look for blocking power, especially if they are hesitant about the Union taking specific action, but what matters most to the Member States seems to be their voting power.

It looks almost like a law of group decision-making that group decisiveness and blocking power cannot be maximised at the same time. Figure 2 brings this fundamental relationship out in a most telling manner, showing how voting power  $\beta_i$  goes towards zero when a group of veto players is enlarged.

One could draw two polar images of the future EU after completing Eastern Enlargement, thus raising the number of Member States to 27:

- “The veto model”: The Union is occupied with the administration of a gigantic market economy where in principle all participants gain from membership. Decision-making will be based upon the protection of country interests through some sort of unanimity principle, in one form or another. In practice, the EU can act only when all Member States agree.
- “The simple-majority model”: Here, voting by means of a simple majority empowers the Union to make policy, which will by necessity involve redistribution from the minority to the majority.

Figure 2: Impracticality of Unanimity in Groups



Source: Authors' compilation.

A choice of decision-making institutions for a future Union will include positioning the Council somewhere in-between the veto model and the simple majority model. One can describe the voting rules of Nice in contrast to those of Lisbon by relating them to these two polar images of the Union. The Union legislates basically from its Council, although the Commission (agenda setting) and the Parliament (consultation, veto) constitute major players too. The Council rules set up so-called *Banzhaf* games in which Member States aim at high *Banzhaf* scores.<sup>4</sup> Here, we focus upon  $\delta$ , i.e. the capacity of the Council to enact decisions.

When  $N$  persons interact in an assembly, then transaction costs lead them to accept some mechanism of voting. Group decisions result from the creation of a mechanism for preference aggregation. The EU favours quantitative voting, meaning that the different Member States cast votes that reflect somehow their population sizes, albeit imperfectly. The voting power of a Member State is an extremely important bargaining chip when policies are to be made. It results from the capacity of a Member State to play cooperative games, i.e. to make

4 Felsenthal, D.S./Machover, M.: The Measurement of Voting Power: Theory and Practice, Cheltenham, 1998; *id.*: A Priori Voting Power: What is it all About? in: Political Studies Review, 2/1 (2004), 1–23; *id.*: Voting Power Measurement: A Story of Misreinvention, in: Social Choice and Welfare, 25/2–3 (2005), 485–506.



coalitions that are winning. Voting power results from the attribution of votes and the social choice rule employed to score a winner from the preferences of the players. The voting power of a player is the capacity of a group to make decisions times the capacity of the player to block times two. The *Banzhaf* Power Index scores are calculated from the various allocations and aggregations of votes under the alternative regimes: Nice and Lisbon.

#### IV. Nice or Lisbon?

The Treaty of Nice prescribes a triple majority for the operation of the 27-member Council. Specifically, in order to pass a decision, proposed by the Commission, it must be supported by:

- at least a simple majority of the Member States;
- a number of countries that together control at least 255 votes from a total of 345 votes.
- a number of countries representing at least 62 % of the EU's population.

If the Council wishes to pass a decision not initiated by the Commission, then the majority requirement is increased to two thirds of the Member States.

The Nice meeting resulted in a new decision rule: qualified majority at 73.9 % plus 62 % of the population, if one or more of the Member States so demands. Actually, the Nice 62 % population demand in addition to the qualified majority rule pushes the decision requirement for “yes” upwards. By entailment it makes it easier for a group to say “no” – the blocking power of a Member State becomes quite high (see *Table 1*).

What appears from *Table 1* is that the decisiveness of the new group, according to Nice, is reduced sharply. The number of winning coalitions is highly sensitive to restrictions upon the majority. What the Nice rule accomplishes is, however, a strong increase in the blocking power of the largest states. Yet, this Nice rule is better than the decision rule of double qualified majority, at least for the largest states. According to this rule, there must be a Double Qualified Majority, which restrictive rule reduces group decisiveness even further, although the blocking power of the small and medium sized states is higher under this rule than under the Nice Treaty.

Table 1: The Council of the European Union according to Nice

	Votes	Qualified Majority				Double Qualified Majority			
		Banzhaf	Banzhaf norm.	Coleman's capacity to initiate	Capacity to Block	Banzhaf	Banzhaf norm.	Coleman's capacity to initiate	Capacity to Block
DE	29	0.0431	0.0789	0.0222	0.7768	0.0294	0.0646	0.0150	0.7305
UK	29	0.0431	0.0789	0.0222	0.7768	0.0294	0.0646	0.0150	0.7305
FR	29	0.0431	0.0789	0.0222	0.7768	0.0294	0.0646	0.0150	0.7305
IT	29	0.0431	0.0789	0.0222	0.7768	0.0294	0.0646	0.0150	0.7305
ES	27	0.0410	0.0750	0.0211	0.7382	0.0280	0.0616	0.0143	0.6959
PL	27	0.0410	0.0750	0.0211	0.7382	0.0280	0.0616	0.0143	0.6959
RO	14	0.0231	0.0423	0.0119	0.4163	0.0180	0.0397	0.0092	0.4487
NL	13	0.0215	0.0394	0.0111	0.3881	0.0172	0.0378	0.0088	0.4279
EL	12	0.0199	0.0365	0.0103	0.3592	0.0164	0.0360	0.0084	0.4072
CZ	12	0.0199	0.0365	0.0103	0.3592	0.0164	0.0360	0.0084	0.4072
BE	12	0.0199	0.0365	0.0103	0.3592	0.0164	0.0360	0.0084	0.4072
HU	12	0.0199	0.0365	0.0103	0.3592	0.0164	0.0360	0.0084	0.4072
PT	12	0.0199	0.0365	0.0103	0.3592	0.0164	0.0360	0.0084	0.4072
SE	10	0.0167	0.0306	0.0086	0.3011	0.0148	0.0325	0.0075	0.3670
AT	10	0.0167	0.0306	0.0086	0.3011	0.0148	0.0325	0.0075	0.3670
BG	10	0.0167	0.0306	0.0086	0.3011	0.0148	0.0325	0.0075	0.3670
SK	7	0.0118	0.0216	0.0061	0.2123	0.0123	0.0271	0.0063	0.3065
DK	7	0.0118	0.0216	0.0061	0.2123	0.0123	0.0271	0.0063	0.3065
FI	7	0.0118	0.0216	0.0061	0.2123	0.0123	0.0271	0.0063	0.3065
IE	7	0.0118	0.0216	0.0061	0.2123	0.0123	0.0271	0.0063	0.3065
LT	7	0.0118	0.0216	0.0061	0.2123	0.0123	0.0271	0.0063	0.3065
LV	4	0.0068	0.0124	0.0035	0.1219	0.0098	0.0216	0.0050	0.2441
SI	4	0.0068	0.0124	0.0035	0.1219	0.0098	0.0216	0.0050	0.2441
EE	4	0.0068	0.0124	0.0035	0.1219	0.0098	0.0216	0.0050	0.2441
CY	4	0.0068	0.0124	0.0035	0.1219	0.0098	0.0216	0.0050	0.2441
LU	4	0.0068	0.0124	0.0035	0.1219	0.0098	0.0216	0.0050	0.2441
MT	3	0.0051	0.0093	0.0026	0.0915	0.0090	0.0199	0.0046	0.2248
Σ	345	0.5468	1.0000	–	–	0.4547	1.0000	–	–
δ	–	0.0278	–	–	–	0.0201	–	–	–

Notes: DE: Germany; UK: United Kingdom; FR: France; IT: Italy; ES: Spain; PL: Poland; RO: Romania; NL: Netherlands; EL: Greece; CZ: Czech Republic; BE: Belgium; HU: Hungary; PT: Portugal; SE: Sweden; AT: Austria; BG: Bulgaria; SK: Slovakia; DK: Denmark; FI: Finland; IE: Ireland; LT: Lithuania; LV: Latvia; SI: Slovenia; EE: Estonia; CY: Cyprus; LU: Luxembourg; MT: Malta; Σ: sum; δ: decisiveness.

Source: Authors' compilation.

The Nice rule is closer to unanimity in its implications than to simple majority. Thus, it was quickly recognised that the Nice rules of Council decision-making were too much biased in favour of blocking power. So the Constitutional Treaty came up with an entirely different mechanism, namely qualified majority based upon the principle one country – one vote, but with the requirement of 65 % of the EU population in favour of a positive decision.

Article I-24 in the EU Constitution stated that decisions in the Council require “a qualified majority defined as at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union”. At least four Member States are necessary to block. Although this new decision rule was difficult to arrive at, it should be singled out as a major step towards rejuvenating the Union, despite all recent Euroscepticism. We call it Lisbon, as it was transferred from the aborted Draft Constitution to the Lisbon Treaty.

More specifically, Lisbon requires that in order to pass a decision by the Council proposed by the Commission, it must be supported by:

- At least 55 % of the Member States and no less than 15; a blocking majority must consist of at least four states. (This implies that a complimentary coalition of 22 members may pass a decision even if they represent less than 65 % of the EU population.)
- A number of countries that together represent at least 65 % of the EU's population.

If the Council wishes to pass a decision not initiated by the Commission, then the first criterion above is increased from 55 % of the states to 72 %. *Table 2* spells out the voting power implications of Lisbon.

To understand what the new rule for the key decision-making body of the Union entails, one would have to take two aspects of political decisions into account: the capacity of the group (EU) to enact positive decisions as well as the capacity of Member States to block any decision they do not want the group to make. The logic of group decisions in representative assemblies is that group decisiveness and individual blocking power cannot be maximised at the same time. When any Member State has veto power, then group decisiveness will be very low, and vice versa. Thus, writing a constitution involves making a trade-off between group decisiveness against individual blocking power. For the first time, the EU has made a sensible decision on this fundamental trade-off between the positive capacity of a group to act and the negative capacity of any Member State to

Table 2: The Council of the European Union, as if Lisbon is Applied

	Population	(Double) Qualified Majority 1				(Double) Qualified Majority 2			
		Banzhaf	Banzhaf norm.	Coleman's capacity to initiate	Capacity to Block	Banzhaf	Banzhaf norm.	Coleman's capacity to initiate	Capacity to Block
DE	82.2	0.1016	0.1043	0.0547	0.7140	0.0110	0.0498	0.0055	0.6923
UK	59.8	0.0885	0.0909	0.0477	0.6222	0.0097	0.0440	0.0049	0.6115
FR	59.5	0.0883	0.0907	0.0476	0.6208	0.0097	0.0439	0.0049	0.6106
IT	57.8	0.0864	0.0887	0.0465	0.6069	0.0096	0.0435	0.0048	0.6052
ES	40.3	0.0639	0.0656	0.0344	0.4489	0.0089	0.0401	0.0045	0.5575
PL	38.7	0.0614	0.0630	0.0331	0.4315	0.0088	0.0399	0.0044	0.5552
RO	22.3	0.0424	0.0436	0.0228	0.2981	0.0083	0.0373	0.0042	0.5192
NL	16.0	0.0346	0.0356	0.0186	0.2434	0.0081	0.0365	0.0041	0.5070
EL	10.6	0.0278	0.0285	0.0150	0.1954	0.0079	0.0357	0.0040	0.4962
CZ	10.3	0.0274	0.0282	0.0148	0.1927	0.0079	0.0357	0.0040	0.4956
BE	10.3	0.0274	0.0282	0.0148	0.1927	0.0079	0.0357	0.0040	0.4956
HU	10.0	0.0270	0.0278	0.0146	0.1900	0.0079	0.0356	0.0040	0.4950
PT	10.0	0.0270	0.0278	0.0146	0.1900	0.0079	0.0356	0.0040	0.4950
SE	9.0	0.0258	0.0264	0.0139	0.1810	0.0078	0.0355	0.0039	0.4930
AT	8.1	0.0246	0.0253	0.0132	0.1729	0.0078	0.0353	0.0039	0.4913
BG	8.0	0.0245	0.0251	0.0132	0.1720	0.0078	0.0353	0.0039	0.4910
SK	5.4	0.0211	0.0217	0.0114	0.1484	0.0077	0.0350	0.0039	0.4859
DK	5.3	0.0210	0.0216	0.0113	0.1475	0.0077	0.0349	0.0039	0.4857
FI	5.2	0.0209	0.0214	0.0112	0.1466	0.0077	0.0349	0.0039	0.4855
IE	3.8	0.0191	0.0196	0.0103	0.1339	0.0077	0.0347	0.0039	0.4829
LT	3.7	0.0189	0.0194	0.0102	0.1330	0.0077	0.0347	0.0039	0.4827
LV	2.4	0.0172	0.0177	0.0093	0.1211	0.0076	0.0345	0.0038	0.4801
SI	2.0	0.0167	0.0172	0.0090	0.1174	0.0076	0.0345	0.0038	0.4793
EE	1.4	0.0159	0.0164	0.0086	0.1119	0.0076	0.0344	0.0038	0.4782
CY	0.7	0.0150	0.0154	0.0081	0.1054	0.0076	0.0343	0.0038	0.4768
LU	0.5	0.0147	0.0151	0.0079	0.1036	0.0076	0.0343	0.0038	0.4765
MT	0.4	0.0146	0.0150	0.0079	0.1027	0.0076	0.0343	0.0038	0.4763
$\Sigma$	483.7	0.9739	1.0000	–	–	0.2209	1.0000	–	–
$\delta$	–	0.0711	–	–	–	0.0079	–	–	–

Notes: See Table 1 for abbreviations. Decision rule, Lisbon QM 1: coalition size (55%): 15/27; population (65%): 314/484; Minimum Blocking Coalition: at least the minimum number of Council members representing more than 35 % of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained. Decision Rule; Lisbon QM 2: coalition size (72%): 20/27; population (65%): 314/484.

Source: Authors' compilation.

block. The EU has since its beginnings been too much orientated towards blocking power, which makes the Union weak in terms of its capacity to act.

To show how an institutional reform of the Council would improve the capacity of the Union to act while at the same time providing for a reasonable amount of blocking power, we will employ some elementary game theory, calculating the probabilities of a positive decision as well as the blocking powers of the Member States. We will compare the present Nice rules with the Lisbon rules.

The Union according to Nice is a very feeble group, only 4 % of all possible coalitions between Member States reaching a positive decision. The capacity to block is very high, as each of the big six states can block in 75 % of all decisions. But the tiny states have a blocking power that is high enough to protect them against the danger of becoming so-called dummy players, meaning without influence. Generally speaking, the medium and small states have more voting power than the large Member States, taking population into account. The new constitution rules changes this imbalance dramatically. While it increases the capacity of the Union to take positive action and the voting power of the big states, it does so without hurting or endangering the position of the medium and small Member States (see *Table 2*).

This Union would be able to take positive decisions in 10 % of all possible coalition formations. The voting power or *Banzhaf* numbers of the Member States have been clearly differentiated so that the large members have more than the smaller members. Germany has finally been given a leading position reflecting its population size and economic contribution to the Union through its high blocking power. No Member State is a dummy player and the special favours given by Nice to medium sized Member States have been undone, e. g. for Spain and Poland. Only the very tiny states have disproportionate influence over the Union, given the size of their population, but their voting power is very small, absolutely speaking.

## V. Conclusion

Organisations need to devote time and effort to stabilise their structure. The defeat of the reform attempts can only be interpreted as a signal that the European electorate does not want major changes in their Union. Yet, the stability of Europe depends upon the Union being able to act. Thus, the EU can only respond to the future challenges to a Union of nation-states, if it has a reasonable level of group decisiveness.

Table 3: A Possible Future EU Council around 2015 (*Banzhaf* Power Indices)

	Population	Votes	Nice		Lisbon	
			Qualified majority	Double qualified majority	Qualified majority 1	Qualified majority 2
DE	82.2	29	0.0307	0.0145	0.0867	0.0041
UK	59.8	29	0.0307	0.0145	0.0760	0.0037
FR	59.5	29	0.0307	0.0145	0.0758	0.0037
IT	57.8	29	0.0307	0.0145	0.0741	0.0036
ES	40.3	27	0.0292	0.0139	0.0553	0.0034
PL	38.7	27	0.0292	0.0139	0.0532	0.0034
RO	22.4	16	0.0189	0.0101	0.0373	0.0032
NL	16.0	13	0.0156	0.0091	0.0307	0.0031
EL	10.6	12	0.0145	0.0088	0.0250	0.0031
CZ	10.3	12	0.0145	0.0088	0.0247	0.0031
BE	10.3	12	0.0145	0.0088	0.0247	0.0031
HU	10.0	12	0.0145	0.0088	0.0244	0.0031
PT	10.0	12	0.0145	0.0088	0.0244	0.0031
SE	9.0	10	0.0122	0.0081	0.0233	0.0030
AT	8.1	10	0.0122	0.0081	0.0224	0.0030
BG	8.1	10	0.0122	0.0081	0.0223	0.0030
SR	7.5	9	0.0110	0.0078	0.0217	0.0030
SK	5.4	7	0.0086	0.0071	0.0195	0.0030
DK	5.3	7	0.0086	0.0071	0.0194	0.0030
FI	5.2	7	0.0086	0.0071	0.0193	0.0030
HR	4.7	7	0.0086	0.0071	0.0185	0.0030
IE	3.8	7	0.0086	0.0071	0.0177	0.0030
BH	3.7	7	0.0086	0.0071	0.0176	0.0030
LT	3.7	7	0.0086	0.0071	0.0176	0.0030
LV	2.4	4	0.0049	0.0061	0.0162	0.0030
MK	2.0	4	0.0049	0.0061	0.0159	0.0030
SI	2.0	4	0.0049	0.0061	0.0158	0.0030
EE	1.4	4	0.0049	0.0061	0.0151	0.0030
CY	0.7	4	0.0049	0.0061	0.0144	0.0030
CG	0.6	4	0.0049	0.0061	0.0143	0.0030
LU	0.5	4	0.0049	0.0061	0.0142	0.0030
MT	0.4	3	0.0037	0.0058	0.0140	0.0030
Σ	502.4	378	0.4339	0.2800	0.9518	0.1003
δ	—	—	0.0193	0.0101	0.0606	0.0030

Notes: See Tables 1 and 2. SR: Serbia; HR: Croatia; BH: Bosnia and Herzegovina; MK: Macedonia; CG: Montenegro

Source: Authors' compilation.

At the same time voting power must be distributed in accordance with the size of the state. Finally, no member should be a dummy, meaning each must have some voting power and some blocking power. No one can be a veto player. The new decision rules – 15 governments for, 65 % of the population and at least four countries in order to block – satisfy these requirements.

Any enlargement project will strain the legitimacy of the Union, unless it is transparent that the peoples of Europe lend their support to it. An enlarged Union must avoid the risk of becoming a group of veto players, especially if pillars II and III are to be moved forward towards deepening. *Table 3* shows the differences between Nice and Lisbon for the European Union 2015, if further extended.

As appears from the Table, Lisbon is more efficient than Nice, especially under qualified majority rule. This increase in group decisiveness will serve the Union well when it proceeds to make decisions about rules and money.

Organisations are man-made devices for channelling resources and efforts into the provision of goods and services. They have to camp on the see-saws whether they are business firms or political organisations, whether they are national, international or regional ones.<sup>5</sup> Whether the Union has a president or a foreign minister is perhaps not terribly important. But its capacity of decide ( $\delta$ ) must not become too low.

The idea of a constitution for the Union was not really a promising one. It conveyed a federalist message that the sovereign states of Europe could have their own constitutions subordinated to a superior law. Probably the same holds for the proposals to create a permanent president and foreign minister of the Union. The EU is merely a collaborative mechanism – it will never become a state. But when it acts, it needs decisiveness. Lisbon should replace Nice, as soon as possible, and without any other huge institutional changes and definitely not a constitutional overhaul.

5 Hedberg, B. L. T./Nystrom, P. C./Starbuck, W. H.: Camping on See-Saws: Prescriptions for a Self-Designing organization, in: *Administrative Science Quarterly*, 21/1 (1976), 41–65.