CE PR

Pandora's (Ballot) Box
Can the Constitution voting rules be improved?

RICHARD BALDWIN and **MIKA WIDGRÉN**
Graduate Institute, Geneva and CEPR; Turku School of Economics and CEPR

The German President of the EU27 wants to avoid discussion of voting rules in the negotiations over a new treaty. Voting rules, Germany claims, are just a Pandora's Box – open the box and everyone will be sorry; best just to stay with the rules in the Constitution. Putting the Constitution's voting rules into a new treaty would shift a great deal of power to Germany so one might be leery of Berlin's motives, but leaving that aside, keeping the box closed is not the real lesson of the Pandora myth.

Pandora politics

According to the hopelessly misogynist Pandora myth, the first men lived in bliss, until the gods decided to punish them by creating the first woman – Pandora – and setting a devious trap for her. The gods' messenger brought a box and told her not to open it. Pandora's curiosity got the better of her, she opened it a crack and out flew all the evils of the world even though she slammed it closed as quickly as she could. Closing the lid did keep one spirit in the box; it was Hope – the spirit whose mission was to heal the damage inflicted by all the other spirits.

Moral of the story? If you have already opened Pandora's Box, you should not be afraid to open it again. Indeed, some good may come from doing so.

Pandora's Box was well and truly opened in the Nice Treaty negotiations and the debates over the draft Constitution. During the 2004 Irish Presidency, the lid was slammed shut in a crisis-atmosphere just months after the Eastern enlargement. The voting rules in the Constitution were put there by the Irish Presidency in Spring of 2004. What little analysis done was based on pure speculation; the voting reforms in the Constitution were adopted without any real-world experience with decision-making in an EU of 25+ members.

Getting the voting rules right is a matter of the utmost importance, and the status quo voting rules – which will remain in effect until a new treaty takes effect – do need to be changed.[1] The EU will face many

important decision-making challenges in the coming decades. It is critical that the decision-making process is well thought through and widely accepted as legitimate. Shutting down discussion and analysis is not the way to achieve this.

The most important changes concern the voting rules of the EU's linchpin decision-making body – the Council of Ministers. Such changes will have complex and far reaching effects. They will alter the EU's ability to act and they will shift the distribution of power among EU members. More subtly, such changes will also alter the distribution of power among the Council, Parliament and Commission.

> **...The Constitution voting rules emerged in a crisis atmosphere during the Irish Presidency. What little analysis done was based on pure speculation; the voting reforms were adopted without any real-world experience with decision-making in an EU of 25+ members. The EU now has two years of experience. Maybe we've learned something...**

This Policy Insight has three goals. It presents the status quo voting rules (from the Nice Treaty), the rules in the rejected Constitution, and some alternatives. Then, it presents a way to organise thinking about the impact of Council voting reforms on the legitimacy and efficacy of the Council of Ministers' voting rules as well as the impact on distribution of power among EU members and institutions. Lastly, it suggests a way that the status quo rules could be repaired without greatly altering the distribution of power among members.

The first step in our reasoning is to explain the status quo rules. They are complex.

Today's voting rules: Nice

The Council of Ministers plays a pivotal role in EU decision-making. The Council is made up of a minister from

---

1 As we argued in "Does the EU need a new Treaty?" CEPR Policy Insight No. 3, 2007.

Figure 1 Nice voting rules distribution of Council votes
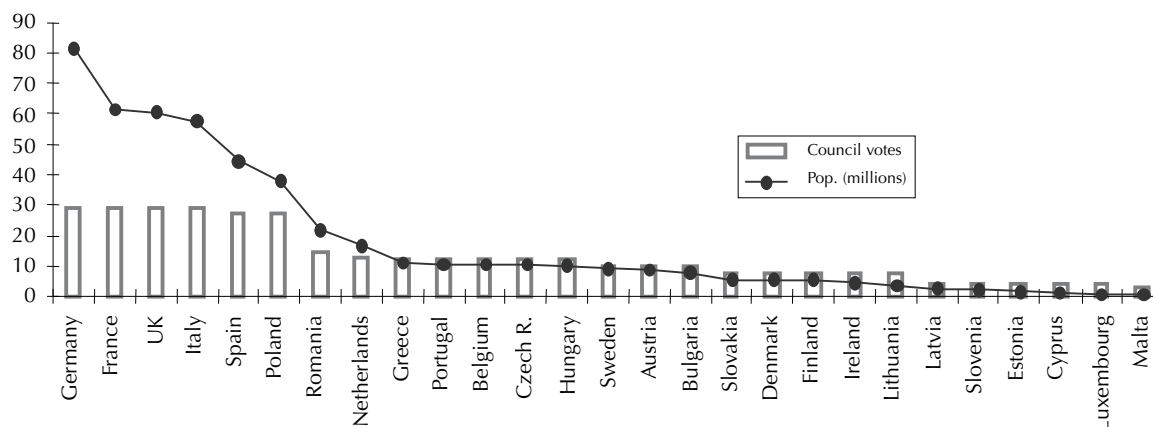
each member nation – agriculture ministers for agricultural matters, treasury ministers for tax issues, etc. On very important issues, such as enlargement and fiscal questions, the ministers must agree unanimously. For most decisions – something like 80% of all Council business – they decide on the basis majority voting. This is not the familiar majority voting, however. The EU has a scheme that is unlike any other.

First, the votes are not allocated according to the standard one-person-one-vote principle. There are a total of 345 'Council votes' allocated among the 27 ministers; ministers from big member states get more votes. Second, the majority threshold is not the familiar 'over 50%.' The formal name for the complicated system is 'qualified-majority voting,' often shortened to QMV. Under the current rules – which were established by the 2001 Treaty of Nice – attaining a qualified majority requires that the group of yes-voters pass three thresholds: one regarding the number Council votes; one the number of members; and one the share of the EU population. Specifically, the yes-voting coalition must have:
  • at least 74% of the Council votes;
  • at least 50% of EU members;
  • at least 62% of the EU population.
A good way to think of QMV is as three separate ways of weighting each minister's vote, with a separate threshold for each type of weighting. Starting with Council votes, Figure 1 shows that these are distributed according to population, but big members get fewer votes than population proportionality would suggest and small members get more; the majority threshold for this weighting is 74% (255 of 345). Next comes the population weighting (see Figure 1); here the majority threshold is 62%. Lastly, there is the membership weighting which gives each member one vote; the threshold is 50%.

The implications of this system are complex. Some coalitions of countries will meet two out of the three criteria, but fail on the third. For example, in the EU27 the 13 largest nations will have enough votes to pass the 74% threshold and enough population to pass the 62% barrier, but such a coalition would be one nation short of the 50%-of-members criteria. In such a case we can say that the member criterion matters, since it makes it harder to come to a decision. However such

situations – where a coalition would win but for the population or member criteria – are quite rare. The Council vote threshold is almost always the binding constraint. Combinatorics tells us that the number of possible yes-no voter coalitions among 27 ministers is 2n, which means 134,217,728 different coalitions. Of these, about 2.7 million pass the Council vote threshold; only 23 of these fail on either the population or member threshold. What this means is that the population and member thresholds almost never matter; 2.7 million minus 23 is basically 2.7 million.

What's wrong the Nice rules? Measuring ability to act

The main problem with the Nice Treaty voting rules are that they make it much more difficult for the Council to take decisions. In the terms of voting theory, the key concept here is 'efficiency' – not efficiency in the usual economics sensible, but rather as a synonym to ease-of-decision-making, or ability-to-act. In CEPR Policy Insight No.3, we presented evidence that EU decision-making had indeed become a problem since the May 2004 enlargement. Here we rely on more formal measures of efficiency that come from voting theory.

...Getting the voting rules right is a matter of the utmost importance ... It is critical that the decision-making process is well thought through and widely accepted as legitimate. Shutting down discussion and analysis is not the way to achieve this...

Efficiency is hard to define but a 'veil of ignorance' approach helps. The idea is to consider how likely the Council is to approve a randomly selected proposal – random in the sense that no member knows in advance whether it would be for or against the proposition.

This is not the perfect way to gauge decision-making efficiency but it is the best practical way. To do the perfect job, we would have to know the unknowable – a list of all decisions that will arise before the Council and how every current and future member will vote on each.

CEPR POLICY INSIGHT No.5

Of course, it is tempting to make a stab at this, speculating on issues and positions, but this is not good enough. As well as being difficult (remember the 134 million coalitions), the results of such exercises are arbitrary since reasonable people can differ over the forecasted issues and positions, especially those that are decades into the future. The admittedly imperfect solution is to employ a quantitative measure of efficiency called the passage probability.

The passage probability measures how difficult it would be to approve a randomly selected issue. This is how it works. The computer determines how many of 134 million possible coalitions are winning coalitions. In a perfect world, we would know how likely each coalition is, but in absence of this knowledge, we rely on a Hegelian 'veil of ignorance' and assume that for a randomly chosen proposal, all coalitions are equally likely. Under this assumption, the ratio of winning coalitions to total coalitions provides a measure of how likely a randomly chosen issue is to pass. In a nutshell, it is the ratio of the number of winning coalitions in the Council to all possible coalitions.

Of course, the precise level of the passage probability is almost entirely useless since the Council does not consider randomly generated proposals. Changes in the passage probability, by contrast, tell us whether a particular change in the voting rules will make it harder or easier to make a decision.

Figure 2 shows what the passage probably looked like for QMV in the current and historical EUs. These indicate that although efficiency has been declining, the pre-2004 enlargements have only moderately hindered decision-making efficiency. The 12-to-15 enlargement lowered the probability only slightly, 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.

Note that the way efficiency falls with enlargement is a clear-cut implication of the mathematics of combinatorics. Since the EU's origin, the threshold for Council votes has always been around 70%. Expanding membership increases the number of ways to form a 30% blocking coalition much more rapidly than it increases the number of ways to form a 71% winning coalition, so enlargement lowers the passage probability. This is just the mathematics of the common sense proposition that it is harder to take decisions when there are more people around the table.[2]

Figure 2 clearly shows that the current rules (adopted in the Treaty of Nice) failed to meet the goal of maintaining the efficiency of EU decision-making. The ability to act drops from 7.8% in the EU15 to 2.8% in the EU27. The 12 newcomers will not be the last to join. Turkey and Croatia are currently negotiating membership and Albania, Bosnia, Macedonia, Montenegro and Serbia are likely joiners. The passage probability in an EU34 would be just 1.1%. For the EU29 – the 27 plus Croatia and Turkey – the passage probability is 2.3%. For the EU36 (the 34 plus Switzerland and Norway), it would be just 0.9%. What all this goes to say is the Nice Treaty rules absolutely must be reformed. They just will not allow the EU to continue to function in its current formation, to say nothing of future membership expansions. Again, this is just the mathematical statement of the reason why EU leaders are almost unanimous in their belief that the Nice Treaty rules need to be reformed.

The EU did react to this problem. The EU25 national leaders unanimously agreed under the 2004 Irish Presidency to dump the Nice Treaty rules in favour of the simpler system in the Constitutional Treaty. Under the Constitution, qualified majority voting involves two thresholds. The group of yes-voters need to represent 55% of the member states and 65% of the EU population. The impact of this reform on the passage probability is dramatic, as Figure 2 shows. For EU 27, 29 and 34 (the 29 plus Albania, Serbia, Macedonia, Montenegro and Bosnia) the passage probability jumps

2 See "European Economic Decision-Making Policy: Progress or Paralysis?", Alan Kirman and Mika Widgren, *Economic Policy*, 1995 for early computations of these numbers for the EU.
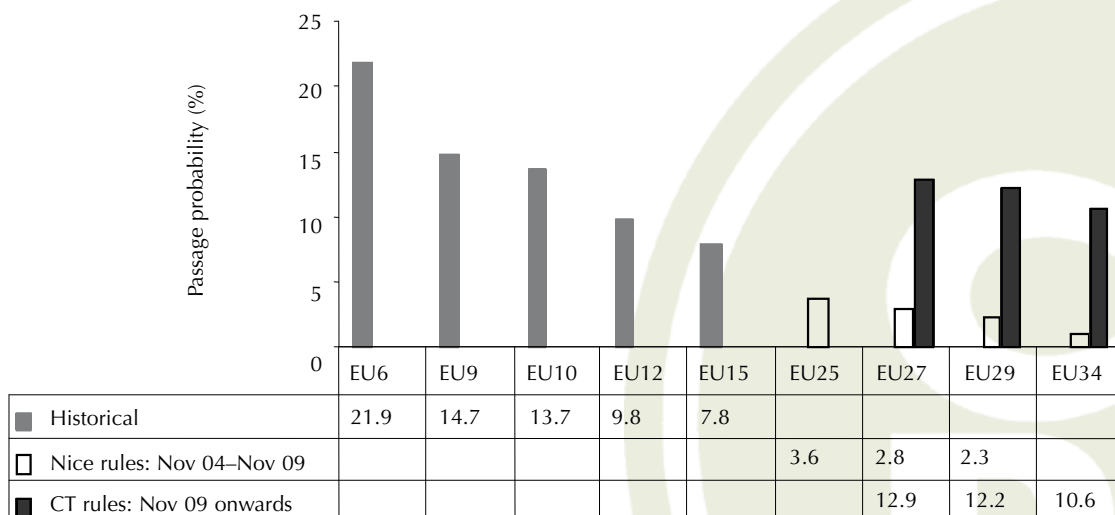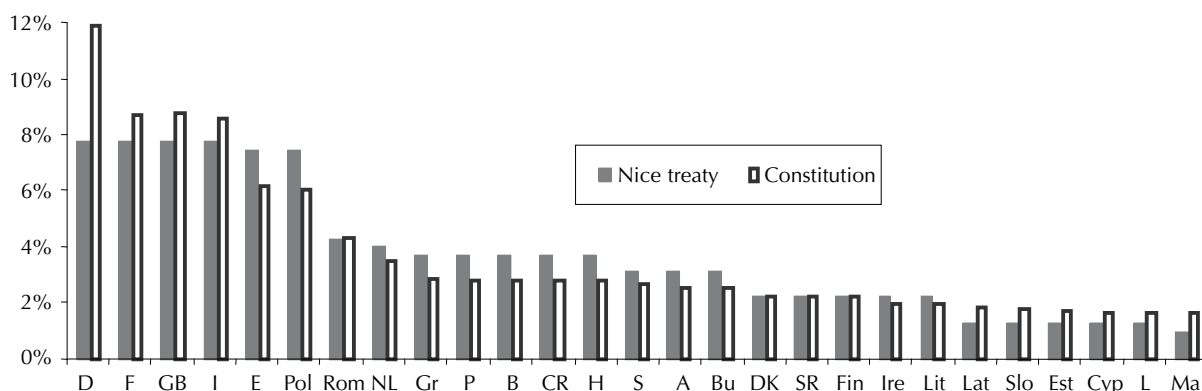
Figure 2 Passage probability for QMV

	EU6	EU9	EU10	EU12	EU15	EU25	EU27	EU29	EU34
Historical	21.9	14.7	13.7	9.8	7.8				
Nice rules: Nov 04–Nov 09						3.6	2.8	2.3	
CT rules: Nov 09 onwards							12.9	12.2	10.6

Figure 3 Power shares (NBIs) under Nice Treaty and Constitutional Treaty rules

Winners and losers? Measuring power shifts

Changing a voting system usually shifts power among members – something that always generates high politics. Poland's opposition to the Constitution's rules, for example, is based primarily on the fact that they would reduce Poland's power while raising Germany's. How can one measure power? This is not easy. The first step is to define it.

For our purposes, power means influence, or more precisely the ability to influence EU decisions by being in a position to make or break a winning coalition in the Council of Ministers. No member has absolute power in the EU, so we focus on the likelihood that a member state will be influential. What determines this? Voting weights are one obvious candidate and this rough-and-ready power measure has the great merit of transparency. Unfortunately, voting weights can give a very misleading depiction of the power distribution. Moreover, with the Constitution's dual majority system, it is not clear what the voting weights are.

Here we assume that power is measured by the likelihood that a nation's vote will make or break a winning coalition. This probability involves complex interactions between the majority threshold and the weighting of votes. One measure that is standard in the voting literature is the Banzhaf Index, and its normalised form(NBI). In plain English, the Banzhaf Index gauges how likely it is that a nation finds itself in a position to 'break' a winning coalition on a randomly selected issue.[3]

We believe this is a useful measure of power since it influences the ability of members to get things passed and to block things; there is also some empirical support for it in the EU context.[4] The concept is that a nation which can frequently break the winning majori-

ty is more likely to be able to block those proposals it disapproves. Moreover, the threat of breaking a winning coalition can be used to line up allies on future issues – what is known more colloquially as 'back scratching' and 'horse trading'.

The mechanical calculation of the NBI is conceptually simple. One asks the computer to look at all winning coalitions and work out all the ways that each winning coalition could be turned into a loser by the defection of a single nation. When the Banzhaf Index is normalised – so the national power measures add up to 100% – the computer calculates the number of times each nation could be a 'deal breaker' as a fraction of the number of times that any country could be. The theory behind this is that the Council decides on a vast array of issues, so the NBI tells us how likely it is that a particular nation will be critical on a randomly selected issue. In the standard Banzhaf Index, the national power measures are not normalised.

Figure 3 shows the normalised Banzhaf Index for the EU27 under the status quo Nice Treaty rules and the Constitutional Treaty (CT) rules. Much of the political opposition stems from the fact that moving from the status quo Nice rules to the Constitution's rules will lower the power share of middle-sized nations ranging from Poland to Ireland, while raising the power shares of the very big (Germany, France, UK and Italy). Poland in particular appears to be peeved that its power share may be trimmed so soon after having become used to being a major player in the EU.

Why did the EU25 agree? Politics of switching voting rules

When thinking about voting rules in terms of power shares – the approach implied by our power measure, the normalised Banzhaf Index – it is hard to see how the EU could ever reform its voting rules. Any change in the rules will create winners and losers; power shares do sum to 100% so it is a zero-sum game. In the EU, the losers have a veto over such things. Why would they ever accept a loss?

At the EU15 summit that produced the Treaty of Nice, the reforms adopted raised the power share of the five biggest nations and lowered the power share of the rest. However, many of the small nations lost relatively little and agreeing the reform was viewed as the price of Eastern enlargement. According to this reading of his-

---

3   There are two classical power indices in the literature, the Banzhaf index, which is due to Lionel Penrose (1946) and the Shapley-Shubik index, which was developed by Lloyd Shapley and Martin Shubik (1954); John Banzhaf (1965), a brilliant professor of law, re-invented the index without knowing Penrose's work. We work with the Banzhaf concept.

4   See Heikki Kauppi and Mika Widgrén, "What determines EU decision making? Needs, power or both?" *Economic Policy*, 39, 2004 and Kauppi, H. & Widgrén, M. (2007): Voting Rules and Budget Allocation in an Enlarged EU, forthcoming European Journal of Political Economy.

tory, the small nations accepted power loss in exchange for Eastern enlargement. There is anecdotal evidence that Spain was the swing voter in the negotiations in Nice and this may explain why Spain's power share rose so much; Spain got a number of Council votes that is only slightly lower than Germany's even though Spain has half the population of Germany. (Note that even though Poland was not at the bargaining table in Nice on the critical night in December 2000, Poland got the same number of votes as Spain since they both have about 40 million inhabitants.)

This line of power-against-enlargement logic, however, does not explain why the voting reforms in the Constitution were adopted unanimously by the EU25. Enlargement had already happened and the Nice Treaty reforms had yet to be tried (the current rules went into effect in November 2004; the Constitution was agreed in June 2004).

To understand what happened – why the EU25 agreed to important shifts in their power shares – it is necessary to think about why power matters. If power is used to divide up a fixed 'pie' then the power share is all that matters. The Constitution's voting rules, however, greatly increased the EU's ability to act, as we saw in Figure 2. Thus in some sense, the Constitution voting rules did not just shift power shares, it increased the size of the decision-making pie. By facilitating decision-making, the new rules meant that each nation's share of power was applied to a larger flow of decisions. Logically speaking, this made it possible for all members to feel that they became more influential in EU affairs.

As it turns out, this is exactly what happened. The construct we need to show this is the non-normalised Banzhaf Index, or BI for short. Formally, this is the probability that an individual nation's vote will be decisive on a random proposal. Roughly speaking, this probability (the BI) is the product of two probabilities: the probability of any given proposal getting passed and the probability that the vote of the member state in question will be critical. Since the Constitution has greatly raised the first probability, every nation could see a rise in the probability that its vote is influential on a randomly selected proposal.

In Figure 4, the first set of bars shows that the 60 million+ nations, especially Germany with its 80 million

inhabitants, all gained a lot – more than the middle-sized nations (5 to 15 to million), and much more the near-big nations, Poland and Spain, with their populations of 40 million. The small and tiny nations also gained disproportionately. The key, however, is that the nations that were the most difficult – Poland and Spain in particular – did not lose in an absolute sense.

Both measures of power – the relative measure (NBI) and the absolute measure (BI) – tell us something about voting reforms, but governments that focus exclusively on their power share may be missing an important aspect of the problem. Perhaps this is why the Spanish government, which vetoed the Constitutional voting rules under the Italian Presidency in late 2003, decided to support the reforms under the Irish Presidency in Spring 2004. This interpretation is buttressed by the changes that the Irish Presidency negotiated in the double majority thresholds rules.

The voting rules in the draft Constitution were inserted by Giscard d'Estaing without much discussion right at the end of the European Convention, closing the lid on Pandora's box, so to speak. These required that a proposal attract the approval of countries accounting for at least 50% of the membership and representing at least 60% of the EU population. Members' probabilities of being influential (BI) for this 50-60 rule are shown by the middle columns in Figure 4. After hard bargaining, the Irish proposed to raise both majority thresholds to the 55-65 that are in the Constitutional Treaty today. As the chart shows, this tightening of the threshold lowered the BI for all members, but lowered it much more for Germany and the other 60 million+ members. It seems likely that this reduction of the relative gains of the biggest nations, teamed with the fact that all nations became more influential was critical in getting unanimity on the Constitutional voting rule changes. Or at least, there is a voting theory logic to the decision.

Thinking about new voting rules

If new voting rules are allowed to be discussed during the negotiations of a new treaty, it will be important to understand the impact of the various changes. There are two basic types of reforms that are likely to be considered – staying with the status quo Nice Treaty rules but 'repairing', or (more likely) tinkering with the two

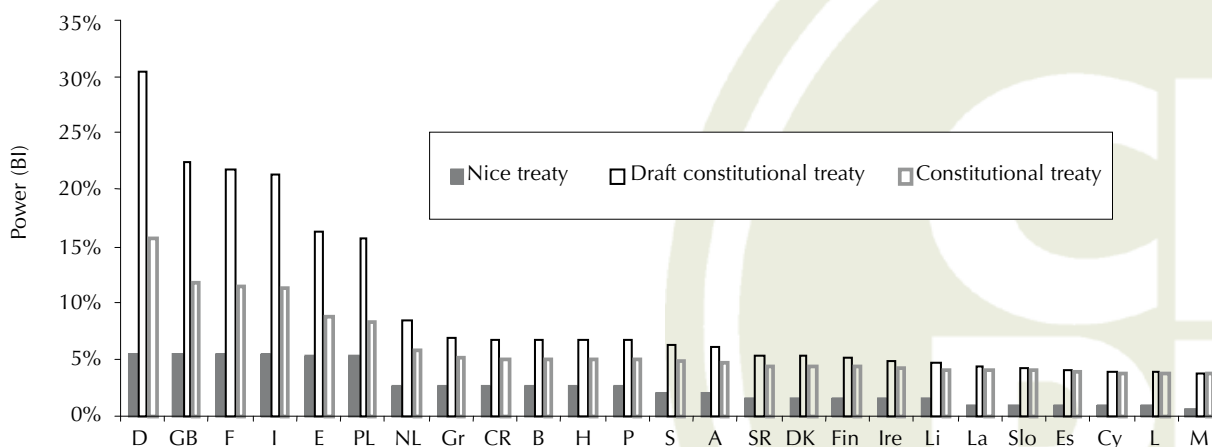**Figure 4** Probability of being pivotal (BI), EU25

Table 1 Ease of decision-making for various dual majority threshold pairs

Majority Thresholds in %: %Members - %Population		Passage Probability		
		EU27	EU27 + Turkey	EU34
	50-50	35.8%	31.9%	31.6%
	55-55	23.0%	19.9%	
	50-60	21.9%	19.8%	
Constitution thresholds:	55-65	12.9%	12.5%	10.6%
	50-2/3rds	12.9%	11.7%	5.8%
	60-50	11.1%	15.1%	
	50-70	9.2%	8.3%	
	60-60	8.5%	11.0%	
	60-70	4.8%	5.6%	
	Nice	2.8%	1.8%	1.1%
	70-50	2.5%	1.7%	
	70-60	2.2%	1.6%	
	70-70	1.6%	1.1%	

Source: Authors' calculations of passage probabilities. Note that EU15 passage probability is 7.8%.

thresholds in the Constitution's dual majority scheme. The key impact of either type of reform can be usefully summarised with our efficiency measure (passage probability) and our power measure (NBI). We start by providing intuition on how changes to the Constitution's 55%-65% thresholds would affect efficiency and power.

Evaluating changes to the 55-65 thresholds: Duelling duals

There is nothing sacred about 55-65 thresholds in the Constitution. They were, after all, a political compromise that moved away from the 50-60 thresholds in the 2003 draft Constitutional Treaty. We start with the impact on decision-making efficiency that changing the 55-65 would bring.

> **...If new voting rules are allowed to be discussed during the negotiations of a new treaty, it will be important to understand the impact of the various changes. There are two basic types of reforms that are likely to be considered – staying with the status quo Nice Treaty rules but 'repairing', or (more likely) tinkering with the two thresholds in the Constitution's dual majority scheme...**

If both thresholds were raised, it will be hard for the Council to make decisions. As our calculations displayed in Table 1 show, the passage probability remains at or above those of the EU15 as long as the thresholds remain below about 70%.

Changing the membership and population thresholds separately has subtler effects on the ability to act (passage probability). As it turns out, efficiency is more sensitive to raising the membership threshold than it is to raising the population threshold, at least as concerns thresholds in the neighbourhood of 55-65. Membership-weights are distributed evenly while population-weights are extremely unevenly distributed (70%
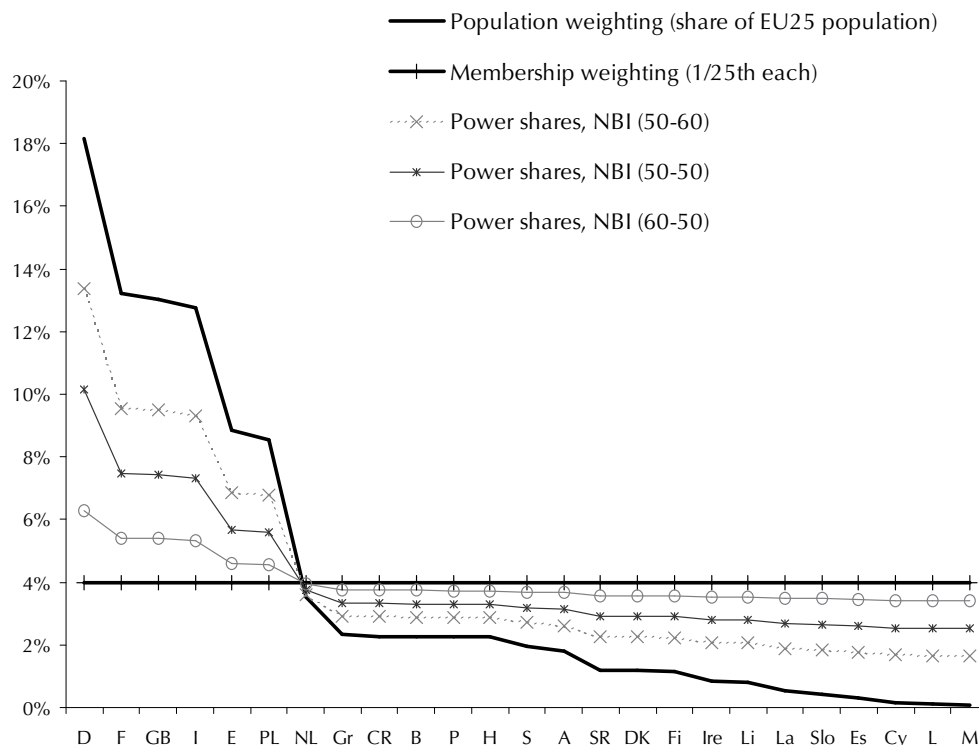
of the EU27 population lives in just 6 member states); this turns out to matter. Recall that our measure of efficiency, the passage probability, is the ratio of winning coalitions to total coalitions. Raising the thresholds does not change the numerator (that remains equal to 227), but it lowers the number of winning coalitions. In particular, raising the population threshold is less damaging to efficiency. The intuitive reason rests on the fact that with the 55-65 rules, the population threshold it is not usually the binding constraint on winning coalitions. Getting 65% of the population is fairly easy since the big 6 nations account for 70% of the EU27 population. Raising the threshold above 65% does eliminate some winning coalitions, but relatively few – basically many of the winners with 55-65 have 'excess' population. Raising the 55% of the membership threshold, by contrast, has a more power efficiency-lowering effect.

Bottom line: EU leaders should be very cautious in raising the thresholds from those in the Constitution, especially the membership threshold. Europe needs a new treaty since the Treaty of Nice voting rules make it too hard to decide. If Europe adopts a dual majority with thresholds that are too high, leaders will soon find themselves negotiating a new treaty to fix up the Nice Treaty's replacement. Table 1 shows the figures for a range of dual majority thresholds.

While maintaining the EU's ability-to-act is the overarching goal of any new treaty, the new voting rules' impact on power is sure to be the most contentious issue. Fortunately, there is an easy intuition for how changing the two thresholds will affect the power distribution.

The old proverb 'the squeaky wheel gets the grease,' applies quite directly to the division of power in a voting system. A change that makes one nation's vote become more critical will boost that nation's power. To apply this proverb to voting rules, recall that we can think of the dual majority system as giving two separate weights to each member's vote – one for membership (the weight is 1/27th for all EU27 members), and one for population (the weight is each members' share of the EU27 population). The first decisive fact is that these two weighting schemes are very different for different members. Big EU members will have a population weight that is far in excess of the membership weight,

Figure 5 Power shares (NBIs) and majority thresholds

Legend:
— Population weighting (share of EU25 population)
—+— Membership weighting (1/25th each)
···×··· Power shares, NBI (50-60)
—∗— Power shares, NBI (50-50)
—○— Power shares, NBI (60-50)

X-axis labels: D F GB I E PL NL Gr CR B P H S A SR DK Fi Ire Li La Slo Es Cy L M

while the opposite holds for small members. Germany's weights are about 18.1% for population and about 4% for membership; the respective weights for Estonia are 0.3% and 4%.

A second decisive fact is that is that the value of having a large voting weight depends upon the relative tightness of the thresholds. Two extreme thought experiments help illustrate this. Suppose the population threshold were very low, say 5%, while the membership criteria were 50%. The low population threshold means that it would be very easy to satisfy the population criteria, so having a large population share is not particularly valuable. At the extreme, the vote of a small nation like Cyprus would be almost as likely to be critical as the vote of a large country like France. At the other extreme, if the population threshold is 70% while the members threshold is low, say 20%, then the really scarce thing is the population weighting. In particular, the votes of the members with big population weights could make or break a very large proportion of the winning coalitions. In short, raising the membership thresholds makes the membership weight relatively more important, thereby shifting power towards small nations; raising the population threshold raises the importance of the population weighting, thereby shifting power to big members.

This logic is illustrated with three concrete examples in Figure 5. The three dual systems considered are 50-60, 50-50 and 60-50 (% member-% population). The chart graphs the power shares (normalised Banzhaf Indices, or NBIs) for each EU27 member for the three pairs of majority thresholds. The figure also graphs the two weights for each nation, share of membership (the flat line) and share of population (the steep solid line). Starting from 50-50, we see tightening the population threshold to 60% while leaving the membership thresh-

old at 50% shifts power to big nations, especially Germany. Tightening the membership threshold to 60% while leaving the population-bar at 50% shifts power in the opposite direction. As it turns out, the Netherlands is the pivot of this whole machine (its population share just happens to be approximately the same as its membership share in the EU27).

Bottom line: If EU leaders want to shift power shares away from the big nations, they should tighten the membership criteria. As discussed above, raising the 55% without changing the 65% will reduce efficiency and thus the size of the decision-making pie. Thus, raising only the membership threshold does not guarantee an increase in overall influence of the small nation (i.e. their Banzhaf Indices). Doing that would require a rise in the 55% and an offsetting drop in the 65%. Conversely, raising the population threshold while lowering the membership threshold will shift influence towards large nations.

Fixing the Nice Treaty rules

The Nice Treaty's complex triple-threshold system has come under much criticism, including from us in book we wrote in 2001 together with Francesco Giavazzi and Erik Berglof.[5] But the changes to the Nice Treaty rules contained in the Constitution were dreamt up before the Nice Treaty rules had even been tried (remember the Nice rule went into effect November 2004, the Constitution rules were set in June 2004). The EU now has two years of practice with the Nice Treaty rules. Some EU members, especially Poland, seem enamoured of the Nice Treaty rules, or at least the very large power share that these rules award to Poland. As it turns out,

5   R. Baldwin, E. Berglof, F.Giavazzi and M. Widgren (2001), *Nice Try: Should the Treaty of Nice be Ratified?*, CEPR, London.

Figure 6 Power shares (NBIs) under Nice Treaty, repaired and Constitution rules
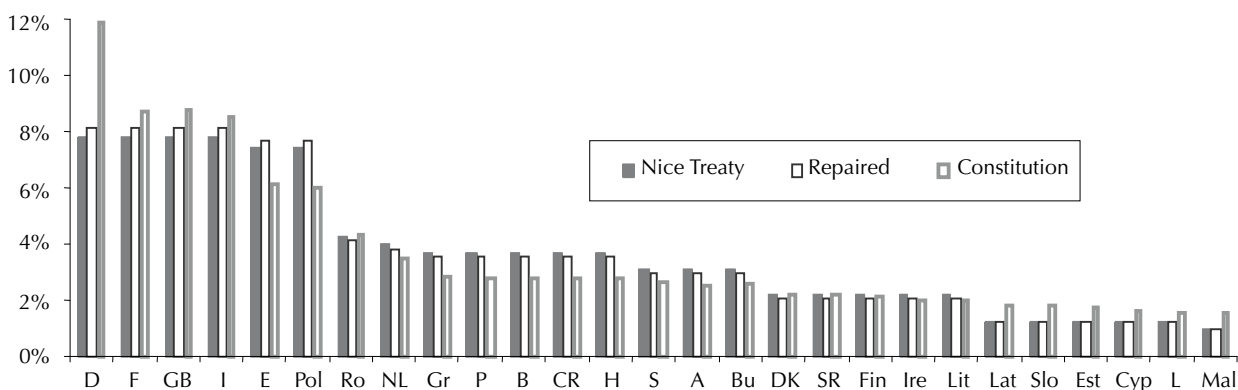
there is a way of staying with the basic Nice Treaty scheme but 'repairing' it by lowering two of the three thresholds. These 'repairs' would fix its fatal flaw – the very low decision-making efficiency in the EU27 – while leaving the power distribution basically unchanged. Plainly, staying with a repaired version of the Nice rules is an option that deserves consideration.

> **...There is a way of staying with the basic Nice Treaty scheme but 'repairing' it by lowering two of the three thresholds ... plainly, staying with a repaired version of the Nice rules is an option that deserves consideration...**

EU leaders could repair the Nice rules without changing the status quo power distribution. Here's how:
1. lower the 74% threshold of Council votes to two-thirds, and
2. lower the population threshold to one-half.

This repaired scheme would have a respectably high passage probability of 7.4% in the EU27 – about what it was in the EU15. These repairs might be politically attractive since it would lead to very little alteration in the current power distribution that exists. No country would gain or lose more than a tenth of a percentage point of power compared to the Nice rules, including Poland and Spain.[6]

Figure 6 shows the numbers and compares them with the power shifts that would occur if the Constitution rules are in the new treaty. The big changes are that all the 60 million plus members would retain equality of power, and the near-big members – Spain and Poland – would have almost the same power share. Staying with the Nice rules would also avoid major power losses for the middle sized nations, those with between 5 and 15 million inhabitants. The very smallest EU members, however, would fail to realise the power gains they were hoping would come with the Constitution.

And Turkey?

Equality of power among the big members plays a very

large role when thinking about Turkish accession. Turkey's current population is about 70 million, which would make it the second largest member when it joins. Under the Constitution's rules, that would mean Turkey would be the second most powerful EU member. And this will almost surely change.

Turkey's population is rising at 1% a year while Germany's 82 million is declining. 25% of Turks are under 14 years of age; the percentage for Germany is half that. Under the Constitution's rules that would make Turkey the most powerful EU member about 14 years from now. Since few would guess that Turkey will be a member in less than ten years, the calculations indicate that Turkey would become the most powerful member soon after joining. This is a fact that Giscard d'Estaing (an arch foe of Turkish membership) knew when he put the dual majority scheme into the draft Constitutional Treaty. Turkey's extremely powerful position in EU legislation is likely to be unacceptable in several circles, which might make the ratification of the Constitution voting rules and Turkey's membership substitutes rather than complements.

The distribution of power in an EU34 (the 27 plus Croatia, Turkey, Serbia, Montenegro, Bosnia and Albania) is shown in Figure 7. The difference between the Nice and CT rules follows the same pattern as in EU29 (EU27 plus Turkey and Croatia).[7] As the CT rules put considerable weight on population, Turkey's big population becomes much more powerful than France, the UK and Italy. In terms of power, the CT benefits the biggest and smallest member states.

How Council voting rules shift power among the Council, Commission and Parliament

So far, we have discussed the impact of voting reform on individual nations and the overall ability of the Council to act. There are other import implications that are much less widely understood. Making the Council's decision-making rule more efficient will tend to shift power from the Council to the Parliament and Commission. The basic intuition is similar to the 'squeaky wheel gets the grease' reasoning above, but understanding this requires some background.

6   These repairs were first proposed in our *Nice Try* book, see note 5

7   For a detailed analysis of Turkey's impact on EU voting see our 2005 paper 'The Impact of Turkey's Membership on EU Voting,' CEPR Discussion Paper 4954.

EU legislating is complex, as the flow chart in Figure 8 shows. We can begin to understand it by starting with a simplified version of the real process, and improve our understanding by adding in reality bit by bit. In the EU's early days, the Council of Ministers was the legislative body and the Commission was the agenda setter (the Parliament merely advised). As agenda-setter – i.e. the one that writes the Directives, etc. that the Council has to vote on – the Commission thinks ahead and considers what the Council will accept. This constrains the Commission's leeway, but only partially. On many issues, a whole range of proposals would be acceptable to some coalition of Council members. The Commission gets to pick which proposal in this range is put to a Council vote. Herein lies the power of an agenda-setter; the Commission determines what is put before the Council, so it can choose its favourite among all the passable proposals.

> **...Equality of power among the big plays a very large role when thinking about Turkish accession. Turkey's population is rising at 1% a year while Germany's is declining ... the Constitution's rules would make Turkey the most powerful EU member about 14 years from now...**

The fulcrum of the logic is the way in which an increase in the Council's passage probably widens the Commission's leeway – and thus its influence. The easier it is to pass a proposal in the Council, the wider is the range of passable proposals. The wider the range of passable proposals, the more influence the Commission has. Following the logic, switching from the Nice Treaty rules to the Constitution's rules would – by making the Council voting rules more efficient – tend to shift power to the Commission.[8]

But the reality is more complex. Since the Amsterdam and Maastricht Treaties, the European Parliament plays a large role in EU law-making. The Council-versus-Parliament power balance is governed by a principle that is similar to that of the Commission-Council interaction just discussed. The threat of a Parliamentary veto influences the shape of the final legislation since it constrains the range of passable packages. However, the threat of Parliamentary veto has less effect as the range of passable proposals in the Council narrows. The point is that the Parliament, like the Commission, can use its veto power to alter the shape of a proposal, but since any altered proposal must also pass the Council, the Parliament's influence is limited to the range of proposal that are passable in the Council. Voting reforms that make Council decision-making more efficient, like those in the Constitution, will – using the logical fulcrum discussed above – increase the Parliament's influence relative to that of the Council.[9]

The reality in today's EU, however, is even more complex, but the basic logic applies. The mainstream EU legislative process,[10] called the co-decision procedure, starts with the Commission as the agenda-setter, but allows the Council and Parliament to amend the law before voting on it. The details are complex (see Figure 8 or this online summary) and social scientists have not yet converged on a clear characterisation of the process. One possibility is that the proposal ends up in front of the so-called Conciliation Committee, consisting of Council, Parliament and Commission representatives who strive to amend the text in a way that can pass the Council (by qualified majority) and the Parliament (by simple majority); the Commission's formal approval is not necessary, but they sit at the table.

In this procedure the role of agenda-setter is blurred. In a few cases, the Commission's proposals have been adopted without amendment, and here the Commission is the sole agenda-setter. In most cases, however, Parliament has proposed amendments and about half of these ended up as law.[11] When the process leads to a Conciliation Committee, the proposal can be completely redrafted by the Council and Parliament representatives without the Commission having a veto. In these cases, the Council – being lead by the nation holding the rotation EU Presidency – and the Parliament are co-setters of the agenda; the role of the Commission is greatly reduced (although even here the Commission's first mover advantage probably matters).

So what does this mean for the new treaty?

The balance of power between the Council and the Parliament is clearly affected by changes in the Council's voting rules. Making these voting rules more efficient reduces the Council's influence relative to that of the Parliament on a randomly selected issue. The impact of great Council decision-making efficiency on the Commission's power is less clear due to the amendment possibilities, but the general trend is obvious. Anything that makes it easier to get a proposal passed by the Council-Parliament pair gives the Commission

---

8   There is a refinement to be added here. The relative power depends on the extent to which members think alike. In the extreme case where all members were of one mind on a particular issue, the Commission has little leeway. Extending this, the range of passable proposals tends to widen as members' preferences become more diverse (as it did with the 2004 enlargement) and so the agenda-setter's power increases as the membership becomes more diverse.

9   The effect is symmetric; making Parliament's decision-making less efficient would strengthen its hand, but the Constitution does not seriously change Parliament voting. The general rule is a 50% threshold and since this is radically more efficient than the Council's current QMV rule, the Council has much more influence on EU law making than the Parliament, at least on a randomly chosen issue. For a formal analysis of this argument in EU codecision see Napel, S. & Widgrén, M. (2006): The Inter-Institutional Distribution of Power in EU Codecision, Social Choice and Welfare 27, 129-154.

10 See Tsebelis, Crombez, and Steunenberg.

11 According to a study of the 82 codecision procedures completed from 1994 to mid 1997, "the Parliament proposed no amendments in 8 cases. In 24 cases, the Parliament proposed no second reading amendments, and the measure was adopted on the basis of the common position. In 22 cases, the Parliament proposed amendments at first and second readings, and the Council accepted all second reading amendments. Only in 28 cases (34% of the total) was recourse to the full conciliation procedure necessary. In one case (application of Open Network Provision to voice telephony) no agreement could be reached, and the proposal was deemed not to have been adopted (19 July 1994). The Commission submitted a new proposal, which was later adopted." (from the web site of EPP Group, European Parliament http://based on research in European Parliament, 1998).

Figure 7 Nice versus Constitution, EU34
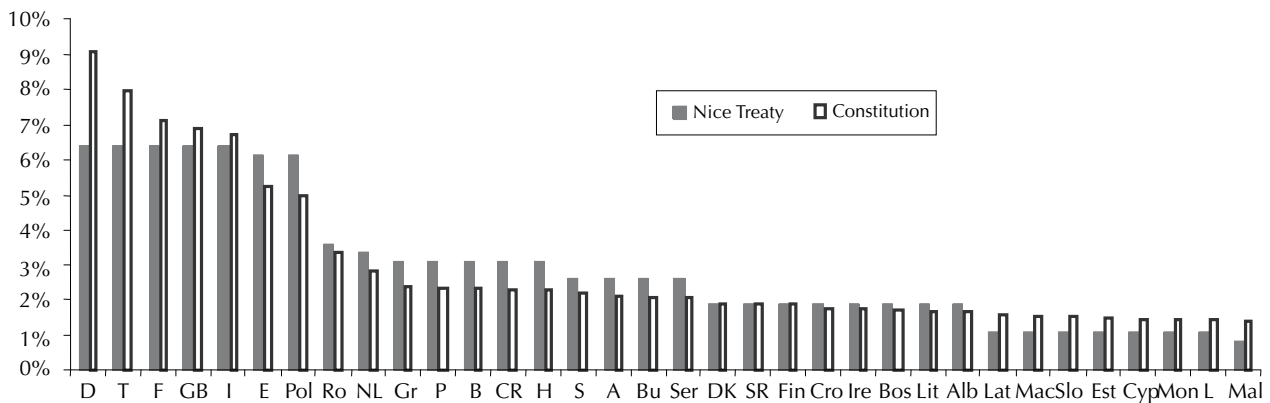
more leeway in crafting new legislation. Note, however, that influence need not be a zero-sum game. Raising Council efficiency increase the flow of legislation passed and so increases the influence of all three bodies involved.

Council voting reforms should be linked to Commission membership reforms

A straightforward implication of this logic is that making it easier for the Council to say 'yes' makes it more important that the Commission is representative of all the members. This point is not well recognised in the debate. It means that one should not consider Council voting reform in isolation from the question of Commission composition – as was unfortunately the case in the Constitution. The European Convention had no Working Group on institutional reform. The Irish Presidency did negotiate changes in both the voting rules and the Commission composition, but this was done in a crisis atmosphere without the aid of systematic, public discussion and analysis.

When EU heads of state and government negotiated over the draft constitution in 2003 and 2004, there was fierce debate surrounding reform of the Commission reform proposals. Almost everyone realised that a Commission with too many members would be ineffective, but who should sacrifice the right to have a Commissioner? Small members – who view the Commission as a key protector of their rights – felt a Commissioner was critical. Given the skewed size distribution of EU members, large members felt it essential that there be a Commission from each of the six big members who together account for three-quarters of the Union's population.

The compromise in the Constitution was to stick with the Nice Treaty's one-per-member up to 2014, after which the number is capped at two thirds the number of EU members, with Commissioners rotating equally among Member States. The rotation system is not specified and it might never occur, even if the Constitution did come into effect. By 2014, the Commission would have had almost a decade of working with 25-plus members. Critically, the Constitution grants the European Council the power to change the number of Commissioners with a unanimous vote (i.e. without a new treaty), so the Council might well decide to stick with the one-per-member rule.

Concluding remarks

Europe should take the time to do it right. Europe does need a new treaty and that treaty does need to reform the status quo Council of Ministers voting rules. But voting rules are not easy to evaluate. The piecemeal changes that so often come out of political negotiations are likely to have unexpected affects on the distribution of power among members and institutions.

Pandora's box was wide open during the preparation phase of the IGC 2000. Despite this, Panadora's evils were not much of a problem. The IGC 2000 preparation produced much well-informed discussion and careful study of the possible Council and Commission reforms, including consideration of the inter-linkages between Council and Commission reforms. The evils only appeared when all this careful preparation was abandoned by then French President Jacques Chirac. France had the EU Presidency in the second half of 2000, so it controlled the Summit agenda. With no warning, Chirac pulled out a brand new voting scheme and used the power of the Chair to force its consideration. The Summit dragged on for a record 4 days and the deal was agreed to by exhausted leaders and their staffs at four in the morning. Chirac's hidden agenda was almost surely to maintain the power parity between France and Germany (despite Germany having 20 million more citizens). He achieved this, but only at the cost of fouling-up the institutional reforms so badly that the EU decided that the Nice Treaty reforms had to be reformed even before they had been tried – in our reading of history, that was the driving force behind the Constitution. This is the sort of thing that can happen when reforms are agreed by EU leaders without the benefit of careful study.

A proper preparation phase in the IGC 2007 could do even better than that of the IGC 2000, since the EU now has two years of law-making experience in the EU25+. It seems rather short-sighted to try to shut down discussion of voting rules in the hopes that this will reduce tensions. Remember, Hope was the only thing left inside the box when Pandora slammed it close.

CEPR POLICY INSIGHT No.5

Figure 8 Today's EU law-making procedure

Figure 8 Today's EU law-making procedure
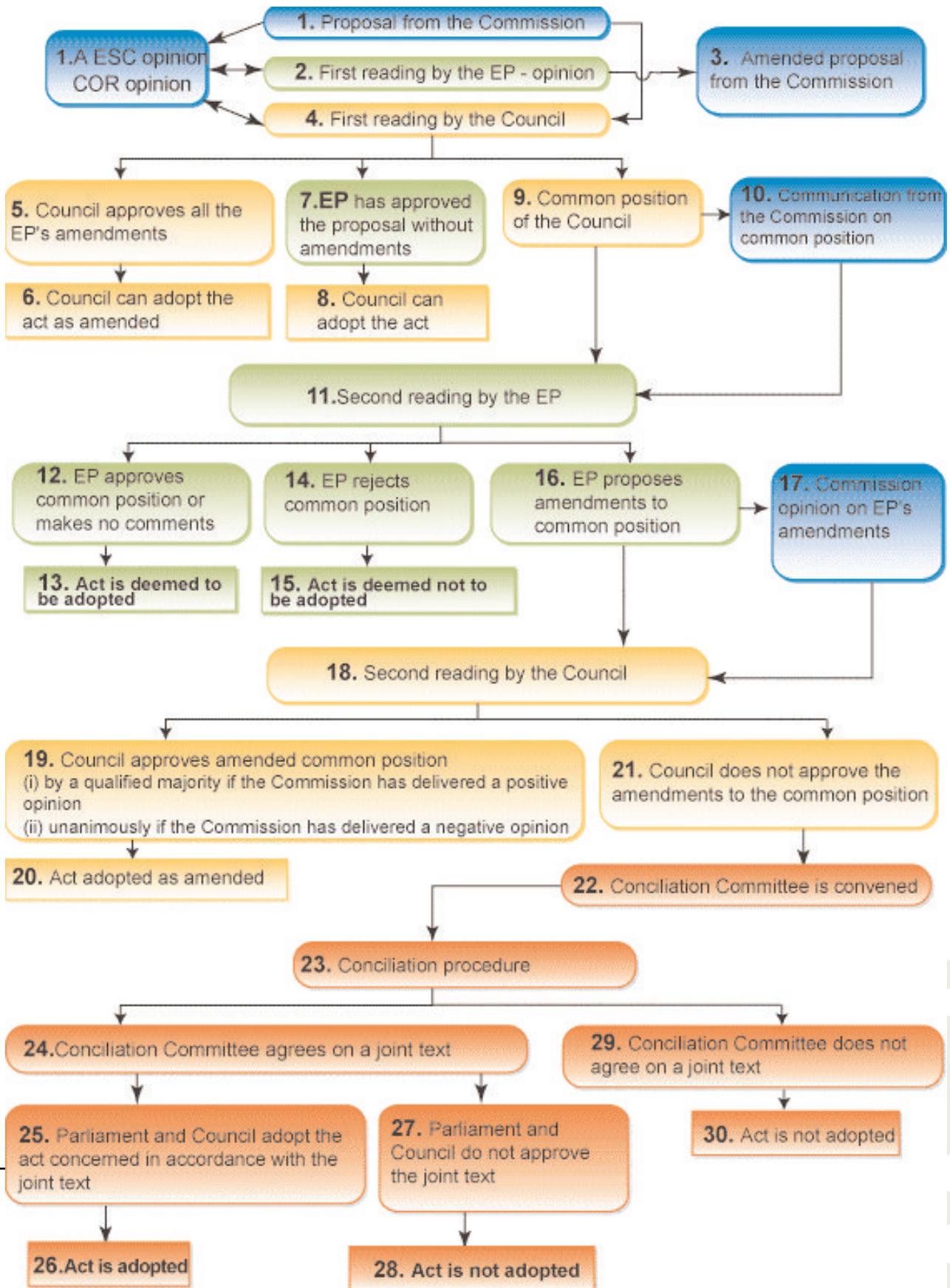
Richard Edward Baldwin is Professor of International Economics at the Graduate Institute of International Studies since 1991 and Policy Director of the Centre for Economic Policy since 2006. He was Co-Managing Editor of the journal *Economic Policy* (2000–2005), and Programme Director of CEPR's International Trade programme (1991–2001). Before that he was Senior Staff Economist for the President's Council of Economic Advisors in the Bush Administration (1990–1991). Before coming to Geneva, he was Associate Professor at Columbia University Business School, having done his PhD in economics at MIT with Paul Krugman finishing in 1986. He was visiting professor at MIT in 2002/03 and has taught at universities in Italy, Germany and Norway. He has also worked as consultant for the European Commission, OECD, the World Bank, EFTA, USAID and UNCTAD. The author of numerous books and articles, his research interests include international trade, regionalism and European integration.

Mika Widgrén is Professor of International Economics at Turku School of Economics since 1999 and a CEPR Research Fellow. Before that he was Research Director at Yrjö Jahnsson Foundation in Helsinki (1994-2001) and Research Fellow at the Research Institute of the Finnish Economy (ETLA, 1989-1994) and Research Assiciate of ETLA since 2001. In 1998, he was Visiting Scholar at MIT and in 2000 in University of Michigan at Ann Arbor and taught at CES and Technical University in Dresden in Germany. He received his PhD at University of Helsinki in 1995. He has also consulted European Commission, ETLA, RECEP and Swedish Ministry of Finance. He is author of numerous books and articles and editor of several volumes and was Managing Editor of *Finnish Economic Journal* in 1008-2002. His research interests include European integration, regionalism, institution design, applied game theory and public choice. He is co-leading the Finnish Centre of Excellence in Public Choice Research in Turku during 2008-2013.

CEPR POLICY INSIGHT No. 5