

ABSTRACT

Nel 1992 i Capi di Stato o di Governo europei hanno firmato il Trattato di Maastricht sull'Unione Europea che apriva la strada dell'Unione monetaria e gettava le basi del SEBC e della BCE. La struttura del più importante organo decisionale della BCE e del SEBC, il Consiglio direttivo, prevedeva la partecipazione, in qualità di membri, dei governatori delle banche centrali nazionali di tutti gli Stati membri dell'area dell'euro.

Successivamente alla firma del Trattato di Maastricht il numero degli Stati membri della UE si è più che raddoppiato, e si attende ora il relativo allargamento dell'area dell'euro. Di conseguenza la qualità di membro per tutti i governatori delle BCN ("un paese, un voto") nel Consiglio direttivo non può essere sostenuta a tempo indefinito: la salvaguardia dell'efficienza del processo decisionale richiede una limitazione di questo impianto.

Il Trattato di Nizza ha introdotto le modifiche fondamentali per adeguare i processi decisionali degli organi della UE in un'Unione Europea allargata. Di conseguenza, esso conteneva anche una disposizione per adeguare le modalità di voto della BCE. A tal fine è stata inserita nello Statuto del SEBC/BCE la cosiddetta "clausola di abilitazione" (articolo 10.6), che dava facoltà al Consiglio UE nella composizione dei Capi di Stato o di Governo di emendare la procedura di voto del Consiglio direttivo della BCE (articolo 10.2). I Capi di Stato e di Governo hanno adottato tale emendamento il 21 marzo 2003, su Raccomandazione della BCE, ed esso è entrato in vigore all'inizio di giugno 2004, a seguito della ratifica da parte degli Stati membri (tutti gli Stati membri ad eccezione di quelli che sono entrati a far parte dell'Unione il 1° maggio 2004). Il nuovo regime avrà applicazione concreta soltanto quando il numero degli Stati membri dell'area dell'euro sarà superiore a 15 o a 17, ove così decida il Consiglio direttivo con una maggioranza dei due terzi. Da quel momento in poi il processo decisionale del Consiglio direttivo della BCE sarà basato su uno schema piuttosto complicato, caratterizzato da gruppi di paesi con differenti rappresentatività nel voto.

Il contributo intende discutere e analizzare l'adeguamento delle modalità di voto del Consiglio direttivo della BCE e paragonarlo con gli adeguamenti previsti dal Trattato di Nizza per il futuro assetto istituzionale della Commissione Europea. Viene infine valutato in che misura la Decisione del Consiglio UE riguardante le nuove modalità di voto della BCE abbia raggiunto il suo obiettivo, sia fondata su criteri adeguati e abbia trattato tutti gli Stati membri in una logica di uguaglianza.

„Doch teilt euch brüderlich darein!“
Friedrich Schiller, *Die Teilung der Erde*

“Felix, qui potuit rerum cognoscere causas”
Virgil, *Georgics*

I INTRODUCTION

European integration is a fascinating peace project of a more or less unprecedented dimension.

What is unique about this process is that so many Member States have been willing to transfer sovereign powers, in a democratic process, to a supranational level. The political commitment to transfer sovereign rights to the European Union (EU) and its institutions and bodies is even more impressive if one considers that the loss of national self-determination is hardly ever offset by equivalent gains in national influence in EU bodies. The enlargement of the EU as envisaged by the Treaty of Nice and implemented in May 2004 through the accession of ten new Member States has further limited individual countries' possibilities of influencing European decision-making.

The decision to give up national competences did not come easily for the Member States in any of the successive stages of European integration. This is obviously also true for the transfer of monetary sovereignty to the European System of Central Banks (ESCB) and the European Central Bank (ECB), as monetary sovereignty and monetary policy-setting have always been key elements of national sovereignty. The difficult struggle with the loss of national influence became particularly clear when the EU Council agreed that the national central bank governors' permanent voting rights in the Governing Council of the ECB, the EU's supreme decision-making body in the field of monetary policy, would have to be abandoned in the wake of euro area enlargement.

European Economic and Monetary Union (EMU) was established by the Treaty on European Union (“the Maastricht Treaty”) signed in Maastricht on 7 February 1992. At that time the European Community consisted of 12 countries; the number of its members had already doubled since its foundation, and six further states were already in the waiting room for EU membership.¹

Nevertheless, the basic organisational structure which had been in place since the beginning of the European Economic Community was retained by the Maastricht Treaty.

¹ In addition to Austria, Finland, Norway and Sweden, which at that time had already entered accession negotiations and which, with the exception of Norway (a negative referendum), joined the EU on 1 January 1995, by 1992 Cyprus and Malta had also already submitted their applications for membership.

One of the fundamental ideas underlying this structure was that, in addition to representation in the European Parliament, a representative² of each state should also contribute to decision-shaping in the other bodies involved in the legislative process, i.e. the Council of the European Union and the European Commission.³

The Maastricht Treaty extended this principle to include the newly established Governing Council of the ECB, which has ultimate authority over monetary decision-making in the ESCB and the ECB. The Governing Council was to consist of the six members of the Executive Board of the ECB and the governors of the national central banks (NCBs) of all euro area Member States.

This “one representative per Member State principle” remained firmly in place until the second amendment⁴ to the Maastricht Treaty, namely the Treaty of Nice, introduced a scheme which paved the way for the abandonment of this principle. Based on this option, the Council (Heads of State or Government) decided that, should the EU reach a certain number of Member States, no EU/EMU Member State was to have permanent voting rights in the European Commission and Governing Council of the ECB.

In the remainder of this paper, we will outline the adjustment of voting modalities in the Governing Council of the ECB as envisaged by the Treaty of Nice and compare it with the rotation scheme provided for the European Commission (Section 2), before assessing the related EU Council Decision of 21 March 2003 (Section 3). The paper concludes with some final remarks (Section 4).⁵

2 THE TREATY OF NICE

2.1 ADJUSTMENTS TO DECISION-MAKING IN GENERAL

A long time before the establishment of the ESCB and ECB⁶, it had become obvious that the number of European Union Member States was going to grow considerably in the foreseeable future. Cyprus and Malta had applied for membership as early as 1990; Hungary and Poland had followed suit in 1994, and all other Member States which finally joined the EU in 2004, as well as Romania and Bulgaria, had submitted their applications for accession by 1995

2 As far as the European Commission is concerned, these representatives are not to be understood as guardians of national interests, but as persons nominated by a Member State.

3 It should be stated that the functions of Council and Commission members are completely different when it comes to the consideration of national interests. While Commission members have to act fully independently and must observe purely Community interests, the EU Council is the body that safeguards national interests. However, even EU Council members are limited in pursuing national interests by virtue of Article 10 of the Treaty (see for example A. Egger (2003), in H. Mayer, *Kommentar zu EU- und EG-Vertrag*, 11. Lieferung (Vienna: Manz Verlag), Articles 202-210, p. 14; and I. Seidl-Hohenveldern (1996), *Legal Issues of European Integration*, 1, p. 76).

4 Leaving aside the Accession Treaty concerning Austria, Finland and Sweden.

5 A detailed discussion of this Council Decision can be found in the ECB Monthly Bulletin of May 2003. See also S. Dvorsky and I. Lindner (2003), „Anpassung der Stimmrechtsmodalitäten im EZB-Rat“, in Oesterreichische Nationalbank, *Berichte und Studien*, 2, pp. 144-53, who also review the literature on alternative voting modalities.

6 I.e. 1 June 1998.

or 1996. In the autumn of 1998 the EU formally opened accession negotiations with Cyprus, Estonia, Hungary, Poland and Slovenia (the so-called Luxembourg group). At that point it became inevitable that the structure of the EU as a whole, which dated back to the original Community of six nations, would have to be reformed to adapt its bodies to a steadily increasing number of Member States, in order to ensure and improve the efficiency of the decision-making process.

Adjusting the size and composition of the European Commission and reweighting the votes in the EU Council had in fact already been on the agenda of the Intergovernmental Conference (IGC) convened in 1996 and concluded in 1997.⁷ This conference, which resulted in the Treaty of Amsterdam (signed on 2 October 1997 and effective from 1 May 1999), did not, however, resolve these issues.⁸ Thus, another reform of the Maastricht Treaty was needed in a further attempt to solve structural deficiencies.

In February 2000 a new IGC was convened to prepare further amendments to the Maastricht Treaty. The key objective of this conference was to find a solution to those problems which had not been solved by the Treaty of Amsterdam (the so-called Amsterdam leftovers). These issues included the size and composition of the European Commission, an expansion of those areas which only require qualified majority voting in the EU Council⁹, and the reweighting of votes in the EU Council.

The result of this Conference, the Treaty of Nice, which was signed on 26 February 2001 and came into effect from 1 February 2003, was largely met with sceptical, critical and sometimes sneering¹⁰ comments in the media. According to a Monitoring European Integration report by the Centre for Economic Policy Research, the Treaty of Nice failed almost completely in two of the above-mentioned areas: measures directed toward reforming the European Commission's composition and size and expanding those areas only requiring qualified majority voting were considered insufficient.

Nevertheless, the results of the Treaty of Nice do not seem to deserve such harsh criticism, as formally the objectives of dealing with the "Amsterdam leftovers" and of creating suitable conditions for enlargement were met.¹¹ Even if the proposed solutions were neither perfect nor self-sufficient¹², they still paved the way for enlargement.

7 The legal basis for calling this conference was a clause on amending the EU Treaties in Article 48, paragraph 2, of the Maastricht Treaty (ex Article N).

8 The "Protocol on the institutions with the prospect of enlargement of the European Union" annexed to the Treaty of Amsterdam merely stated that a conference of representatives of the governments of the Member States was to be convened at least one year before the membership of the European Union exceeded 20 countries; at the same time, it shifted the focus for further amendments to the Treaty on the Commission's size and composition and on the weighting of votes to the EU Council.

9 See document SN 300/99, Recital 16.

10 See for instance a report entitled "Nice Try", published in *European Economic Perspectives* (issue 29) of the Centre for Economic Policy Research. *The Times* regarded it as "an ingenious voting system reminiscent of the annual machinations of the Eurovision Song Contest", while *The Independent* summarised the achievements of the Nice Treaty as representing "hardly a great step forward for the European ideal".

11 See for example K. H. Fischer (2003), *Der Vertrag von Nizza* (Baden-Baden: Nomos Verlag).

12 Article 10.6, which was added by the Treaty of Nice, merely opened up the possibility to alter voting procedures in the Governing Council of the ECB through a unanimous decision of the Heads of State or Government.

In the following sub-section we will compare the regulatory adjustments for the European Commission and the Governing Council of the ECB, and will elaborate on the similarities and differences between the two.

2.2 ADJUSTING THE COMPOSITION OF THE EUROPEAN COMMISSION

With respect to the size and composition of the European Commission, the EU Heads of State or Government reached the following compromise¹³:

- When the first Commission takes up its duties after 1 January 2005, the Commission is to include one national of each of the Member States. The number of Members of the Commission may be altered by the Council, acting unanimously.
- When the first Commission takes up its duties after the number of Member States has reached 27, the following regulation shall apply: “The number of Members of the Commission shall be less than the number of Member States. The Members of the Commission shall be chosen according to a rotation system based on the principle of equality, the implementing arrangements for which shall be adopted by the Council, acting unanimously.” The implementing arrangements shall contain all the criteria and rules necessary for determining the composition of successive colleges automatically and shall comply with the following principles¹⁴:
 - Member States shall be treated on a strictly equal footing as regards determination of the sequence of, and the time spent by, their nationals as Members of the Commission; consequently, the difference between the total number of terms of office held by nationals of any given pair of Member States may never be more than one;
 - subject to the latter, each successive college shall be so composed as to reflect satisfactorily the demographic and geographical range of all the Member States of the Union.

With this formula, the European Union for the first time abandoned the existing rule that each Member State should have at least one representative in all EU bodies involved in legislation (even if this change was only to take effect in the future). Although this principle had not been explicitly laid down anywhere, it had nonetheless represented a driving element of EU legislation and thus probably also of the EU’s identity up to this point – irrespective of the fact that members of the Commission have always had to act exclusively in the interest of the EU regardless of individual national concerns.

As from the accession of the 27th Member State, the “one member, one vote” principle will be abandoned in the first European Commission to be subsequently installed, and the number of Commissioners will have to be lower than the number of Member States. The size of the Commission and all further details will then have to be determined by the Council on the basis of a unanimous vote. What has been decided by the Nice Treaty, however, is that the rotation system

¹³ Article 4 of the “Protocol on the enlargement of the European Union” annexed to the Maastricht Treaty and to the Treaties establishing the European Communities by the Nice Treaty.

¹⁴ Article 4, paragraph 3, of the above Protocol.

has to treat Member States on a strictly equal footing with regard to the sequence of, and the time spent by, nationals as Members of the Commission. In addition, the composition shall satisfactorily reflect the demographic and geographical range of all Member States.

With respect to the size and composition of the Commission, the Treaty of Nice thus resorted to a flexible model which provides a regulatory framework as well as basic principles, while leaving more detailed, later specifications to another body (or several other bodies).

2.3 ADJUSTING THE VOTING PROCEDURES OF THE GOVERNING COUNCIL OF THE ECB

In addition to the rotation system for the European Commission, the Treaty of Nice resorted to a similar model for the ECB concerning the voting rights of its Governing Council. By inserting a new provision (Article 10.6) in the Statute of the European System of Central Banks and of the European Central Bank (“the Statute”), the Treaty of Nice directly altered the Statute and offered the possibility for the Heads of State or Government (“enabling clause”) to change the voting procedures in the Governing Council of the ECB.

Article 5 of Part One (“Substantive Amendments”) of the Treaty of Nice added the following paragraph in Article 10 of the Statute:

- “10.6 Article 10.2¹⁵ may be amended by the Council meeting in the composition of the Heads of State or Government, acting unanimously either on a recommendation from the ECB and after consulting the European Parliament and the Commission, or on a recommendation from the Commission and after consulting the European Parliament and the ECB. The Council shall recommend such amendments to the Member States for adoption. These amendments shall enter into force after having been ratified by all the Member States in accordance with their respective constitutional requirements. A recommendation made by the ECB under this paragraph shall require a decision by the Governing Council acting unanimously.”

Thus the newly added Article 10.6 of the Statute introduced a specific and somehow challenging procedure for amendments to the Statute. The amendment procedure as defined by Article 10.6 in fact resembles the procedure for amending the Treaty, one significant difference being that the former does not require a previous IGC.

¹⁵ Article 10.2 of the Statute, later amended by Decision 2003/223/EC of the Council, meeting in the composition of the Heads of State or Government, of 21 March 2003, on an amendment to Article 10.2 of the Statute (OJ L 83, 1.4.2003, p. 6), used to read as follows: “Subject to Article 10.3, only members of the Governing Council present in person shall have the right to vote. By way of derogation from this rule, the Rules of Procedure referred to in Article 12.3 may lay down that members of the Governing Council may cast their vote by means of teleconferencing. These rules shall also provide that a member of the Governing Council who is prevented from voting for a prolonged period may appoint an alternate as a member of the Governing Council. Subject to Articles 10.3 and 11.3, each member of the Governing Council shall have one vote. Save as otherwise provided for in this Statute, the Governing Council shall act by a simple majority. In the event of a tie, the President shall have the casting vote. In order for the Governing Council to vote, there shall be a quorum of two-thirds of the members. If the quorum is not met, the President may convene an extraordinary meeting at which decisions may be taken without regard to the quorum.”

2.4 DIFFERENCES IN ADJUSTMENTS TO THE COMMISSION AND THE GOVERNING COUNCIL OF THE ECB

Like the new provision of the Treaty of Nice reforming the size of the European Commission, Article 10.6 of the Statute requires unanimous action on the part of the Council before pertinent measures can be implemented. Unlike the regulation on the size of the Commission, however, Article 10.6 additionally requires ratification by all Member States. On the one hand, this can be explained by the fact that the Nice Treaty further specifies the framework for a restructured composition of the Commission, while it does not outline any criteria for a new voting procedure in the ECB Governing Council. On the other hand, this may, to a certain extent, reflect the particular sensitiveness of decision-making in the field of monetary policy in Europe. Changes to the regulatory framework of the Governing Council of the ECB or a curtailment of voting rights in this supreme monetary policymaking body – whatever form they might take – apparently should not be possible without being confirmed by national parliaments, which somehow compensates for the lack of any specifications concerning the new Governing Council voting structure.

The adjustments introduced by the Treaty of Nice to increase the efficiency of the Commission and those targeted at the Governing Council of the ECB also differ significantly in that the number of Commissioners is supposed to be downsized once EU membership exceeds a certain number, while Article 10.6 of the Statute does not affect the composition of the Governing Council of the ECB or the right of participation therein, but merely members' voting rights and their execution. Although the voting rights of varying members are to be temporarily suspended, all members of the Governing Council of the ECB shall maintain the right to participate in Governing Council meetings.

The provisions pertaining to the Commission's size also comprise the important stipulation that the number of Members of the Commission shall be less than the number of Member States once the EU consists of 27 Member States, and that the Members of the Commission shall be chosen according to a rotation system based on the principle of equality expressed in predetermined criteria.¹⁶ Thus, the Council is only to determine the limit for the number of Commission Members and the exact implementing arrangements for the rotation system, but has in fact little room to manoeuvre. Article 10.6 of the Statute, by contrast, does not specify how voting procedures in the Governing Council of the ECB should be determined. It neither contains any indication with regard to timing nor does it stipulate a limitation to the number of members with voting rights, nor a fixed procedure for their allocation. Although it might seem that this lack of specification is politically compensated for by the requirement that all Member States have to ratify prospective regulatory adjustments, it is nevertheless

¹⁶ These criteria, which are to determine the composition of successive colleges automatically, are to be based on the following principles: (a) Member States shall be treated on a strictly equal footing with regard to determination of the sequence of, and the time spent by, their nationals as Members of the Commission; consequently the difference between the total number of terms of office held by nationals of any given pair of Member States may never be more than one; (b) subject to point (a), each successive college shall be so composed as to reflect satisfactorily the demographic and geographical range of all the Member States of the Union.

striking, given that an important aspect of primary Community law has thus formally been delegated to a Community body. In comparison with the new provisions on the European Commission laid down in the Treaty of Nice, the provisions enabling new voting modalities for the Governing Council of the ECB are thus even more flexible and leave the Heads of State or Government with a broad margin of discretion – even if the ratification requirement does not give them exclusive responsibility.¹⁷ This does not, however, mean that the EU Council (in the composition of the Heads of State or Government) is entirely free to decide on whatever regulatory provisions it chooses. Every regulatory provision which is issued in accordance with Article 10.6 of the Statute must correspond to the general fundamental principles of Community law. In particular, such decisions have to meet standards of proportionality and equal treatment as endorsed by the European Court of Justice in the context of legislative acts.

3 COUNCIL DECISION OF 21 MARCH 2003

On 3 February 2003 the ECB issued a Recommendation¹⁸ which completely corresponded to the later Decision 2003/223/EC¹⁹ regarding new voting modalities for the ECB Governing Council in a future, enlarged euro area (Article 1 of this Decision is set out in Annex 1).

3.1 BASIC CONCEPT OF THE COUNCIL DECISION

The new system of voting rights as adopted on 21 March 2003 by the EU Council in Decision 2003/223/EC can be summarised as a two-tier rotation model which allocates NCB governors to different groups with specific numbers of voting rights. Governors will exercise their voting rights with different frequencies depending on the size of their NCB's economy within the euro area. Within each group, governors have a voting right for equal amounts of time. The allocation of governors to groups depends on the ranking of their NCBs' Member State (see Annex 2, showing a ranking based on the prospective Member States at that juncture) measured against a weighted two-component indicator: The first component, to which a 5/6 weight is attributed, is the gross domestic product at market prices (GDP mp), while the second component, accounting for a weight of 1/6, is the total aggregated balance sheet of the monetary financial institutions (TABS-MFIs) of the respective Member State.

The following charts for the first and second tier show the basic concept of the selected rotation model:

Tier one, which provides for two groups of governors, will start as soon as the overall number of governors exceeds 15.

¹⁷ In practice, however, the Heads of State or Governments' scope of discretion is similar to that of a Treaty amendment, the only difference being that no IGC has to intervene and the Council is strictly limited to the given Treaty framework.

¹⁸ Recommendation ECB/2003/1, under Article 10.6 of the Statute, for a Council Decision on an amendment to Article 10.2 of the Statute (OJ C 29, 7.2.2003, p. 6).

¹⁹ Cf. footnote 15.

Table 1 The two-group rotation system (first stage) – voting frequencies of governors in each group					
	First group		Second group		Sum
Governors in the Governing Council	Voting rights/governors	Voting frequency (percentage)	Voting rights/governors	Voting frequency (percentage)	Voting rights
16	5/5	100	10/11	91	15
17	5/5	100	10/12	83	15
18	5/5	100	10/13	77	15
19	4/5	80	11/14	79	15
20	4/5	80	11/15	73	15
21	4/5	80	11/16	69	15
22 and more	<i>Second stage: rotation system with three groups (see Table 2)</i>				

Source: ECB Monthly Bulletin, May 2003.

With regard to tier one, it is explicitly stated that the frequency of voting rights allocated to the first group will not be lower than the frequency of voting rights for the second group.

The second tier, which already provides for three groups, will commence when the number of governors exceeds 21.

Table 2 The three-group rotation system (second stage) – voting frequencies of governors in each group							
	First group		Second group		Third group		Sum
Governors in the Governing Council	Voting rights/governors	Voting frequency (percentage)	Voting rights/governors	Voting frequency (percentage)	Voting rights/governors	Voting rights (percentage)	Voting rights
16-21	<i>First stage: rotation system with two groups (see Table 1)</i>						
22	4/5	80	8/11	73	3/6	50	15
23	4/5	80	8/12	67	3/6	50	15
24	4/5	80	8/12	67	3/7	43	15
25	4/5	80	8/13	62	3/7	43	15
26	4/5	80	8/13	62	3/8	38	15
27	4/5	80	8/14	57	3/8	38	15

Source: ECB Monthly Bulletin, May 2003.

The detailed implementing procedures are to be adopted by the Governing Council, acting by a two-thirds majority of its members with and without a voting right. By applying the same procedure, the Governing Council may also decide to postpone the start of the rotation system until the date on which the number of governors exceeds 18.

3.2 CONSULTATION OF THE EUROPEAN COMMISSION AND THE EUROPEAN PARLIAMENT

Recommendation ECB/2003/1²⁰ triggered the Commission's and the Parliament's right to be consulted.

The Commission presented its Opinion²¹ on the matter on 19 February 2003. It supported the rotation model recommended by the ECB and checked it against several criteria²² the Commission had developed.

The Commission noted that the rotation model was in line with the Treaty of Nice and that it would prepare the ECB for a substantially enlarged euro area. However, the Commission also saw some room for improvement and reached the following conclusions:

- It could be advisable to lower the maximum number of voting rights, as this could further increase the speed and efficiency of decision-making.
- In view of the weighting formula intended to govern the frequency at which the individual NCB governors are assigned voting rights in the Governing Council of the ECB, the Commission emphasised the relevance of the population criterion for reforming the voting rules in other institutions (notably the EU Council), and stated that it deemed the ECB's key for capital subscription (50% GDP component, 50% population component) more appropriate for assigning individual Member States to the various groups of the rotation model, as this would more strongly reflect an unbiased and neutral approach.
- To increase transparency, some issues should be regulated in greater detail (e.g. rotation frequency, the order according to which voting rights are to be assigned within each group), and the effective start of the rotation system should be explicitly mentioned in Article 10.2.
- Large-scale adaptations are not to be based on the enabling clause, but require decisions taken within the framework of the EU Convention or IGCs.²³

By comparison, the Opinion of the European Parliament on the ECB's Recommendation²⁴ is much more critical. The European Parliament states that it is fully conscious of the need to reform the voting procedures of the Governing Council of the ECB in view of a possible enlargement of EMU. Nevertheless, it rejects the ECB's Recommendation. It points to the excessive complexity of the proposed rotation model and to the fact that it has been widely criticised for that reason. At the same time, it takes into account the difficulty of coming up with reform measures within the limits set by Article 10.6 of the Statute.

20 Cf. footnote 18.

21 COM (2003) 81 final, which has to the best of our knowledge not yet been published in the Official Journal.

22 The Commission named the following conditions: "decisions should continue to be taken in a swift and efficient manner; the decision-making bodies should act with the interests of the whole euro area in mind; the system must be considered as neutral and unbiased by both existing and future Member States; the markets and the general public should be able to understand the logic and the functioning of the new voting system." However, the Commission deemed that these criteria had not been fully met.

23 However, the Treaty establishing a Constitution for Europe did not introduce any further adaptations to the decision-making procedures of the ECB Governing Council.

24 Adopted on 13 March 2003, 6163/2003 – C5-0038/2003 – 2003/0803(CNS); (OJ C 61 E/274 10.3.2004).

According to the European Parliament, the present voting procedure in the Governing Council of the ECB should be maintained for the time being. Reform proposals should be left up to the European Convention, and decisions could be taken in the course of the next IGC.²⁵

As far as the composition of the Executive Board is concerned, the European Parliament leans toward increasing the number of members to nine persons who are to be competent for operational decisions. Moreover, the Parliament envisages a Governing Council responsible for “strategic and general monetary policy decisions”, acting on a double majority “based on the population of the Member States, the total size of the economy and the relative size within it of the financial services sector”.

After consulting the European Commission and Parliament, the EU Council unanimously adopted an amendment to Article 10.2 of the Statute on 21 March 2003 (see Annex 1), which was fully based on the above-mentioned ECB Recommendation.

3.3 THE MOTIVATION OF THE SELECTED ROTATION MODEL AS SET OUT IN THE DECISION

The reasons and explanations for this complex regulation are laid out in the “whereas” clauses of Decision 2003/223/EC:

In an introductory remark, the EU Council stresses that there “is a need to maintain the Governing Council’s capacity for efficient and timely decision-making in an enlarged euro area, irrespective of the number of Member States that adopt the euro. [...] A rotation system is an equitable, efficient and acceptable way of assigning voting rights among the governors in the Governing Council.” A number of 15 voting rights for the governors is deemed to strike “an appropriate balance between, on the one hand, continuity with the existing set-up including a balanced assignment of voting rights between the six members of the Executive Board and the other members of the Governing Council and, on the other hand, the need to ensure efficient decision-making in a substantially enlarged Governing Council” (“whereas” clause (1)).

“Whereas” clause (2) indicates clearly that changes to the permanent voting rights of the Executive Board members in the Governing Council have never been an issue, as they are appointed at European level by a Treaty procedure. The clause also makes reference to the fact that the Executive Board Members are the only members of the Governing Council operating solely in the euro area context and for the ECB without performing any NCB function at the same time.

As far as the composite indicator (the 5/6-1/6 GDP mp and TABS-MFIs split) is concerned, the economic weight of a Member State as reflected by its GDP mp is said to be “an appropriate component as the impact of central bank

25 Cf. footnote 23.

decisions is greater in Member States with larger economies than in those with smaller economies. At the same time, the size of a Member State's financial sector also has a particular relevance for central bank decisions, since the counterparties of central bank operations belong to this sector. [...] This choice of weights is suitable, as this will mean that the financial sector is sufficiently and meaningfully represented.”²⁶

The shares of each Member State in the aggregate GDP mp and in the TABS-MFIs of the Member States which have adopted the euro should be adjusted whenever the aggregate GDP mp is adjusted in accordance with Article 29.3 of the Statute or whenever the number of governors in the Governing Council increases.

According to “whereas” clause (4), the chosen rotation principle reflects five fundamental principles:

1. “One member, one vote”: this is said to be the Governing Council's core decision-making principle; it continues to apply to all members of the Governing Council that have a voting right;
2. “*Ad personam* representation”: this refers to the fact that all members of the Governing Council will continue to participate in its meetings “in a personal and independent capacity”;
3. “Automaticity”: this means that the rotation system will be able to accommodate any euro area enlargements up to the presently envisaged maximum number of Member States²⁷;
4. “Representativeness”: this principle pursues the objective of avoiding insufficient representation of the euro area economy as a whole;
5. “Transparency”.²⁸

3.4 ANALYSIS AND EVALUATION

An analysis of Decision 2003/223/EC on the new voting modalities must above all deal with the achievement of the objective of the Decision, the appropriateness of its criteria and with the issue of equal treatment of Member States.

3.4.1 DO THE NEW VOTING MODALITIES MEET THE OBJECTIVE FOR WHICH THEY WERE ESTABLISHED?

The objective of making the decision-making process more efficient in a larger Governing Council of the ECB, which was implicitly set by the Treaty of Nice, has been met to a certain extent through the establishment of a rotation system. As a result of the thresholds introduced by Decision 2003/223/EC, the number of persons voting on decisions of the Governing Council will gradually become smaller than the overall number of Governing Council members, and will never exceed 15. Yet

²⁶ See “whereas” clause (5) of Decision 2003/223/EC.

²⁷ The rotation system should be able to accommodate a number of Member States up to 27 (the present 25 Member States as well as Bulgaria and Romania, which already had the status of accession candidates when the Treaty of Nice was signed). The ECB's Recommendation also labelled this principle as the “robustness principle”.

²⁸ With regard to this principle, the EU Council Decision does not offer any further explanation.

the merits of the rotation system and its practical gains for the decision-making process in the Governing Council are significantly reduced by one factor: the rotation system does not reduce the number of governors actually participating in the meetings of the Governing Council of the ECB – the non-voting members are free to join the voting members in their discussions. (In this respect, it must be noted that the new voting modalities do not necessarily effect a shift from present practice, because so far the Governing Council has adopted the overwhelming majority of its decisions by consensus rather than by formal voting.)

The fact that the practical relevance of Decision 2003/223/EC is limited must, however, not be blamed on the Heads of State or Government that took this decision. After all, the EU Council’s mandate under the Treaty of Nice to amend, by unanimous vote, the Statute (Article 10.6, the “enabling clause”) is limited to Article 10.2 of the Statute. As the enabling clause does not extend to Article 10.1, which regulates the basic composition of the Governing Council of the ECB, the right to participate in Governing Council meetings that the Maastricht Treaty granted to all Eurosystem NCB governors – including future members without voting rights – was here to stay.

Moreover, while the Governing Council has so far adopted most of its decisions without a formal voting procedure, this need not be the case in the future. The very reason for which the enabling clause was inserted by the Treaty of Nice was to secure an efficient decision-making procedure in a Eurosystem comprising more (than the current 12) NCBs.

Accordingly, the European Commission noted in its Opinion of 3 February 2003 that the three-group rotation model fully responds to the mandate received in Nice and prepares the ECB for a substantially enlarged euro area.

3.4.2 ARE THE CRITERIA ON WHICH THE DECISION WAS BASED APPROPRIATE AND ADEQUATE?

Without any doubt, the principles of transparency and of involving the NCB governors in a personal and independent capacity are appropriate and adequate. The latter concept reflects the ESCB’s guiding principle enshrined in Article 108 of the Treaty establishing the European Community (“the Treaty”), according to which decision-making bodies shall seek or take no instructions from third parties, as well as the principle that governors are to vote in a personal capacity as laid down in Article 10.2 (substitution only being allowed in case of absence for a prolonged period), plus the ESCB’s commitment to fully autonomous decision-making. Indeed, it goes beyond this concept in so far as it rejects the idea that several members should have to represent other members of the Governing Council or the overall interest of a constituency.²⁹ Furthermore, the principle of automatic accommodation to any euro area enlargement up to the presently envisaged maximum number of Member States seems very reasonable, because this principle obviates the need for making adjustments upon every single enlargement of the Eurosystem (up to 27 members, which appeared

²⁹ At the International Monetary Fund (IMF), for instance, each Executive Director represents the countries allocated to his/her constituency.

realistic when the Treaty of Nice was signed). This criterion is derived from the Nice Treaty itself, which prescribed it for the Commission rotation model.

An interesting aspect that is not immediately understandable is that one of the criteria by which the rotation system was chosen was the “one member, one vote” principle. After all, the new voting modalities no longer reflect this principle. Yet the Council Decision is based on the interpretation that this principle should apply to all those members of the Governing Council that have been assigned voting rights. In other words, one *voting* member, one vote. This principle would not seem to be a key criterion. In the rotation model, votes are treated differently by allocating them to different groups; in theory, it would also have been possible to establish such an indirect form of weighting with a system of multiple voting rights. From this perspective, this criterion does not appear to affect significantly the adequacy of the chosen system. The decision to weight voting rights by assigning different frequencies to them is at best the more “elegant” option, as a system of staggered voting also implements the weighting principle, but in a less obvious way.

Finally, the criterion of “representativeness”, which is designed to avoid situations of insufficient representation of the euro area economy as a whole, is of crucial importance.³⁰ This criterion basically prescribes that the rotation model must contain some kind of weighting element. It requires governors whose Member States account for a greater share of the euro area economy to be allocated larger shares in the voting key. A weighting based on the economic role of the Member States within the euro area was not stipulated by the Treaty of Nice, but reflects a policy judgement that the EU Council, meeting in the composition of Heads of State or Government, endorsed on the basis of a recommendation by the Governing Council of the ECB. As such, this judgement is not to be contested and appears to be an adequate criterion, even though it strongly restricts the range of options.

To sum up, the criteria recommended by the Governing Council and eventually endorsed by the EU Council which were to define the requirements for the rotation model appear to be broadly appropriate and adequate. This brings us to the question as to whether those criteria were sufficient or whether additional criteria would have been called for. In this respect two criteria listed in the European Commission’s Opinion of 3 February 2003 should be mentioned:

- “the system must be considered as neutral and unbiased by both existing and future Member States”;
- “the markets and the media should be able to understand the logic and the functioning of the new voting system”.

The first of these two criteria is linked to the question discussed under sub-section 3.4.3, i.e. whether the rotation system may lead to an unequal treatment of Member States.

³⁰ This criterion is related to the requirement mentioned by the European Commission in its Opinion that “the decision-making bodies should act with the interests of the whole euro area”. The European Commission’s concept appears, however, more neutral than the criterion of “representativeness”.

However, the neutrality of a given system cannot be evaluated in an abstract manner, but only in relation to a reference model – something that the Treaty of Nice did not provide. Choosing a weighting model which is referred to in the Treaty in a different context (such as the voting weights of EU Council members or the ECB’s subscribed capital key) as a reference model again implies a policy judgement, even if contextual differences are rather small. Against this backdrop, it is not easy to recognise any objective assessment of the rotation system as being fully neutral. The crucial point is that Member States must not be treated unequally in a discriminatory way (see also sub-section 3.4.3).

The second of the two Commission criteria mentioned above, which underlines the importance of an understandable framework, is broadly in line with the transparency principle advocated in Decision 2003/223/EC. However, the Commission formulated this requirement in a more detailed and explicit way.

The Commission could have gone further than that – it could have called for the new voting modalities to cut back significantly the number of voting governors in the Governing Council. In fact, the Commission did argue along those lines by indicating that it would be advisable to reduce the maximum number of voting rights in order to strengthen the speed and efficiency of decision-making, but it did not actually go so far as to specify a criterion to this effect. This argument was not followed through for political reasons. A stronger reduction of voting rights would clearly have hit the smaller Member States most, which would have made it unrealistic to expect unanimous support for a more sweeping reform of the Governing Council.³¹

3.4.3 HAVE THESE CRITERIA BEEN MET, AND ARE THE NEW VOTING MODALITIES IN LINE WITH THE PRINCIPLE OF EQUAL TREATMENT FOR ALL EU MEMBER STATES?

At any rate, the voting modalities that were adopted in the end meet the criteria that the governors shall act in a personal and independent capacity and that the system shall be accommodated automatically for enlargements of the Eurosystem. With regard to the transparency principle, however, a qualification is called for: the logic of the system may not be deemed the most straightforward, and its high degree of complexity does not foster immediate understanding. Yet as the causal relationship on the basis of which the new voting modalities work is obvious, it cannot be said that this criterion has not been met.

The new regime also reflects the principle of “one member, one vote” (in the sense interpreted above). As mentioned earlier, this principle would not appear to be particularly relevant for judging the adequacy of the system, as there are different approaches to weighting votes, including the assignment of votes for different frequencies, as at the ECB.

³¹ The number of voting rights for governors never sinks below 15, which implies that the Governing Council will at all times have at least 21 voting members. Moreover, this system does not take effect until the Eurosystem consists of 16 NCBs.

What matters most for an overall assessment is whether the chosen rotation system meets the criterion of a sufficient representation of the euro area economy as a whole, or whether there is a bias in the system that clashes with the principle of equal treatment.

In this respect it must be noted that the weighting formula governing the frequency at which the individual NCB governors are assigned voting rights is somewhat out of the ordinary. As indicated above, the ranking is based on a two-component indicator, where a 5/6 weight is attributed to the shares that the individual Member States have in the euro area's gross domestic product at market prices (GDP mp), and a 1/6 weight to the shares that the total aggregated balance sheet of the monetary financial institutions (TABS-MFIs) of each Member State has in the euro area's TABS-MFIs.

The reason why this particular composite indicator was chosen is specified in "whereas" clause (5): "The economic weight of a Member State as reflected in its GDP mp is an appropriate component as the impact of central bank decisions is greater in Member States with larger economies than in those with smaller economies. At the same time, the size of a Member State's financial sector also has a particular relevance for central bank decisions, since the counterparties of central bank operations belong to this sector. [...] This choice of weights is suitable, as this will mean that the financial sector is sufficiently and meaningfully represented."

Using GDP mp to rank the Member States' economic significance is a fairly widespread and adequate approach. Yet applying a "correction factor" (TABS-MFIs) to adjust this measure – be it at a weight of just 1/6 – introduces a discretionary element into this formula that cannot be deduced clearly or conclusively from the Treaty or from the Statute. At the same time, it can be argued that the size of the financial sectors of the Member States should indeed be adequately reflected in the voting frequencies defined for the highest monetary policy decision-making body of the euro area.

A comparison of frequencies based on GDP mp alone with frequencies adjusted for TABS-MFIs at a weight of 1/6 shows that small Member States with comparatively high TABS-MFIs tend to benefit most from taking TABS-MFIs into account. This is particularly true for Luxembourg. Once the Governing Council has been divided into three groups (i.e. once the number of governors reaches 22), the Governor of the Banque centrale du Luxembourg will probably be assigned to the second group, and not to the third, owing to the TABS-MFI criterion.³²

The ranking of Member States defined for the chosen rotation model, which determines the NCB governors' voting frequencies (see Annex 2), begs the question whether this ranking may put certain Member States at a disadvantage

³² See for example G. de la Dehesa (2003), "The New Governing Rules of the ECB", Briefing Paper for the Committee for Economic and Monetary Affairs, European Parliament, 17 February.

or discriminate against them in a legally problematic way. At a first glance, the chosen weighting – 5/6 GDP mp and 1/6 TABS-MFIs – would appear to be discretionary to a certain extent. A certain institutional uneasiness is also evident from the fact that the EU Council stated in its minutes that the model “should not be seen as a precedent for the future composition and decision-making of other Community institutions.”³³ Basically, however, the new voting modalities are not discriminatory in a contestable way insofar as the NCB governors are measured by a single criterion. The two elements of the chosen composite indicator are not inadequate as such; only the percentages applied appear deliberate. Yet at the same time, one could argue that the NCBs’ shares in the capital of the ECB, which have been determined so as to reflect the shares of the Member States in the euro area’s GDP and the individual Member States’ share in the population of the Eurosystem in equal parts, were set with a certain amount of discretion as well; they could also have been determined on the basis of a different calculation model.³⁴

Besides, given the legal format applied in the Treaty of Nice, which empowered the Heads of State or Government to adopt primary legislation (Article 10.2 of the Statute), it would not have been easy to measure Decision 2003/223/EC against other pieces of primary Community legislation. Only in the event that this Decision had violated structural principles of EU legislation, such as the principle of equal treatment of Member States, would it have been possible, in theory, to take the Decision of the Heads of State or Government to the European Court of Justice.³⁵ The Decision contains no such contradiction.

To sum up, the criteria defined by the EU Council, meeting in the composition of the Heads of State or Government,³⁶ for adjusting the voting modalities of the Governing Council are broadly met by the chosen rotation system.

4 FINAL REMARKS

The complexity of the new voting modalities for the Governing Council of the ECB, as adopted by the EU Council meeting in the composition of the Heads of State or Government on 21 March 2003, and in particular the discretionary design of the composite indicator, are political weaknesses that cannot be glossed over. The Council itself stated, as mentioned above, that the established rotation model for the Governing Council of the ECB should not be seen as a precedent for the future composition and decision-making process of other Community institutions. The EU Council may thus have simply underlined the one-off nature of its decision. At the same time, this statement reflects the understanding that a complex regime which appears to have been tailored to produce specific results

33 See ECB Monthly Bulletin, May 2003, pp. 81-82.

34 In its Opinion the Commission highlights the particular relevance of the population criterion for reforming the voting rules in other institutions (notably the Council), and refers to the option to use the ECB’s key for capital subscription as an indicator.

35 To institute such a proceeding would, pursuant to Article 230, subparagraph 5, of the Treaty, have been conceivable only within two months of the publication of the Decision in the Official Journal.

36 These criteria were already contained in Recommendation ECB/2003/1.

may not be deemed a “best practice” model for cooperation at the European level. Moreover, it also reflects the awareness that such a model is hard to communicate to the citizens of Europe.

The EU Council, meeting in the composition of Heads of State or Government, may however rightfully claim to have applied the enabling clause of the Treaty of Nice with its Decision 2003/223/EC and to have managed to improve, by unanimous vote as required, the efficiency of the decision-making process in a future, substantially larger Eurosystem to the extent that this was politically feasible. By adopting this Decision, the Heads of State or Government also signalled to the financial markets as well as the general public their willingness to safeguard a smoothly working monetary policy framework, thereby also fostering the stability of the euro.

ANNEX I

Article 1³⁷ of the “Decision of the Council, meeting in the composition of the Heads of State or Government of 21 March 2003 on an amendment to Article 10.2 of the Statute of the European System of Central Banks and of the European Central Bank”, reads as follows:

“Article I

The Statute of the European System of Central Banks and of the European Central Bank is hereby amended as follows:

Article 10.2 of the Statute shall be replaced by the following:

- (10.2) Each member of the Governing Council shall have one vote. As from the date on which the number of members of the Governing Council exceeds 21, each member of the Executive Board shall have one vote and the number of governors with a voting right shall be 15. The latter voting rights shall be assigned and shall rotate as follows:
 - as from the date on which the number of governors exceeds 15, until it reaches 22, the governors shall be allocated to two groups, according to a ranking of the size of the share of their national central bank’s Member State in the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions of the Member States which have adopted the euro. The shares in the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions shall be assigned weights of 5/6 and 1/6, respectively. The first group shall be composed of five governors and the second group of the remaining governors. The frequency of voting rights of the governors allocated to the first group shall not be lower than the frequency of voting rights of those of the second group.

³⁷ Article 2 of the Council Decision states that this Decision shall be ratified by all Member States in accordance with their respective constitutional requirements and “shall enter into force on the first day of the second month following that in which the instrument of ratification is deposited by the last signatory state to fulfill that formality.”

- Subject to the previous sentence, the first group shall be assigned four voting rights and the second group eleven voting rights;
- as from the date on which the number of governors reaches 22, the governors shall be allocated to three groups according to a ranking based on the above criteria. The first group shall be composed of five governors and shall be assigned four voting rights. The second group shall be composed of half of the total number of governors, with any fraction rounded up to the nearest integer, and shall be assigned eight voting rights. The third group shall be composed of the remaining governors and shall be assigned three voting rights;
 - within each group, the governors shall have their voting rights for equal amounts of time;
 - for the calculation of the shares in the aggregate gross domestic product at market prices, Article 29.2 shall apply. The total aggregated balance sheet of the monetary financial institutions shall be calculated in accordance with the statistical framework applying in the European Community at the time of the calculation;
 - whenever the aggregate gross domestic product at market prices is adjusted in accordance with Article 29.3, or whenever the number of governors increases, the size and/or composition of the groups shall be adjusted in accordance with the above principles;
 - the Governing Council, acting by a two-thirds majority of all its members, with and without a voting right, shall take all measures necessary for the implementation of the above principles and may decide to postpone the start of the rotation system until the date on which the number of governors exceeds 18.

The right to vote shall be exercised in person. By way of derogation from this rule, the Rules of Procedure referred to in Article 12.3 may lay down that members of the Governing Council may cast their vote by means of teleconferencing. These rules shall also provide that a member of the Governing Council who is prevented from attending meetings of the Governing Council for a prolonged period may appoint an alternate as a member of the Governing Council.

The provisions of the previous paragraphs are without prejudice to the voting rights of all members of the Governing Council, with and without a voting right, under Articles 10.3, 10.6 and 41.2. Save as otherwise provided for in this Statute, the Governing Council shall act by a simple majority of the members having a voting right. In the event of a tie, the President shall have the casting vote. In order for the Governing Council to vote, there shall be a quorum of two-thirds of the members having a voting right. If the quorum is not met, the President may convene an extraordinary meeting at which decisions may be taken without regard to the quorum.”

ANNEX 2

Weighted two-component indicator

(5/6 GDP mp and 1/6 TABS-MFIs (%))

1	Germany	23.45	15	Ireland	1.25
2	United Kingdom	17.86	16	Luxembourg	0.69
3	France	16.00	17	Czech Republic	0.57
4	Italy	12.19	18	Hungary	0.49
5	Spain	6.48	19	Romania	0.38
6	Netherlands	4.59	20	Slovakia	0.21
7	Belgium	2.82	21	Slovenia	0.20
8	Sweden	2.52	22	Bulgaria	0.13
9	Austria	2.31	23	Lithuania	0.11
10	Denmark	1.91	24	Cyprus	0.10
11	Poland	1.66	25	Latvia	0.07
12	Finland	1.31	26	Estonia	0.05
13	Greece	1.30	27	Malta	0.04
14	Portugal	1.29			

Source: Dvorsky and Lindner, op. cit. footnote 5; data derived from publications from EUROSTAT, ECB and NCBs for periods until 2001; GDP data calculated in accordance with Article 29.3 of the Statute.