Peter Katz, The Treaty of Nice and European Union enlargement: the political, economic, and social consequences of ratifying the Treaty of Nice

Caption: This study, drafted by Peter Katz and published in the University of Pennsylvania's Journal of International Economic Law in 2003, sheds light on the ratification process for the Treaty of Nice and the referendums held in Ireland in 2001 and 2002.

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COMMENTS

THE TREATY OF NICE AND EUROPEAN UNION ENLARGEMENT: THE POLITICAL, ECONOMIC, AND SOCIAL CONSEQUENCES OF RATIFYING THE TREATY OF NICE

PETER KATZ*

1. INTRODUCTION

The European Union ("EU") has worked incessantly to achieve its lofty goal of establishing a more unified European continent. The Treaty of Nice is the third major treaty revision of the EU in the past ten years. The Treaty of Maastricht, more commonly known as the Treaty on European Union ("TEU"), went into force in 1993, establishing what is currently referred to as the "European Union."[1] The Treaty of Amsterdam was signed in 1997, entered into force in 1999, and has added to and amended the foundational TEU.[2] The main purposes of the EU treaties are twofold: First, to adopt a structure that enables current EU members to interact and function cohesively, while leaving some of the specific means of achieving the goals of the EU to the member states; and second, to ease the transition for countries that hope to gain EU membership.

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* J.D. Candidate 2003, University of Pennsylvania Law School; B.S. 1999, University of Florida. I thank Jill Concannon and the *University of Pennsylvania Journal of International Economic Law* staff for all of their hard work in editing and improving the Comment. I also thank my mother, Jayne Katz, for her devoted efforts in encouraging me to achieve my goals.

[1] TREATY ON EUROPEAN UNION, Feb. 7, 1992, O.J. (C 191) 1 [hereinafter TEU].

[2] TREATY OF AMSTERDAM AMENDING THE TREATY ON EUROPEAN UNION, THE TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES AND CERTAIN RELATED ACTS, Oct. 2, 1997, O.J. (C 340) 1 [hereinafter TREATY OF AMSTERDAM].

The critical issue at Nice was the adoption of amendments to the TEU that would ease the "enlargement" process for twelve non-member countries seeking membership into the EU as early as 2004. Many of these issues were not resolved at Amsterdam, and the Treaty of Nice was meant to provide some solutions. Although there was a political agreement reached at Nice among all of the member countries' representatives, the Treaty of Nice could not go into force without all fifteen member countries ratifying the Treaty. This ratification could be achieved either by legislative approval or by a referendum, in which the citizens of the member countries would vote.

The citizens of Ireland, whose constitution requires a referendum, rejected the Treaty of Nice on June 7, 2001.[3] This created a dilemma, as the Treaty of Nice could not go into force without ratification by all EU members. The Irish government staged a strong pro-Nice campaign to convince its citizens that ratification of the Treaty was essential for enlargement and would not jeopardize Ireland's neutral military position. Ireland held a second referendum on October 19, 2002, and this time the citizens adopted a constitutional amendment allowing Ireland to ratify the Treaty of Nice.

This is not to say that everyone is satisfied with the current enlargement process. Many EU citizens question the governmental bodies' motives for wanting to achieve enlargement. Citizens are wary that enlargement will not be in their best economic interests. The EU has taken substantial steps towards enlargement and they insist that the enlargement schedule must be maintained. They believe that enlargement is the best solution to achieve their political and economic goals.

It is beneficial to first look at the recent history of the EU, its treaties, and the ultimate goals of enlargement. Section 2 of this Comment looks at how the EU has positioned itself in recent years to allow enlargement to become a reality. This Section also looks at the present state of enlargement and the countries interested in seeking EU membership. Section 3 of this Comment analyzes the potential economic consequences of enlargement on the existing EU members and the candidates for membership. This Section focuses on the *potential* economic impact of the candidates' entrance into the EU, as it is uncertain what the ultimate effects of such a move will be.

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[3] *See infra* note 151.

Section 4 is an in-depth analysis of the Treaty of Nice and how the EU focused its efforts towards enlargement. It will also detail the purposes of the Treaty of Nice, with attention paid to the Treaty of Amsterdam and its shortcomings. Section 5 describes the ratification process for the Treaty of Nice and the emergence of the Irish referenda. Section 5 also analyzes public opinion on enlargement. In Section 6, this Comment concludes that although the EU has successfully achieved its goals of ratification and has maintained its enlargement timetable, there is still much work to be done with respect to democratic representation and gaining the confidence of current EU citizens.

2. ENLARGEMENT

The present enlargement process is the most aggressive, ambitious project that the EU has ever undertaken.[4] There are currently thirteen countries seeking membership into the EU: Ten Central and Eastern European Countries ("CEECs") (Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, the Slovak Republic, and Slovenia), as well as Cyprus, Malta, and Turkey. Each of these countries applied for membership at different dates, which ranged from 1987 to 1996.[5] The goal of enlargement is not to add all of the countries simultaneously, but to add each independently to achieve an EU of twenty-seven members by the end of 2009.[6] When the EU finally enlarges to twenty-seven members, the CEECs, Cyprus, and Malta will be integrated into the EU. However, these countries have already developed substantial relationships with the EU through the Europe Agreements and the

[4] The EU currently consists of fifteen members, six of which were founding members: Belgium, Germany, France, Italy, Luxembourg, and the Netherlands. The others were added during four separate enlargements: (1) In 1973, Denmark, Ireland, and the United Kingdom were added; (2) In 1981, Greece joined; (3) In 1986, Portugal and Spain joined; and (4) In 1995, Austria, Sweden, and Finland were the last additions. EUROPEAN UNION, EU ENLARGEMENT—A HISTORIC OPPORTUNITY [hereinafter EU ENLARGEMENT], *at* http://europa.eu.int/comm/enlargement/intro/index_en.htm (last visited Feb. 7, 2003).

[5] See EUROPEAN UNION, NEGOTIATIONS [hereinafter NEGOTIATIONS], *at* http://europa.eu.int/comm/enlargement/negotiations/index.htm (last visited Feb. 7, 2003), for a comprehensive list of each applicant country's application date.

[6] Turkey continues to seek membership in the EU, but has not fully achieved the political, economic, or *acquis* criteria necessary for membership. Towards the Enlarged Union: Strategy Paper from the Commission on the Progress Towards Accession by Each of the Candidate Countries, COM(2002)700 final at 21 [hereinafter Strategy Paper 2002].

EU has previously established the procedural guidelines that these countries must follow to achieve membership status.

2.1. Europe Agreements

The collapse of Communism in Eastern and Central Europe and the dissolution of the U.S.S.R. tore down many of the political and trade barriers that previously existed between the old Communist countries and the Western world. The newly-formed and preexisting countries were left in disarray, but opportunities to trade freely with Western European countries became possible. Between 1991 and 1996, all of the CEECs signed association agreements, known as the Europe Agreements,[7] with the EU, which established bilateral relations between the associated CEECs and the EU.[8] The Europe Agreements support economic, political, and social relationships with the purpose of converging interests.[9] This

[7] The Official Journal of the European Communities published the Council's and Commission's Decisions to approve the Europe Agreements. Hungary and Poland signed their Europe Agreements in 1991. Commission Decision 93/743, 1993 O.J. (L 348) 1; Commission Decision 93/742, 1993 O.J. (L 347) 1. In 1993, Romania, Bulgaria, the Slovak Republic, and the Czech Republic signed their Europe Agreements. Commission Decision 94/910, 1994 O.J. (L 360) 1; Commission Decision 94/909, 1994 O.J. (L 359) 1; Commission Decision 94/908, 1994 O.J. (L 358) 1; Commission Decision 94/907, 1994 O.J. (L 357) 1. Latvia, Estonia, and Lithuania signed their Europe Agreements in 1995. Commission Decision 98/180, 1998 O.J. (L 68) 1, 2; Commission Decision 98/150, 1998 O.J. (L 51) 1, 2; Commission Decision 98/98, 1998 O.J. (L 26) 1, 2. The last CEEC, Slovenia, signed its Europe Agreement in 1996. Commission Decision 99/144, 1999 O.J. (L 51) 1, 2. Europa, the official website of the EU, provides a comprehensive chart containing each applicant country, the date it signed its Europe Agreement, the date the Europe Agreement went into force, the date each applicant officially applied for EU membership, and a link to the text of each applicant's Europe Agreement. See generally European Union, Europa: The European Union On-Line [hereinafter Europa], *at* http://europa.eu.int/comm/enlargement/pas/europe_agr.htm for citations of this material.

[8] This section refers to the Europe Agreements signed by the CEECs and the EU. Turkey, Malta, and Cyprus had signed their association agreements with the European Economic Community (EEC) years earlier. Council Regulation 1246/73, 1973 J.O. (L 133) 1; Council Regulation 492/71, 1971 J.O. (L 61) 1; Council Decision 64/733, 1964 J.O. (L 217) 1. See generally Europa, *supra* note 7, for citations of these and other helpful materials.

[9] The Europe Agreement between Poland and the EU states that the purpose of the Agreement is:

> [T]o provide an appropriate framework for the political dialogue . . . to promote the expansion of trade and the harmonious economic relations between the parties . . . to provide a basis for the Community's financial and technical assistance to Poland, to provide an appropriate framework for Poland's gradual integration into the Community. To this end, Po-

Subsection will focus specifically on the economic relations between the CEECs and the EU.

The Europe Agreements' major economic impact is that the EU began to assist, and continued assisting, the CEECs in the creation and development of their new market economies. The Europe Agreements encourage reciprocal, yet asymmetrical, trade relations between the associated countries and the EU by virtually eliminating restrictions on industrial goods that the CEECs export to the EU members, while allowing the CEECs to continue to tax EU imports.[10] By January 1, 1997, tariffs were eliminated from most CEEC exports to the EU, except for agricultural goods.[11] Although foreign trade with the CEECs is less significant for EU members, the Europe Agreements' success for the CEECs is evident from the fact that over half of the CEECs' foreign trade is with EU members.[12] In addition to trade relations, the Europe Agreements have positively altered CEEC relations with the EU concerning the free movement of capital and labor. The results are similar to that of trade relations, where the impact on the CEECs is far more significant than the impact on the EU;[13] however, overall, the Europe Agreements have provided benefits to both the CEECs and the EU.[14]

The Europe Agreements have also had a phenomenal effect on the transformation of the CEECs into market economies. They provide the basic framework from which full integration into the

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land shall work towards fulfilling the necessary conditions, to promote cooperation in cultural matters.

Commission Decision 93/743, art. 1, 1993 O.J. (L 348) 3.

[10] DIRECTORATE GEN. FOR ECONOMIC & FINANCIAL AFFAIRS, EUROPEAN COMMISSION, ENLARGEMENT PAPERS: THE ECONOMIC IMPACT OF ENLARGEMENT 21 (2001) [hereinafter ECONOMIC IMPACT OF ENLARGEMENT], *at* http://europa.eu.int/comm/economy_finance/publications/enlargement_papers/enlargementpapers04_en.htm. *See* CHRISTIAN WEISE ET AL., GERMAN INSTITUTE FOR ECONOMIC RESEARCH & EUROPEAN POLICIES RESEARCH CENTER, THE IMPACT OF EU ENLARGEMENT ON COHESION 79 (2001) [hereinafter IMPACT ON COHESION] (analyzing the effects of enlargement on EU-CEEC trade patterns), *at* http://www.diwberlin.de/programme/cgi/index.cgi?automatic=1&c=/english/abtielungen/wlt/publikationen/content.html.

[11] ECONOMIC IMPACT OF ENLARGEMENT, *supra* note 10, at 21.

[12] *Id.* at 23.

[13] *Id.* at 24.

[14] From 1994 to 1999, the CEEC's average gross domestic product ("GDP") growth was 3.5% per year and the average EU member's GDP growth was 2.25% per year. *Id.* at 26.

EU is to be achieved. It may seem as if the EU and the CEECs have little to gain through the CEECs' full integration into the EU, but there are still advantages and privileges of full membership, which the CEECs could not achieve without joining the EU.[15]

2.2. Accession Criteria and the Pre-Accession Process

Every country seeking membership into the EU has been given an extensive list of the broad and specific requirements that must be met before its application for membership will be considered and accepted. The current membership criteria have been developed over the past nine years through a number of conferences and summits. There were three significant events that led to the finalization of the accession criteria, which established the foundation of the current enlargement scenario: (1) the Copenhagen European Council summit in 1993; (2) the European Commission's ("the Commission's") report, Agenda 2000, and its relevant Opinions and Reports; and (3) the Luxembourg European Council summit in 1997.

2.2.1. Copenhagen European Council

In 1993, the Council of the European Union held its meeting in Copenhagen, realizing that enlargement was soon approaching. The parties agreed that "the associated countries in Central and Eastern Europe that so desire shall become members of the European Union."[16] Membership requirements, now known as the Copenhagen Criteria, were determined,[17] but no specific countries were targeted, nor were any definitive dates given. Even without the specifics, the political, economic, and institutional criteria were

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[15] *See infra* Section 3 (analyzing the economic impact of enlargement on the CEECs).

[16] Presidency Conclusions from the Copenhagen European Council, June 21-22, 1993, § 7(A)(iii) [hereinafter Copenhagen Conclusions], *at* http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=DOC/93/3|0|AGED&lg=EN&display=.

[17] There are four broad membership requirements that applicants must satisfy: (1) Applicants must undergo institutional reform to conform with the EU's institutional policies promoting democracy; (2) Applicants must promote the establishment of their market economies and be able to cope with market forces; (3) The applicants must be able to adhere to the obligations of EU membership with regard to economic and political union; and (4) Applicants must condition their national procedures to allow for the integration of EU law into domestic law. *Id.* Annex II.

settled and the CEECs and other potential countries could begin focusing their efforts towards gaining membership.

The aforementioned Europe Agreements were entered into soon after the Copenhagen European Council agreed on these criteria; all of the Europe Agreements are focused on fulfilling the Copenhagen Criteria.[18] The criteria provided guidance to both sides, defining EU-CEEC relations via the Europe Agreements. Between 1994 and 1996, all ten CEECs applied for EU membership,[19] and fulfillment of the Copenhagen Criteria is the first major step for the CEECs to achieve accession.

2.2.2. *Agenda 2000 and the Commission's Opinions*

In July 1997, the Commission presented its Agenda 2000 report,[20] which broadly communicated the EU's objectives for the 21st century concerning the reform of EU policies, enlargement, and the EU's financial framework.[21] Specifically with relation to enlargement, Agenda 2000 provided that the EU would continue to foster an encouraging environment for enlargement, with the increase of funds to the CEECs.[22] Also, the EU would continue to provide support to the CEECs by monitoring the Accession Partnerships, which include the Europe Agreements and other multinational programs. As the Copenhagen Criteria established the

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[18] *See, e.g.*, Commission Decision 94/907, art. 1, 1994 O.J. (L 357) 5 (stating that the objectives of Romania's Europe Agreement are to fulfill the four criteria set forth in Copenhagen).

[19] The following is a chronological list of the applicants and their application years: Turkey (1987), Cyprus (1990), Malta (1990), Hungary (1994), Poland (1994), Romania (1995), Estonia (1995), Lithuania (1995), Bulgaria (1995), Slovakia (1995), Latvia (1995), the Czech Republic (1996), and Slovenia (1996). EU ENLARGMENT, *supra* note 4.

[20] Agenda 2000: For a Stronger and Wider Europe from the Commission to the Council of the European Union, COM(97)2000 final [hereinafter Agenda 2000], *at* http://europa.eu.int/prelex/detail_dossier_real.cfm?CL=en&DosId=20085 #20516. However, analyses and summaries are more prevalent. *See, e.g.*, EUROPEAN COMMISSION, GENERAL REPORT ON THE ACTIVITIES OF THE EUROPEAN UNION paras. 29-44 (1997) (summarizing the Commission's conclusions from Agenda 2000).

[21] Agenda 2000 has spawned a variety of legislation and resolutions from the EU's institutions. See, e.g., Parliament Resolution on the Communication from the Commission on Agenda 2000, 1997 O.J. (C 38) 31, in which the Parliament gives its opinions and conclusions concerning the Agenda 2000 report.

[22] EU INFORMATION CENTRE, OVERVIEW OF THE PHARE PROGRAMME AND THE NEW PREACCESSION FUNDS (1999) [hereinafter PHARE PROGRAMME], *at* http://europa.eu.int/comm/enlargement/pas/phare/publist.htm.

pre-accession criteria for the CEECs and other countries, Agenda 2000 provided part of the procedural framework from which enlargement developed.

Agenda 2000 also focused on three categories of criteria that the applicants must achieve during the pre-accession process.[23] First, the political criteria concern the applicants' political regimes' "respect for democracy and human rights,"[24] with emphasis on converging the applicants' general political views with those of the EU. The economic criteria represent the greatest disparity among the CEECs, Malta, and Cyprus.[25] The CEECs had the difficult task of forming market economies that could withstand strong competitive forces. For many of the CEECs that were previously part of the Soviet bloc, this meant dismantling their previously functioning systems and literally starting over again with no foundation in place. The last criteria concern the applicants' ability to adopt the "acquis communautaire," the ability to develop the necessary legal avenues to allow EU law, and most importantly, the EU's major treaties, which must become the applicant countries' laws upon membership.[26]

The EU's membership criteria require many applicants to dismantle functioning legal and economic systems, as well as deconstruct long-lasting political ideologies—tasks that do not come without a significant price. Agenda 2000 developed the idea of a financial system wherein the EU would contribute a significant amount of funds through various programs, such as Phare, to the CEECs to help meet some of the costs of the pre-accession process.

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[23] These criteria re-emphasize the Copenhagen Criteria. Copenhagen Conclusions, *supra* note 16, at Annex II.

[24] EUROPEAN UNION, ENLARGEMENT OF THE UNION § 6 (2001), *at* http://europa.eu.int/scadplus/leg/en/lvb/e40001.htm.

[25] The economic criteria, including establishment of a market economy and the ability to withstand market forces, were the main reason why the EU chose to begin negotiations with Cyprus, Poland, Hungary, Estonia, Slovenia, and the Czech Republic. *Id.* at § 7; *see infra* Section 2.2.3 (discussing the Luxembourg European Council).

[26] The Agenda 2000 report suggested that each applicant develop a plan for acquiring the EU's *acquis*. Each applicant devised a National Program for the Adoption of the Acquis (NPAA). *Acquis* includes: (1) Adoption of principles and laws of EU treaties; (2) Secondary legislation and jurisprudence; and (3) declarations and resolutions. For a comprehensive list, see, for example, HUNGARY, MINISTRY OF FOREIGN AFFAIRS, NATIONAL PROGRAMME FOR THE ADOPTION OF THE ACQUIS (2001), *at* http://www.mfa.gov.hu/euanyag/NPAA/Cover.htm.

In July 1997, the Commission issued its opinion on the status of each CEEC's application for EU membership.[27] The Commission evaluated various reports issued by the applicant countries and the bodies of the EU. These opinions encompassed the Commission's views on the steps the applicants had taken to meet the accession criteria set forth in Copenhagen.[28] They concluded that the EU should begin accession negotiations for enlargement with six of the applicant countries: Five CEECs (the Czech Republic, Poland, Slovenia, Estonia, and Hungary) and Cyprus.[29] At each meeting after 1997, the Commission has issued regular reports on the status of the applicant countries.[30]

2.2.3. *Luxembourg European Council*

In December 1997, only four months after the Commission issued its Agenda 2000 report, the European Council held its summit in Luxembourg and accepted the Commission's recommendations concerning enlargement.[31] They undertook the task of developing the current enlargement process by implementing a

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[27] For a complete link to the Commission's opinions on every CEEC's application, see EUROPEAN UNION, EU ENLARGEMENT—A HISTORIC OPPORTUNITY (2000) [hereinafter HISTORIC OPPORTUNITY], *at* http://europa.eu.int/comm/enlargement/intro/ag2000_opinions.htm.

[28] The opinions also offered predictions of each CEEC's progress towards enlargement. *See, e.g.*, Commission Opinion on Bulgaria's Application for Membership of the European Union, COM(97)2008 final at 36 (predicting Bulgaria's ability to cope with market pressures), *at* http://europa.eu.int/comm/enlargement/bulgaria/index.htm.

[29] HISTORIC OPPORTUNITY, *supra* note 27 (locating all of the Opinions). The Conclusion section of each Opinion states how well the applicant has progressed in establishing the Copenhagen Criteria; the Commission decided that six applicants were ready to begin negotiations. *See, e.g.*, Commission Opinion on Hungary's Application for Membership of the European Union, COM(97) 2001 final (concluding that Hungary was successful in preparing itself to begin accession negotiations), *at* http://europa.eu.int/comm/enlargement/hungary/index.htm.

[30] In June 1997, the Council summit in Luxembourg concluded that the Commission should continue to submit progress reports concerning the status of each CEEC's progress. Presidency Conclusions from the Luxembourg European Council, Dec. 12, 1997, para. 38 [hereinafter Luxembourg Conclusions], *at* http://ue.eu.int/en/info/eurocouncil/index.htm. In 1999, the Commission concluded that the EU should be ready in 2002 to begin formal negotiations with the CEECs who have met their criteria. Reports on Progress Towards Accession by Each of the Candidate Countries: Composite Paper on the Commission Reports, COM(99)0500 final at 39 [hereinafter Composite Paper], *at* http://europa.eu.int/comm/enlargement/report_10_99/index.htm#2.

[31] Luxembourg Conclusions, *supra* note 30, para. 10.

plan that European non-member countries must follow in order to meet the political, economic, and institutional goals of the EU.[32] Furthermore, the plan includes the EU's role in facilitating the enlargement process.[33]

The plan includes four major parts. First, the Luxembourg European Council creates the European Conference, a series of meetings between the EU's and applicants' representatives, to ensure that the applicants understand and adhere to the EU's political and social agenda.[34] Second, the Council details the pre-accession strategy for any European country hoping to obtain EU membership.[35] The pre-accession strategy assumes that the relationships fostered by the Europe Agreements would continue. In addition, the strategy introduces the new accession partnerships,[36] including the Phare program, as the main source of EU contribution to the applicants.[37] Third, the plan formally adopts the recommendations of the Commission and announced that accession negotiations would officially begin with Cyprus, Poland, Hungary, Estonia, Slovenia, and the Czech Republic.[38] Fourth, the Council concludes that the Commission should continue to execute progress reports and make recommendations concerning the status

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[32] *Id.* paras. 2-3.

[33] *Id.* para. 17.

[34] "The members of the Conference must share a common commitment to peace, security and good neighbourliness, respect for other countries' sovereignty, the principles upon which the European Union is founded . . . ." *Id.* para. 5.

[35] *See* HISTORIC OPPORTUNITY, *supra* note 27 (summarizing the parts of the enlargement process from Luxembourg).

[36] The Accession Partnerships provide the CEECs with a guide to meeting the EU's *acquis*, as well as establish the financial means by which they are to support their acts. Luxembourg Conclusions, *supra* note 30, paras. 14-16. Each CEEC entered an Accession Partnership with the EU in 1998. *See, e.g.*, Commission Communication on Information from the Commission—Bulgaria: Accession Partnership, 1998 O.J. (C 202) 1-6 [hereinafter Bulgaria Communication] (outlining the short-term, medium-term, and long-term goals for Bulgaria in the Accession Partnership).

[37] The Phare program started as a financial assistance program for Central and Eastern European countries in 1989, with the goal of encouraging those countries to develop new political and economic regimes after the Cold War ended. The Luxembourg Council announced Phare's complete devotion to the pre-accession process for applicant countries. For a complete history and guide to the Phare program, see PHARE PROGRAMME, *supra* note 22. "The Phare programme is the main financial instrument of the reinforced pre-accession strategy." Bulgaria Communication, *supra* note 36, § 5.1.

[38] Luxembourg Conclusions, *supra* note 30, para. 27.

gress reports and make recommendations concerning the status of the CEECs in connection with the Copenhagen Criteria.[39]

The Luxembourg Summit was a significant step in the enlargement process. The EU's long-term goal of enlargement, which had started as a broad, conceptual idea, now had the requisite form for success. The Council commenced accession negotiations with six applicants, and the others soon followed. With the framework in place, the EU and the applicants were left to deal with the substantive negotiation processes.

2.3. *The State of Enlargement After Luxembourg*

This is not to say that after 1997 all of the groundwork for enlargement was completed. Rather, this Section illustrates some of the foundational events within the EU institutions that have contributed to the enlargement process up until 1997.[40] Remaining specific issues required acknowledgement and attention, but the success of the earlier planning meant that the other applicants and potential candidates now had a roadmap to follow in pursuit of membership. As enlargement nears, the Council continues to hold summits and to work on the details of effectuating enlargement.[41]

In 1999, the Helsinki European Council concluded that the Intergovernmental Conference ("IGC") would convene in 2000 with the main purpose of amending the EU laws to help further the goals of a largely expanded EU.[42] The Council also agreed that

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[39] *Id.*

[40] The Commission prepared a follow-up report to Agenda 2000, called Strategy 2000, along with its Regular Reports in 2000, which set up a roadmap for the accession process from 2000-2002. Enlargement Strategy Paper—Report on Progress Towards Accession by Each of the Candidate Countries [hereinafter Strategy Paper 2000], *at* http://europa.eu.int/comm/enlargement/report_11_00/index.htm#1 (last visited Feb. 8, 2003). The Nice Council accepted in December 2000 the Commission's roadmap as a positive guide for enlargement. Presidency Conclusions from the Nice European Council, Dec. 2000, para. 5 [hereinafter Nice Conclusions], *at* http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=DOC/00/30|0|RAPID&lg=EN.

[41] In December 2001, the President concluded in Laeken that "the accession process . . . is now irreversible," and maintained that the EU's goals should still be to continue with enlargement in 2002. Presidency Conclusions from the Laeken European Council, Dec. 2001, paras. 7-8 [hereinafter Laeken Conclusions], *at* http://ue.eu.int/en/Info /eurocouncil/index.htm.

[42] Presidency Conclusions from the Helsinki European Council, Dec. 1999, para. 5 [hereinafter Helsinki Conclusions], *at* http://ue.eu.int/en/Info /eurocouncil/index.htm. IGC 2000 met in Nice and made various amendments to the main treaties of the EU via the Treaty of Nice. *See infra* Section 4 & notes 80-

once the IGC results were ratified, the first countries would obtain EU membership by 2002.[43] Eventually, at the Santa Maria da Feira European Council in June 2000, the Council announced that it would open negotiations with the remaining group of nations: Bulgaria, Latvia, Lithuania, Slovakia, Romania, and Malta.[44]

2.4. *Accession Negotiations*

The EU has officially opened accession negotiations with the twelve aforementioned applicant countries. The first group, Hungary, Poland, Estonia, the Czech Republic, Slovenia, and Cyprus, began negotiations on March 31, 1998. The second group, Romania, the Slovak Republic, Latvia, Lithuania, Bulgaria, and Malta, commenced negotiations on October 13, 1999.[45] However, the applicant countries will not receive membership at the same time; negotiations are conducted bilaterally, between the EU and each applicant.

2.4.1. *The Accession Negotiation Process*

The applicant countries must develop and implement strategies concerning thirty-one separate chapters, which together form the EU's *acquis*.[46] The goal is to have the applicants conform their national laws with those of the EU, which are based on the EU treaties. Each applicant works closely with the Commission, which keeps track of their progress and helps deal with any significant problems that occur. Accession negotiations are lengthy, as the Council must unanimously approve each chapter before it is closed.

Each applicant is eligible to receive membership only when all thirty-one chapters have been closed. After the applicant receives

81 (discussing the Treaty of Nice, enlargement, and the background study for the second cohesion report).

[43] Helsinki Conclusions, *supra* note 42, para. 5.

[44] Council Presidency Conclusions from the European Council in Santa Maria da Feira, June 2000, para. 13, *at* http://ue.eu.int/en/Info/eurocouncil/index.htm.

[45] NEGOTIATIONS, *supra* note 5.

[46] Some examples of negotiations chapters are Chapter 1: Free Movement of Goods, Chapter 2: Free Movement of Persons, Chapter 10: Taxation, and Chapter 30: Institutions. For a comprehensive list, see EUROPEAN UNION, ENLARGEMENT—CHAPTERS OF THE ACQUIS [hereinafter CHAPTERS OF THE ACQUIS], *at* http://europa.eu.int/comm/enlargement/negotiations/chapters/index.htm (last updated Dec. 30, 2002).

the approval of the Council and the EU Parliament,[47] each of the existing EU member countries *and* the applicant countries must ratify the accession treaty according to their domestic constitutional requirements.[48] Finally, if the applicant country and all of the EU member countries ratify the treaty, the applicant will achieve EU membership.

2.4.2. *Accession Negotiation Progress*

Since the Helsinki Summit in 1999, 2002 was expected to be the year in which the first applicant countries were to achieve membership status.[49] The Council's optimistic timeframe has, for the most part, been successful, since ten of the applicants concluded accession negotiations by the end of 2002.[50] Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, and Slovenia have completed negotiations for all thirty-one chapters.[51]

On October 9, 2002, the Commission recommended that the EU conclude negotiations with ten of the candidates.[52] The Commission further decided that these ten candidates were to be ready for full membership by the beginning of 2004.[53] The Commission stated that the EU would offer its support to Romania and Bulgaria to continue negotiations, with the hope that they would be ready for membership in 2007.[54] Bulgaria has concluded negotiations on twenty-four chapters, and Romania has concluded negotiations on only sixteen chapters.[55] Turkey will continue its pre-accession ne-

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47 TREATY OF AMSTERDAM art. 1.15.

48 *Id.*

49 Laeken Conclusions, *supra* note 41, para. 7.

50 The EU has prepared a table charting each applicant's progress in negotiating the thirty-one chapters of the EU's *acquis*. EUROPEAN UNION, ACCESSION NEGOTIATIONS: STATE OF PLAY DECEMBER 2002, *at* http://www.europa.eu.int/comm/enlargement/negotiations/chapters/index.htm.

51 *Id.*

52 On October 9, 2002, the Commission released its monumental Strategy Paper, which concluded that the ten candidates were nearing membership status. Strategy Paper 2002, *supra* note 6, at 33.

53 *Id.* After the Commission issued its Strategy Paper 2002, the Council slightly amended the timeframe for enlargement by concluding that the ten candidates are to achieve full membership status on May 1, 2004. Copenhagen Conclusions, *supra* note 16, para. 3.

54 Strategy Paper 2002, *supra* note 6, at 34.

55 *See* CHAPTERS OF THE ACQUIS, *supra* note 46 (describing the various chapters that must be negotiated).

gotiations; the Commission has not set a definitive timetable for Turkey's membership.[56]

3. THE ECONOMIC IMPACT OF ENLARGEMENT

Enlargement is not a fixed point in time when the EU will instantly change from its current fifteen members to twenty-seven members. There is no single event that defines enlargement; instead, EU enlargement will be the result of a dynamic process stemming from the vision of the EU's governing bodies. The Europe Agreements maintain their status as the foundation for bilateral relations between the CEECs and the EU.[57] The Europe Agreements accomplished most of the economic goals of EU-CEEC relations through trade and foreign direct investment. The question arises as to what economic gains the EU and the CEECs can achieve through completing the enlargement process.

There are conflicting views on whether enlargement will have any additional economic benefits. Advocates of enlargement point to the potential for increased trade and investment, which would increase the gross domestic product ("GDP") of the existing members, the CEECs, and, therefore, the EU as a whole.[58] The skeptics claim that enlargement is more of a political ploy, rather than a beneficial economic decision, which will stagnate EU economic development because the current members will have to support the slowly developing CEEC economies.[59] Presently, the arguments for and against the economic benefits of EU enlargement are just that, arguments. Both sides have their economic models illustrating their opinions; however, these models are based on numerous assumptions that may or may not be true. This Section will analyze the arguments with regard to trade and investment.

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[56] Strategy Paper 2002, *supra* note 6, at 35.

[57] *See supra* Section 2.1 (describing the role played by the Europe Agreements in establishing CEEC-EU relations).

[58] Enlargement supporters point to the increase in GDP in the EU and the CEECs since the inception of the Europe Agreement. *See supra* note 14 and accompanying text (noting that the CEECs' average gross domestic product growth exceeded that of the EU for the period 1994-1999). They infer from this increase in GDP that since enlargement will remove all of the barriers to trade and investment, GDP will only continue to increase.

[59] *See* ECONOMIC IMPACT OF ENLARGEMENT, *supra* note 10, at 27-28 (describing the likelihood of slow growth rates in the CEECs).

3.1. Trade

The EU and the CEECs have increased trade relations since the adoption of the Europe Agreements, which removed many of the trade barriers between the countries.[60] The CEECs have taken advantage of these relations by exporting most of their goods to EU members.[61] Overall, the figures indicate that the EU has not benefited as much as the CEECs from the removal of trade barriers, but the EU exports to CEECs have been steadily increasing.[62] Also, the EU members that border the CEECs have established stronger trade relations than the EU members that are not geographically located near the CEECs.[63]

Although the Europe Agreements have opened trade on some goods between the CEECs and the EU, enlargement will extinguish trade barriers entirely.[64] Enlargement will not have a large effect on overall trade, but will most likely have its greatest impact on certain sectors, especially agriculture.[65] The potentially large effect on agriculture leads to the greatest topic of debate. The agricultural industry was not included in the Europe Agreements,[66] and enlargement would guarantee that the CEECs' farmers would gain access to the EU market, and vice versa.[67]

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[60] *See supra* Section 2.1 (describing the impact of the Europe Agreements on the EU and the CEECs).

[61] In 2000, applicants exported 62% of their goods to the EU, as compared to 48% in 1994. In 1999, Poland, the largest CEEC, exported 70.5% of its goods to the EU, an increase of 7.5% from 1994. ECONOMIC IMPACT OF ENLARGEMENT, *supra* note 10, at 22.

[62] EU exports to the CEECs represented only 7.7% of the EU's total exports in 1999. *Id.* However, it should be noted that the EU was already established in the global economy and did not have as much to benefit from exporting as the CEECs.

[63] Germany, the largest EU member and a border country, has the largest impact on CEEC trade. IMPACT ON COHESION, *supra* note 10, at 81.

[64] There were exceptions carved out of the Europe Agreements for "sensitive" goods. Chemical fertilizers, footwear, furniture, automobiles, televisions, radios, and leather products are some of the sensitive goods that did not have trade barriers removed by the Europe Agreements. Pawel Jackowski, Economic Integration Through Europe Agreements 5 (2001) (unpublished term paper, on file with the U. PA. J. INT'L ECON. L.).

[65] IMPACT ON COHESION, *supra* note 10, at 89.

[66] ECONOMIC IMPACT OF ENLARGEMENT, *supra* note 10, at 21.

[67] DIRECTORATE-GENERAL FOR AGRICULTURE, EUROPEAN COMMISSION, EU AND ENLARGEMENT 3 (2001), *at* http://europa.eu.int/comm/agriculture/external/enlarge/publi/index_en.htm.

The CEECs rely more heavily on agriculture than the current EU members, but their production levels are significantly lower than the EU's farming output.[68] Poland and Romania are the two most populated CEECs, and together, they have about as many farmers as the entire EU.[69] The concern is that enlargement will crush the CEECs' domestic farmers because they will not be able to compete with the EU farmers' prices. The short-term effects on CEEC farming may be substantial, but in the long run, the membership of CEECs in the EU will likely increase competition and create further incentives for the EU to develop their new members' agricultural industries.

There is concern that enlargement will negatively impact agricultural trade, because the EU's development of the CEECs' agricultural production will disadvantage the current members' farmers. The CEECs have enormous amounts of farming acreage and the EU's financial programs and technology developments will greatly increase the CEECs' production. If the CEECs' production reaches that of the current EU, they will overwhelm the EU market and eliminate the current EU's farmers.

As with most economic issues of enlargement, the EU members that border the CEECs—Germany, Austria, Greece, Italy, and Finland—will be most affected.[70] The regions of those border countries that have a considerable farming industry may be negatively affected. However, enlargement will have a beneficial economic impact on the EU's entire agricultural trade. The current EU does not rely heavily on its farming industry, as agriculture only contributes to 1.5% of the EU's GDP and 4% of employment, and these percentages are steadily decreasing.[71] In addition, the discrepancy in pricing between the CEECs' and the EU's agricultural

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[68] ECONOMIC IMPACT OF ENLARGEMENT, *supra* note 10, at 58 n.40 ("Gross value added of agriculture in the CEEC-10 is only 16 per cent [sic] of that of the EU-15, with the CEEC-10 using 46 per cent [sic] of the agricultural area and more than 100 per cent of agricultural employment of the EU-15.").

[69] Poland and Romania combined have about 7.3 million farmers, while the current EU has about 7.6 million farmers. *Id.*

[70] *See, e.g.*, IMPACT ON COHESION, *supra* note 10, at 89-93 (discussing Germany and Austria); ECONOMIC IMPACT OF ENLARGEMENT, *supra* note 10, at 23 (explaining the disparate impact on the border EU members).

[71] Since 1989, agricultural employment has decreased 3.2% per year on average in the EU. ECONOMIC IMPACT OF ENLARGEMENT, *supra* note 10, at 55.

products will diminish as the CEECs conform to the EU's agricultural policies.[72]

3.2. Investment

The Europe Agreements have had similar effects on capital movement as they have had on trade relations. Most restrictions have already been removed and the impact has been significantly greater for the CEECs than the current EU.[73] Most of the EU investment in the CEECs has come in the form of foreign direct investment ("FDI").[74] In 1997, about 90% of the FDI flow into the CEECs had gone to the first group of countries that began accession negotiations,[75] which correlates with the fact that these countries have had greater success in establishing their market economies.[76] Similar to trade, there has been a geographical effect on investment, as most of the FDI flow coming into the CEECs is from Germany and Austria.[77] However, there has been very little capital flow from the CEECs into the EU.

There are concerns that enlargement will have serious, negative implications for the current EU because the FDI flow to the CEECs is not creating an economic benefit for the EU as a whole. EU businesses may divert capital currently invested within the EU to

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[72] The CEECs cannot achieve membership without accepting the EU's *acquis*, which includes Chapter 7: Agriculture. EUROPEAN UNION, ENLARGEMENT-CHAPTER 7 - AGRICULTURE, *at* http://europa.eu.int/comm/enlargement/negotiations/chapters/chap7/index.htm (last visited Jan. 21, 2001). The CEECs' farmers must upgrade the quality and sanitation of their farming at a substantial cost. Therefore, not all CEEC farmers will continue to compete with EU farmers, and those that do will have to increase their prices to compensate for the increase in production costs. *See* ECONOMIC IMPACT OF ENLARGEMENT, *supra* note 10, at 56-58 (describing the impact on CEEC-EU trade with changing quality standards).

[73] Two-thirds of capital flows into the CEECs during the 1990s came from EU members. However, the amount of capital invested in the CEECs only accounted for less than 1% of the EU's GDP. ECONOMIC IMPACT OF ENLARGEMENT, *supra* note 10, at 24.

[74] *See* IMPACT ON COHESION, *supra* note 10, at 95 (discussing investment in the CEECs).

[75] Hungary, the Czech Republic, Poland, Slovenia, and Estonia received 30%, 28%, 26%, 3%, and 1% of the CEECs' total FDI input respectively. *Id.* at 96.

[76] The statistic is remarkable and poses an ironic question: Is the reason that these countries developed their market economies faster than the other CEECs because they received such relatively large portions of FDI, or is the reason that they received the FDI because their economies were the most developed and they were closer to accession?

[77] *See* IMPACT ON COHESION, *supra* note 10, at 97 (suggesting that geographical proximity plays an important part in FDI flows).

take advantage of the developing CEECs' industries. EU businesses will invest in the CEECs with the intention of relocation to take advantage of lower costs and wage rates. The result will be an economic slowdown in the current EU as many jobs, mostly unskilled labor positions, will be compromised.[78]

These concerns are legitimate for certain regions of the border countries and will likely affect specific labor-intensive industries, such as textiles.[79] It is probable that businesses in Austria and Germany will take advantage of their proximity to the CEECs and decide to move certain operations across borders. This would negatively affect the low-skilled labor workers in the current EU but would serve the EU as a whole with greater economic advantages. Specialization could lead to higher quality products and make the EU more efficient, with the CEECs specializing in the labor-intensive industries, while the current EU focusing its domestic investment on human capital-intensive goods and technology.[80] Also, the EU's large trade surpluses with the CEECs can lead to increased exports to them, which could make up for some of the negative effects of losing the labor-intensive industries.[81]

Some of the concerns about the effects that enlargement would have on current EU investment are exaggerated. Most of the FDI flow to the CEECs is used to develop non-tradable industries, such as telecommunications and public utilities.[82] The FDI is being used to help develop the CEECs' infrastructure, not to compete with current EU industries. Also, studies show that businesses view market access as the main objective of investing in the CEECs.[83] If the goal is market access, and not exploitation of low wages and costs, then the EU's investment in the CEECs is not a diversion of

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[78] *See id.* at 105 (discussing possible job and investment losses in current EU countries due to accepted gains for CEECs).

[79] *Id.*

[80] However, there is a need to develop the technology industries of the CEECs as well if they hope to achieve a more stable market economy. FDI has not been geared towards developing the technology of the CEECs, and there is skepticism about enlargement's ability to increase FDI flows with regards to technology. *See* DAVID DYKER, THE DYNAMIC IMPACT OF THE CENTRAL-EAST EUROPEAN ECONOMICS OF ACCESSION TO THE EUROPEAN UNION 18-19 (Sussex European Inst., Working Paper No. 06/00, 2000) (describing the potential impact of enlargement and the need for FDI in the CEECs, especially in the technology sector).

[81] IMPACT ON COHESION, *supra* note 10, at 106.

[82] ECONOMIC IMPACT OF ENLARGEMENT, *supra* note 10, at 24; IMPACT ON COHESION, *supra* note 10, at 105.

[83] *See* ECONOMIC IMPACT OF ENLARGEMENT, *supra* note 10, at 24.

funds, but rather the creation of new investment where there was none before. Finally, the applicants have been spending great amounts of time and money to conform to the EU's *acquis*.[84] This includes upgrading environmental and social standards.[85] The result is that, in the long term, the cost of production and the wage rate in the CEECs will move towards those of the EU, thus the incentive for EU businesses to move operations based solely on those reasons will fade.

The debate concerning the economic impact of enlargement will, until accession is completed, continue to focus on predictions about the future state of the EU. The analyses of the economic benefits of enlargement were essentially concerned with *whether* the EU should strive to enlarge. The EU and representatives of the member states concluded that enlargement would be beneficial to the EU. The next question became: *What* must the EU's governing bodies do to ensure that enlargement can actually occur? The simple answer to this question was that the EU's founding treaties had to be amended to allow for the new members to be democratically represented in EU governance. The Treaty of Amsterdam was the first attempt at treaty reformation to pave the way for a twenty-seven-member EU.

4. TREATY OF NICE AND ENLARGEMENT

The 1996-1997 Intergovernmental Conference ("IGC") opened in Turin, Italy, and the Turin Council listed enlargement as one of the main objectives in amending the treaties.[86] Although there was a consensus that institutional reform to further the EU's democratic processes was critical for enlargement, the IGC opted to postpone making decisions on many of these issues.[87] The Treaty of Am-

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[84] *See, e.g.*, Strategy Paper 2002, *supra* note 6, at 80-86 (discussing Turkey's ongoing reformation of its constitution, laws, and domestic policies in trying to conform to the EU's *acquis*, and stating that the country has still been unsuccessful).

[85] *Id.*

[86] Presidency Conclusions from the Turin European Council, Mar. 29, 1996, *at* http://europa.eu.int/en/record/turin.html.

[87] The IGC's agenda did not include overhauling the EU but only to try to make adjustments within the current system. Most of the members agreed that the best way to encourage democracy would be to increase the use of qualified majority voting ("QMV") and decrease the use of unanimous voting. *Infra* Section 4.2.1.1.1. However, without reforming the institutional structures, increasing the use of QMV was marginally successful. Jacek Saryusz-Wolski, *The Reformed Euro-*

sterdam recognized the fact that there were serious changes that needed to be made to foster enlargement, but major issues such as the composition of the Commission or how to reweigh the votes of the Council were not addressed, leaving many parties wondering whether the EU was stalling its enlargement process.[88]

Only ten months after the Treaty of Amsterdam went into force,[89] the next IGC commenced on February 14, 2000.[90] Its primary purpose was to address institutional reform issues that were not resolved in the Treaty of Amsterdam,[91] but which were considered indispensable to the enlargement process. Enlargement would increase the EU to twenty-seven members, and it would be essential to increase the democratic mechanisms of the EU governing bodies accordingly. The IGC reached agreement in December 2000 and each EU member state signed the Treaty of Nice on February 26, 2001.[92] Although there was unanimous agreement to sign the Treaty of Nice, and the Treaty achieves some success in easing the transition of enlargement, some of the amendments are contradictory compromises that have undesirable results.

This Section analyzes the Treaty of Nice with respect to enlargement. Section 4 breaks down the analysis into two subsections: (1) the enlargement issues left unresolved after the Treaty of Amsterdam, and (2) the Treaty of Nice's attempt to encourage enlargement through institutional reform and changes in the EU's decision-making processes.

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pean Union and the Challenge of Enlargement, in THE EUROPEAN UNION AFTER THE TREATY OF AMSTERDAM 56, 58-59 (Jörg Monar & Wolfgang Wessels eds., 2001).

[88] Ulrich Sedelmeier, *East of Amsterdam: The Implications of the Amsterdam Treaty for Eastern Enlargement, in* EUROPEAN INTEGRATION AFTER AMSTERDAM 218, 219, 236 (Karlheinz Neunreither & Antje Wiener eds., 2000).

[89] The Treaty of Amsterdam entered into force on May 1, 1999. STEFAN GRILLER ET AL., THE TREATY OF AMSTERDAM 33 (2000).

[90] The IGC began in Brussels, Belgium. EUROPEAN UNION, THE HISTORY OF THE EUROPEAN UNION: 2000, *at* http://europa.eu.int/abc/history/2000/2000_en.htm (last visited Feb. 8, 2003).

[91] Jörg Monar calls these issues the "left-overs" of Amsterdam. Jörg Monar, *Continuing and Building on Amsterdam: The Reforms of the Treaty of Nice, in* THE EUROPEAN UNION AFTER THE TREATY OF AMSTERDAM, *supra* note 87, at 321.

[92] EUROPEAN UNION, THE HISTORY OF THE EUROPEAN UNION: 2001, *at* http://europa.eu.int/abc/history/2001/2001_en.htm (last visited Feb. 8, 2003).

4.1. The Aftermath of the Treaty of Amsterdam

The Treaty of Amsterdam was not successful in specifically reforming the governing institutions to help promote a more democratic, larger EU. However, the Treaty of Amsterdam was not a complete disappointment with respect to enlargement. The IGC's biggest reform was amending and adding a number of provisions that changed where the co-decision process applies.[93] The IGC also put a ceiling of 700 representatives on the Parliament, recognizing that enlargement could lead to an unmanageable number of Members of the European Parliament ("MEP"s).[94] Immediately after the IGC concluded the Treaty of Amsterdam, they added the Protocol on the Institutions with the Prospect of Enlargement of the EU, which identified the potential for problems concerning agreement within the Council and the need for more institutional reform.[95]

The Amsterdam IGC understood that institutional reform was needed in order for enlargement to be successful. Most of the EU legislative processes were governed by unanimous voting, which meant that any current member of the EU had its own veto power. In an EU with fifteen members, unanimous voting was workable, but the prospects of almost doubling the size of the EU meant that a different form of decision-making would be essential. There were some areas of governance where the EU applied qualified majority voting ("QMV"), and most members believed that QMV should have been extended to more provisions before enlarging the EU. However, as with areas of institutional reform, the extension of QMV was left for the next IGC. The irony was that the decision-making process that needed to be changed was the same one that was keeping the reform from occurring.

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[93] Co-decision promotes democratic values, as it gives the European Parliament equal legislative power to the Council. The Treaty of Amsterdam also simplified the co-decision process. EUROPEAN UNION, GLOSSARY: CODECISION PROCEDURE, *at* http:// europa.eu.int/scadplus/leg/en/cig/g4000c.htm#c4 (last visited Feb. 8, 2003). Article 251 of the EC Treaty simplifies the co-decision process, and it is applied to fifteen new areas. TREATY ESTABLISHING THE EUROPEAN COMMUNITY, Nov. 10, 1997, O.J. (C 340) 3 (1997), art. 251 [hereinafter EC TREATY].

[94] TREATY OF AMSTERDAM art. 159; *see* Saryusz-Wolski, *supra* note 87, at 60 (discussing institutional reform under the Treaty of Amsterdam).

[95] TREATY OF AMSTERDAM Protocol on the Institutions with the Prospect of Enlargement of the European Union.

4.2. Major Issues Left for Reform at Nice

The Treaty of Amsterdam left many parties unsatisfied with the EU's commitment to enlargement. Among the malcontents were Belgium, France, and Italy, countries adamant about the necessity for institutional reform and who expressed their position in the Declaration to the Protocol on the Institutions.[96] When the 2000 IGC commenced in February, it faced pressures from the discontent members and EU governing bodies, as well as from the looming timetable set for enlargement. This Section focuses on two areas where the Treaty of Nice made great strides in preparing the EU for enlargement: (1) institutional reform, and (2) changes in the EU's decision-making processes.

4.2.1. Changes to the EU's Institutional System

Treaty reform was not legally necessary for enlargement to occur. However, from a practical standpoint, the EU needed to restructure its governing bodies to enable the new members to have representation. No country would want to join the EU without having a democratic voice. Therefore, the Treaty of Nice attempted to enhance democracy in the EU by amending the treaties with regard to the composition and voting power of the Council, the Commission, and the Parliament.

4.2.1.1. The Council of the European Union

The Council of the European Union is responsible for many of the legislative functions of the EU.[97] The Council is comprised of

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[96] Belgium, France and Italy observe that, on the basis of the results of the Intergovernmental Conference, the Treaty of Amsterdam does not meet the need, reaffirmed at the Madrid European Council, for substantial progress towards reinforcing the institutions.

. . .

Those countries consider that such reinforcement is an indispensable condition for the conclusion of the first accession negotiations.

TREATY OF NICE AMENDING THE TREATY ON EUROPEAN UNION, THE TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES AND CERTAIN RELATED ACTS, Mar. 10, 2001, Declarations at 6, O.J. (C 80) 1 (2001) [hereinafter TREATY OF NICE].

[97] The Council is the main institution for dealing with issues of foreign and security policy and judicial cooperation in criminal matters. The Council is also a budgetary authority, alongside the Parliament. EUROPEAN COMMISSION, WHO'S WHO IN THE EUROPEAN UNION?: WHAT DIFFERENCE WILL THE TREATY OF NICE MAKE? 9 (2001) [hereinafter WHO'S WHO IN THE EUROPEAN UNION], *at* http://europa.eu.int/comm/igc2000/dialogue/info/offdoc/guidecitoyen_en.pdf.

one representative from each EU member state, each representative having the authority to act on behalf of the member country.[98] The Council must vote on the legislative proposals and there are various threshold requirements, depending on the issue, to determine whether the Council has voted in favor or against the legislation. Decisions are made by unanimous voting, QMV, or majority voting.[99]

4.2.1.1.1. Qualified Majority Voting

One of the threshold requirements, QMV, was a major issue for the IGC in Nice.[100] It was obvious to the IGC, and most others, that the EU needed to alter the QMV structure in order to prepare the EU for enlargement. If the EU's underlying goal was to promote a democratic institutional system, then QMV needed to be adjusted to account for the new members' voting rights. In the Treaty of Nice,[101] the IGC included the Protocol on the Enlargement of the European Union ("the Protocol"),[102] which addressed most of the institutional reformation issues. The Treaty of Nice amended the "definition" of QMV,[103] which will take effect on January 1, 2007[104] and consist of three elements.

First, the QMV threshold, with the re-weighing of votes discussed below, will be altered to 169 out of 237 votes (71.3%).[105] Second, in addition to the threshold requirement, the votes must represent a majority of the EU members if the Council acts on a

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98 *Id.*

99 For example, the EC Treaty states in Article 13 that the Council is to act by unanimous vote on a proposal to combat discrimination. EC TREATY art. 13.

100 *See* TREATY OF AMSTERDAM (describing requirements for changes in voting processes).

101 TREATY OF NICE.

102 This protocol establishes most of the specific implementations for institutional reform. It also repeals the Protocol on the Institutions with the Prospect of Enlargement of the EU from the Treaty of Amsterdam. TREATY OF NICE Protocol A.

103 Qualified majority is defined in Article 205(2) of the EC Treaty, which allocates the weight of votes and the threshold for QMV. EC TREATY art. 205(2). The Treaty of Nice changes this. TREATY OF NICE art. 3.

104 TREATY OF NICE art. 3.

105 *Id.* The Protocol only sets the QMV for the existing EU. When each applicant achieves membership, there will be a section in its accession treaty that establishes its voting weight. Monar, *supra* note 91, at 322-27. Once the last of the current applicants under negotiation achieve membership the QMV threshold is to be 258 out of 345 votes, or 74.78%.

proposal of the Commission and must represent two-thirds of the members if the proposal originated within the Council.[106] Third, in the most original element of the Protocol, the addition of Treaty on European Union Article 205(4) will allow any EU member to request verification that the qualified majority represents at least 62% of the *population* of the EU.[107] If any of the three elements are not met, then the Council may not adopt the decision.

4.2.1.1.2. Re-Weighing of Votes in the Council

With the new criteria for meeting a qualified majority decided upon, there was also a need to re-weigh the votes of the existing EU members, while keeping in mind that twelve new members would soon join the EU. There was great concern regarding the representation of the heavily populated members' votes in the Council when an issue was to be determined by QMV.[108] The twelve new members are all relatively small in population size, and since the weight of the votes is based on population, there was potential for the smaller members to be over-represented in the Council's QMV.[109]

In Article 3 of the Treaty of Nice Protocol, the IGC amended each current member's voting strength.[110] This gives Germany, Spain, the United Kingdom, France, and Italy, the five largest members, a combined 60% of the voting power, as opposed to the 55% they had before the amendment.[111] The IGC also included in the Declaration on the Enlargement of the European Union the vot-

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106 EC TREATY art. 205(2).

107 *Id.*

108 The current weight of votes had the smaller countries being over-represented. Monar, *supra* note 91, at 324.

109 The weight of the votes is supposed to be based on the population of the countries. The applicants are, on average, much smaller than the current EU members. Therefore, the weight of the votes had to be adjusted or the over-representation of the smaller countries would reach an unmanageable level. *Id.* at 323-24.

110 The Treaty of Nice adjusts the weight of the votes in the Council as follows: 1) Germany - 29; 2) France - 29; 3) United Kingdom - 29; 4) Italy - 29; 5) Spain - 27; 6) the Netherlands - 13; 7) Belgium - 12; 8) Greece - 12; 9) Portugal - 12; 10) Austria - 10; 11) Sweden - 10; 12) Denmark - 7; 13) Ireland - 7; 14) Finland - 7; and 15) Luxembourg - 4. TREATY OF NICE Protocol A, art. 3.

111 The current weights of the "big five" are as follows: Germany, France, Italy, and the United Kingdom all have ten votes, and Spain has eight votes. These forty-eight votes comprise about 55% of the total eighty-seven votes. *See* EC TREATY art. 205(2) (listing the weighting of the votes).

ing weights of each of the applicant countries that will apply once they achieve membership.[112] In support of democracy and enlargement, the IGC refused to give more weight to current members that had comparable populations to the new members.

4.2.1.1.3. Impact on the Council

It was necessary to change the structure of QMV and to re-weigh the votes for the current members and potential members. The IGC may have introduced some new anomalies in attempting to redress the problem of the smaller members' over-representation, but if one looks at the Treaty of Nice in its entirety, including the protocols and declarations, the IGC was successful. The Treaty of Nice increases the relative weight of the five biggest members in QMV.[113] However, if we look at some of the members individually, their representation has actually diminished. As Jörg Monar writes, "Currently Germany—which has more than double the population—has 25 per cent [sic] more votes than Spain. Under the new arrangements this margin, rather than increasing, will shrink to 7.4 per cent [sic]."[114]

One must wonder why Germany, as the most populated EU member, would accept this reduction in power with regard to the weight of its votes. The reason is that the IGC compensated Germany by adding the third element of the new definition of QMV as a "significant blocking" mechanism.[115] Germany, France, Italy, and the United Kingdom are the four most populated EU members; a combination of *any* three of the four would give them a "blocking" minority because they would represent greater than 38% of the EU's population.[116] Moreover, Germany and *any* one of Italy,

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112 *See supra* note 109 and accompanying text (discussing the effects of new membership on QMV). After the EU has accepted its twenty-seventh member, the weights of the new members will be as follows: 1) Poland - 27; 2) Romania - 14; 3) the Czech Republic - 12; 4) Hungary - 12; 5) Bulgaria - 10; 6) Slovakia - 7; 7) Lithuania - 7; 8) Latvia - 4; 9) Slovenia - 4; 10) Estonia - 4; 11) Cyprus - 4; and 12) Malta - 3. The current EU's votes will stay the same as what was set in the Protocol. TREATY OF NICE Declaration.

113 TREATY OF NICE Protocol A, art. 3.

114 Monar, *supra* note 91, at 324.

115 *See supra* note 109 and accompanying text (describing the new element of population verification as a part of QMV).

116 Monar, *supra* note 91, at 324-25.

France, or the United Kingdom would also represent enough of the population to block any Council decision.[117]

4.2.1.2. Reform of the Commission

The European Commission is responsible for initiating most of the EU's legislative processes and for implementing the EU's overall policies.[118] It also serves a monitoring function, as it is responsible for the EU's adherence to its treaties and institutional decisions.[119] The Commission currently consists of twenty commissioners, two each from Germany, Italy, Spain, the United Kingdom, and France, and one each from the other EU members.[120]

Article 4(1) of the Protocol states that, beginning in 2005, each EU member will only be allowed one Commissioner.[121] The Commission will include one representative from each applicant when it enters the EU.[122]

The most interesting change that the Treaty of Nice made concerning the institutional structure of the Commission is that once the twenty-seventh member joins the EU, "[t]he number of Members of the Commission shall be less than the number of Member States."[123] This will be the first time in the history of the Commission that each member state will not be represented at all times during meetings. The Council has been given the responsibility of setting the number of Commissioners and of developing a systematic rotation for the Commission's representation.[124] The purpose is to enable the Commission to function, as the IGC assumed that a Commission comprised of twenty-seven members could not be effective or efficient. However, there are still concerns about equality and fairness. How many Commissioners would be able to function effectively? How will the Council determine whom to rotate

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117 *Id.* at 325.

118 The Commission works closely with the members' domestic administrations concerning the implementation of the EU's common policies. The Commission is also responsible for international negotiations, serving as the EU's representative for external affairs. *See* WHO'S WHO IN THE EUROPEAN UNION, *supra* note 97, at 13.

119 *Id.*

120 EUROPEAN UNION, THE ROLE OF THE COMMISSION, *at* http://europa.eu.int/comm/role_en.htm (last visited Jan. 22, 2003).

121 TREATY OF NICE Protocol A, art. 4(1).

122 *Id.*

123 TREATY OF NICE Protocol A, art. 4(2).

124 TREATY OF NICE Protocol A, art. 4(3).

and when? Members may be concerned that decisions made by the Commission during periods when they are unrepresented may not be in their best interests.

4.2.1.3. *The European Parliament*

The reforms to the European Parliament are "among the most puzzling of the Nice negotiations."[125] The IGC in Amsterdam addressed the problem of an unmanageable Parliament by limiting the total number of MEPs to 700. Only a few months later, the IGC in Nice amended Article 190(3) of the TEC in the Protocol to allow a maximum of 732 MEPs.[126] There does not seem to be any legitimate reason why the IGC felt that the Parliament could not adhere to the 700 MEP limit. The thought of adding twelve new members to the EU with many new languages and interests might suggest that the Parliament needs fewer MEPs to achieve its goals, not more.

There is also some concern about the IGC's decisions concerning the seat allocation in the Parliament. Germany and Luxembourg are the only current members that will keep their current number of seats.[127] The criticism comes from the CEECs, because the Parliament's composition is not supposed to favor current members; rather, it is supposed to be based proportionately on population. However, many of the EU's current members have been allotted greater representation than CEECs with larger populations.[128] This result is a loss for democracy and enlargement; if the EU truly intends to incorporate the CEECs as equals, then the CEECs must have greater representation than current members with smaller populations.

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125 Monar, *supra* note 91, at 325.

126 TREATY OF NICE Protocol A, art. 2.

127 *Compare* EC TREATY art. 190 (giving Germany ninety-nine representatives in the Parliament and giving Luxembourg six representatives), *with* TREATY OF NICE Protocol A, art. 2 (showing that Germany and Luxembourg are the only EU members that maintain the same number of representatives in the Parliament).

128 For example, the Czech Republic and Hungary have larger populations than Belgium and Portugal, yet Belgium and Portugal will get twenty-two MEPs, while the Czech Republic and Hungary will only receive twenty. Monar, *supra* note 91, at 326. For the number of representatives allotted to the current EU members and the applicants after all twelve applicants have joined the EU, see TREATY OF NICE Declaration.

4.2.2. Changes in Decision-Making

The treaty reform of the Council, the Commission, and the Parliament helped the potential new members gain representation within the governing bodies. Equally important as the issue of representation was the issue of decision-making within the institutions. Enlargement makes it essential to change the ways in which the institutions implement new policies and laws. Adding many new members means that there will be an influx of fresh ideas, but it may come with the price of stagnation because of the inability to come to agreement. The Treaty of Nice attempts to reconcile this potential problem by increasing the number of areas where QMV, rather than unanimous voting, meets the requirement, as well as by redefining the parameters of enhanced cooperation.

4.2.2.1. Changes From Unanimous Voting to Qualified Majority Voting

The IGC's purpose in amending the QMV procedure was based on the idea that the EU wanted to increase the use of QMV in decision-making. Unanimous voting was hindering the EU's institutions in their decision-making, as it essentially gave each of the fifteen members its own veto power.[129] Adding twelve new members would only put a stronger hold on the EU's democratic processes if unanimity continued to be required for major policy issues.

The Treaty of Nice increased the number of decision-making issues that required QMV by thirty-five.[130] Some of the major amendments from unanimous voting to QMV that go into effect with the ratification of the Treaty of Nice are the amendment giving every citizen the right to free movement among the EU members,[131] the amendment governing the common commercial policy,[132] and the amendment providing economic, financial, and

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[129] XÉNOPHON A. YATAGANAS, THE TREATY OF NICE: THE SHARING OF POWER AND THE INSTITUTIONAL BALANCE IN THE EUROPEAN UNION—A CONTINENTAL PERSPECTIVE 15 (Harvard Law School, Jean Monnet Paper No. 1, 2001).

[130] The Treaty of Nice amendments do not all enter into force at the same time. Some of the amendments are effective as soon as the Treaty of Nice is ratified, while others have been set for a later date (the Protocols), and still others require further decisions by the Council to establish starting dates.

[131] TREATY OF NICE art. 2(3).

[132] *Id.* art. 2(8).

technical cooperation with third countries.[133] Although Romano Prodi, President of the Commission, had highlighted five sensitive policy areas for enlargement that he considered essential to change to QMV,[134] there was minimal success in resolving these core issues.

4.2.2.2. *Enhanced Cooperation*

The Treaty of Amsterdam established "closer cooperation" as a means for allowing members with common interests to enter into agreements to promote those interests without binding the EU as a whole.[135] However, any member's Council representative who has legitimate and stated reasons why the closer cooperation should not be allowed may "veto" closer cooperation.[136] Closer cooperation is a valuable concept, but as with other areas of institutional and decision-making reforms, there is the need to promote a more democratic system with enlargement on its way.

The IGC in Nice supported the idea of closer cooperation but amended the TEU and TEC with regard to the requirements for the new, *enhanced* cooperation.[137] Some argue that this was the most successful area of reform that the Treaty of Nice had in relation to enlargement, as there were sixteen changes made to the TEU and TEC.[138] Through the amendments, the IGC sought to strike a new balance between the interests of the willing and the protection of the EU/EC *acquis* and of the unwilling or unable.[139] The main concern was the veto power that each member of the Council was given to strike down any proposed cooperation. Enhanced cooperation would become obsolete in an EU with twenty-seven members unless there was some democratic reform. The Treaty extinguished the veto power and replaced the previous majority

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133 *Id.* art. 2(16).

134 In the Treaty of Nice, these policy areas are: 1) social policy (arts. 42 and 37); 2) visas, asylum, and immigration issues (art. 67); 3) taxation (arts. 93, 94, and 175); 4) common commercial policy (art. 133); and 5) cohesion policy (art. 161).

135 TREATY OF AMSTERDAM art. 1(12).

136 TEU art. 40(2).

137 The Treaty of Nice abolished the use of the term "closer" and replaced it with "enhanced" to emphasize the new qualities of the cooperation process. TREATY OF NICE arts. 1(13), 2(1).

138 Monar, *supra* note 91, at 322.

139 *Id.* at 330.

participation requirement with Article 43(g), requiring a minimum of eight EU members to take part in the cooperation.[140]

5. RATIFICATION OF THE TREATY OF NICE

The IGC closed its negotiations in Nice on December 11, 2000. The Presidency Conclusions state that they reached agreement on the Treaty of Nice and that they hoped to sign it in early 2001.[141] The President was confident that "[t]his new treaty strengthens the legitimacy, effectiveness and public acceptability of the institutions and enables the Union's firm commitment to the enlargement process to be reaffirmed."[142] The IGC members reconvened in Nice, and on February 26, 2001, they signed the Treaty of Nice.[143]

The Treaty required that every EU member ratify the document before it could go into force. As stated earlier, the IGC representative of each member had already signed the Treaty, but the ratification process could be different for each member, as it was governed by the domestic constitutional requirements.[144] Eleven of the twelve current EU members had governmental procedures for ratifying treaties. Ireland was the only EU member that required its citizens' approval to ratify a treaty.

This Section analyzes the Treaty of Nice's ratification process. There is great emphasis on Ireland, not only due to its unique ratification process, but also because of its previous rejection of the Treaty of Nice. The first Subsection looks at the first Irish referendum. In 2001, the Irish referendum was against adoption of the Treaty of Nice. The other members continued with their ratification processes despite the Irish rejection. The second Subsection discusses the EU's response to the first referendum. The third Subsection discusses Ireland's decision on how to implement the Treaty of Nice. The fourth Subsection presents the current status of the ratification process and the EU's future goals for enlargement.

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140 TREATY OF NICE art. 1(11).

141 Nice Conclusions, *supra* note 40, para. 3.

142 *Id.* para. 4.

143 THE HISTORY OF THE EUROPEAN UNION: 2000, *supra* note 90.

144 TEU art. 48.

5.1. The First Irish Referendum

Article 48 of the TEU sets out the institutional process for the EU when amending a founding treaty.[145] After the EU's institutions finished their processes, every EU member had to ratify the treaty amendments according to its constitutional standards.[146] For Ireland, this meant that the amendments had to be voted on by its citizens. Article 46 of the Irish Constitution governed amendments to the Irish Constitution, and it had been decided that this Article was the relevant provision for amending EU treaties in Ireland.[147] Article 46 required that any amendment first be proposed by the legislation in the form of a bill, which must then be put to the Irish people in the form of a referendum after it is passed.[148]

Many Irish political groups started strong campaigns to defeat the adoption of the Treaty of Nice. Each group had its specific platform, but there were a few broad arguments. The main argument made by anti-Nice campaigners was that the Treaty of Nice threatened Ireland's neutral position concerning defense. The Treaty establishes a security committee with the authority to take military action in international crises.[149] Some felt that Ireland would be bullied into NATO, even though the country specifically adopted a neutral position.[150]

Another Irish concern was that the Treaty of Nice gave more power to large members of the EU, taking away Ireland's relative power with regard to the Council and the Commission. The Treaty of Nice actually centralizes power, they argued, not creating a democratic EU. The Irish political activists won the initial battle, and on June 7, 2001, the Irish citizens voted against ratifying the Treaty of Nice.[151]

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145 *Id.*

146 *Id.*

147 Art. 46, Constitution of Ireland, 1937.

148 *Id.*

149 TREATY OF NICE art. 1(5) (amending Article 25 of the EC Treaty).

150 Afri-Action from Ireland is a non-governmental organization that has adopted this position. See http://www.afri.buz.org/, for more information about Afri and its position.

151 Article 47 of the Irish Constitution requires that there be a minimum vote of 33.3% of the population for a referendum to be valid if it does *not* amend the Constitution. However, since the ratification of the Treaty of Nice would require an amendment, Article 47(1) only says that there must be a majority vote, and has no threshold requirement. Art. 47, Constitution of Ireland, 1937. The turnout was among the lowest for an Irish referendum ever. Only 34.8% of Ireland's voting

5.2. The EU's Response to the First Referendum

The Irish people spoke with a collective voice concerning the Treaty of Nice. Ireland's "No" vote was supposed to mean that the Treaty could not enter into force, regardless of the results of the other members' ratification processes. However, since Ireland's referendum in June 2001, the other members have continued with ratification.

The commonalities among the members' ratification processes are that they all require their respective parliamentary branches to approve the treaty; after parliamentary approval,[152] the executive/royal body must formally sign on behalf of the member state.[153] After domestic ratification, the EU has a formal date of lodging that it considers to be the official day that the member accepted the Treaty. The Treaty of Nice would enter into force on the first day of the second month after the last member lodged its ratification instrument.[154]

Why did the members continue with their ratification processes when they legally could not adopt the Treaty of Nice without the ratification of all of the members? It was essential for enlargement that the EU continue to show its solidarity. The current members did not want the applicants to lose faith in the EU and its decision-making ability. Also, they wanted to show that they fully supported enlargement.

Current members also wanted the Irish people to recognize that they were the sole dissenters, hoping that this would apply pressure to seek a solution that the Irish could accept. As President Prodi of the European Commission said, "[r]emember that the de-

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population cast a vote. Nicola Byrne, *Anti-Nice Protestors Turn Up Heat*, OBSERVER (London online edition), June 24, 2001, *at* http://www.guardian.co.uk/eu/story/0,7369,511870,00.html. The final vote was 453,461 (46.13%) in favor of ratification and 529,478 (53.87%) against.

[152] The Europa website has an updated graph charting the progress of each member's ratification process. For example, Germany must get approval from the Bundestag and Bundesrat divisions of its parliament. EUROPEAN UNION, TREATY OF NICE—RATIFICATION SITUATION (2002) [hereinafter Ratification Chart], *at* http://www.europa.eu.int/comm/nice_treaty/index_en.htm#.

[153] For example, Denmark's parliamentary body, Folketing, drafted a law adopting the Treaty of Nice on June 1, 2001, and the Queen of Denmark signed the law on June 7, 2001. *Id.*

[154] TREATY OF NICE art. 12(2).

cision, which is yours alone to make, will have a decisive impact on the future direction of the entire continent."[155]

5.3. Ireland's Decision to Ratify the Treaty of Nice

By the end of August 2002, every EU member, except for Ireland, had completed its ratification process and the EU had noted its official lodging.[156] The Irish government was perplexed by the situation that had developed. Much of the Irish dissent revolved around the worry that Ireland would be giving up its neutral military position if it ratified the Treaty of Nice.[157]

The Irish government felt that this was a misconception of the Treaty's purpose. There was poor voter turnout for the first referendum and the government attributed this to the belief that the citizens were not fully informed of the benefits of the Treaty. The government devised a pro-Nice campaign to better inform the public, in the hopes that more Irish citizens would take a stance in favor of the Treaty of Nice.[158]

The main purpose of the pro-Nice campaign was to assure the Irish people that the foundation of the Treaty of Nice was to en-

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[155] *See* EUROPEAN COMMISSION, Why Nice is Needed (June 26, 2001) (statement of President Romano Prodi), *at* http://europa.eu.int/comm/commissioners/prodi/nice_en.htm.

[156] The following is a list of the accepting members' dates of lodging: Denmark - June 13, 2001; Luxembourg - September 24, 2001; France - October 19, 2001; Spain - December 27, 2001; the Netherlands - December 28, 2001; Austria - January 8, 2002; Portugal - January 18, 2002; Sweden - January 25, 2002; Finland - January 29, 2002; Germany - February 11, 2002; Greece - June 3., 2002; Italy - July 9, 2002; United Kingdom - July 25, 2002; and Belgium - August 26, 2002. Ratification Chart, *supra* note 152.

[157] Patricia McKenna is a MEP and represents the Green Party of Ireland. Her website publishes articles supporting the Green Party's political positions. "Ireland's neutrality has been dismantled with incredible deception and thoroughness by this Government: The Amsterdam Treaty, NATO's Partnership for Peace, the Rapid Reaction Force, and now the Nice Treaty have left our neutrality in shreds." Patricia McKenna Green Party Homepage, *Government Attempts to Sell Nice as Treaty of Enlargement a Marketing Ploy, Claim Greens* (May 8, 2001), *at* http://www.pmckenna.com/media/statements/2001/01.05.08.html.

[158] The Irish government published documents explaining the intricacies of the Treaty of Nice, but it also took a strong stance in letting the citizens know that the government strongly favored the Treaty of Nice and considered it essential to maintaining healthy EU relations. *See* DEPARTMENT OF FOREIGN AFFAIRS, GOVERNMENT OF IRELAND, WHITE PAPER ON THE TREATY OF NICE AND SEVILLE DECLARATIONS (2002), *at* http://www.gov.ie/iveagh/nice/NiceTreaty.pdf.

hance enlargement, not to create a strong EU military force.[159] The government presented the National Declaration by Ireland at the Seville European Council on June 21, 2002.[160] The Declaration stated that Ireland continued to support the EU's goal of enlargement and firmly restated Ireland's neutral position concerning military force.[161] The Declaration explicitly states that, "[i]n line with its traditional policy of military neutrality, Ireland is not bound by any mutual defence commitment. Nor is Ireland party to any plans to develop a European army."[162]

The Council accepted Ireland's Declaration and formally documented its own declaration.[163] The Council recognized that Ireland's Declaration was a condition of Ireland's work towards the ratification of the Treaty of Nice.[164] This was not a unique position; as with every EU treaty, there were members who carved out specific positions via declarations. However, Ireland was not stating its exception to the stated position. "The European Council recognises that, like all Member States of the Union, Ireland would retain the right, following the entry into force of the Treaty of Nice, to take its own sovereign decision . . . on whether to commit military personnel to participate in any operation carried out . . . ."[165]

The aforementioned declarations were made for the benefit and comfort of the Irish citizens. They did not alter Ireland's or the EU's former positions concerning military advancement. The declarations clarified the military positions of the EU and Ireland. Neither Ireland nor the EU adopted different positions than they had taken before.

The next step for the Irish government was to ratify the Treaty of Nice. There could not be an identical referendum voting directly on the Treaty of Nice because this had already been rejected. Instead, the Irish government introduced the Twenty-Sixth

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159 Press Release, Irish Government, Statement by the Government on the Publication of the Twenty-Sixth Amendment to the Constitution Bill (June 27, 2002) [hereinafter Press Release], *at* http://www.gov.ie/iveagh/nice/st1.htm.

160 TREATY OF NICE, NATIONAL DECLARATION BY IRELAND, *at* http://www.gov.ie/iveagh/nice/st2.htm (last visited Feb. 4, 2003).

161 *Id.*

162 *Id.* para. 4.

163 TREATY OF NICE, DECLARATION OF THE EUROPEAN COUNCIL WITH RESPECT TO THE NATIONAL DECLARATION BY IRELAND, *at* http://www.gov.ie/iveagh/nice/st3.htm.

164 *Id.* para. 1.

165 *Id.* para. 6.

Amendment of the Constitution Bill, 2002,[166] which only differed from the past proposed amendment by adding a third part.[167]

The Amendment Bill consists of three parts. The first part would allow the State to ratify the Treaty of Nice.[168] The second part of the Amendment Bill allows for Ireland to participate in enhanced cooperation as proscribed in Articles 1.6, 1.9, 1.11, 1.12, 1.13, and 2.1 of the Treaty of Nice, but not without the prior consent of both Houses of the Oireachtas.[169] The third part explicitly provides that "[t]he State shall not adopt a decision taken by the European Council to establish a common defence pursuant to Article 1.2 of the Treaty . . . where that common defence would include the State."[170]

The two Houses of the Oireachtas, the Irish Parliament, were presented with the Twenty-Sixth Amendment of the Constitution Bill on June 27, 2002.[171] Dáil Éireann passed the Amendment Bill on September 11, 2002, and the Seanad Éireann passed the bill two days later, on September 13, 2002.[172] These were not the significant events, as the entire EU awaited the second Irish referendum.

The second referendum was held on October 19, 2002. This time the outcome was in favor of the Treaty of Nice.[173] While the first referendum was only voted on by 34.8% of Ireland's voting population, the second referendum drew about 48% of the Irish voting population.[174] The final form of the Twenty-Sixth Amendment is identical to the Amendment Bill, and 62.89% of the Irish

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166 The Bill and its explanatory memorandum are reproduced at the Government of Ireland's official website. Ireland, Twenty-Sixth Amendment of the Constitution Bill (2002), *available at* http://www.gov.ie/bills28/bills/2002/3202/default.htm.

167 Irish activists who oppose the Treaty of Nice found this addition of the third clause to the referendum to be "irrelevant spin-doctoring." *The Constitutional Outrage of Re-Running Nice*, NAT'L PLATFORM, *at* http://www.nationalplatform.org/notnice/constitutional_outrage.html (last visited Feb. 8, 2003).

168 The Bill was adopted without any alterations, therefore, the language of the 26th Amendment is identical to that of the Bill. Amend. 26, pt. 2(7), Constitution of Ireland.

169 Amend. 26, pt. 2(8), Constitution of Ireland, 2002.

170 Amend. 26, pt. 2(9), Constitution of Ireland, 2002.

171 Press Release, *supra* note 159.

172 *Id.*

173 *'Yes' Camp Wins Irish Vote*, CNN.COM/WORLD, Oct. 20, 2002, *at* http://www.cnn.com/2002/WORLD/europe/10/20/ireland.eu/.

174 *The Empire Strikes Back*, NAT'L PLATFORM, Oct. 21, 2002, *at* http://www.nationalplatform.org/statements/021021_dark.html.

voters voted in favor of allowing the State to ratify the Treaty of Nice.[175]

5.4. The Current State of Affairs

The EU has accomplished its goal by ratifying the Treaty of Nice. This is not to say that the public is satisfied with the results. The strong anti-Nice contingency in Ireland is not the only party that has negative feelings towards enlargement and the Treaty. There is a broad distrust of enlargement in the current EU, as the public is not certain that the information they are being fed about the positive impacts of enlargement is true.

The ratification situation in Ireland is just one example of the current public fears coming true. The EU's goal was and is enlargement. The governmental bodies have shown that they will use whatever means necessary in order to achieve that goal. This goal may be achieved at the cost of losing the faith of their own citizens.

The European Parliament recently published the results from a public opinion poll that it conducted.[176] As could be anticipated, the results of the poll varied according to whether the respondent was a citizen of the current EU or of a candidate country. The poll showed that citizens of the candidate countries are almost entirely in favor of enlargement, while the citizens of the current EU members are greatly varied in their opinions.[177]

Seventy-one percent of current EU citizens believe that enlargement is a personal advantage or an advantage on the whole.[178] There is also a common belief that enlargement will in-

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[175] The results of the second referendum were posted by the Irish Times online website. *Referendum Results 2002*, IRISH TIMES (Online Edition), *at* http://www.ireland.com/focus/nice/results.htm (last visited Feb. 4, 2003).

[176] The results are posted on the European Parliament's website. The poll consisted of seven questions. The poll results are organized in four separate graphs. The first graph represents the opinions of the current EU members and is divided into the percentage results by each member country, as well as the current EU as a whole. The second graph represents the results from the candidate countries. The third graph is broken into three socio-demographics: gender, age, and occupation. The fourth group of graphs are pie charts representing the total results of the poll. EUROPEAN UNION, ANALYSIS OF RESULTS OF INTERNET QUESTIONNAIRE ON ENLARGEMENT IN ON EUROPARL, *at* http://europoll.ibicenter.net/default.asp?LANGUAGE=EN&WHEREAMI= (last visited Feb. 4, 2003).

[177] *Id.* The Netherlands' citizens are the most skeptical with respect to the positive contributions of enlargement.

[178] *Id.* Graph 1, Question 1.

crease the EU's international influence, as 77% of the current citizens believe this to be true.[179] There are, however, negative implications, as 41% of current EU citizens believe that enlargement will lead to higher unemployment,[180] 74% agree that enlargement will make it more complicated for the EU to operate,[181] and 49% of current citizens do *not* believe they are properly informed on the effects of enlargement.[182]

Over 90% of the citizens from the candidate countries believe that enlargement will be a personal advantage or an advantage on the whole, will increase the EU's international influence, and will be good for the EU's businesses.[183] Only 48% of candidate citizens indicated that they think enlargement will make it more complicated for the EU to operate.[184] An even smaller percentage, 21%, think enlargement will lead to higher unemployment in the EU.[185] Seventy-one percent stated that they believe they are well informed about enlargement.[186]

These results support many of the opinions of the parties who oppose enlargement and the Treaty of Nice. There is a feeling that enlargement will only benefit the economic interests of the new members, and that the EU's political motives are best served by enlargement, not the overall interests of the current EU community. The most telling of all public opinion polls, the Irish referendum, was dismissed when the EU did not gain the desired result. Instead of respecting the opinions of the majority of the Irish voters, the EU and the Irish government strengthened their efforts to ensure they could achieve their political agendas.

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179 *Id.* Question 2.

180 *Id.* Question 4. Most of the border countries have a higher percentage of their citizens believing that enlargement will lead to higher unemployment.

181 *Id.* Question 5.

182 *Id.* Question 6. Ireland has the second highest percentage of citizens who feel that they are well informed about enlargement. This is not a surprising result due to the large governmental campaign after the first referendum.

183 *Id.* Questions 1-3.

184 *Id.* Question 5.

185 *Id.* Question 4.

186 *Id.* Question 6. This result is expected because enlargement is centered around the membership of the candidate countries. Unlike the EU's current citizens who may need convincing that enlargement is beneficial, the candidate countries' citizens have been anticipating membership for some time.

6. CONCLUSION

The EU will expand to twenty-five members in 2004. The EU's governing bodies have worked vigorously to meet its aspirations for enlargement. The EU, the members' governments, and the candidate countries' governments have done their part to make membership a reality for the candidates. Although the Treaty of Nice was not legally necessary to enable the candidates to join, with enlargement deadlines looming, it was essential that the EU members ratify the Treaty.

There is a certain degree of irony in Ireland's ratification of the Treaty; the Treaty of Nice and enlargement are supposed to introduce a new democracy for the EU. Many strides were taken to ensure that new members would have representation among the EU's governing bodies. Yet, the democracy does not appear to extend to the EU's citizens. The Irish people were told to vote again on the Treaty of Nice because their first decision was not acceptable. The polled citizens of the current EU do not feel as if they are well informed about how enlargement will impact their lives, and there are many questions left to be answered about the economic impact enlargement will have on trade, investment, immigration, and jobs. The only certainty seems to be that the next decade will prove to be a momentous era for the EU.