

# **Diversity and decisional rules**

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## **Introduction**

European integration represents an unprecedented new form of government. Creating a government is a process that can be interpreted as signing a contract among parties that have common interests. The contract concerns how to manage these interests, and the government is the set of institutions that will make decisions. When the design of institutions is democratically founded we have that the contract is a constitution. In a democratic government the decisions made by the majority apply to the minority, thus we have the risk that the majority decisions are not the first best for the minority. In this case we talk about tyranny of the majority. The tyranny is high when the preferences of the majority are substantially different from the preferences of the minority, and when the policy areas in which the parties take common decisions are many. The tyranny is mitigated either by the presence of compensatory payments from the majority to the minority, or by fluctuations of the majority coalitions, in the sense that the parties have equal chance of belonging to a majority as of being part of a minority.

We will show that the risk of tyranny is high in the European Union. Because of that, countries tend to protect themselves by making common decisions more difficult. This generates inefficiencies in the decisional process.

Another source of inefficiency in the constitutional design is the presence of diversified interests not only, as above, in the object of the policy decision, but also in the decision itself. For example, countries can have different preferences not only

about which kind of common environmental policy to implement, but also about implementing or not any common environmental policy. We will show that when such a kind of diversity arises, the design of any constitution risks to be highly inefficient.

### **Diversity and voting rules**

Voting is the usual way to take common decisions and coordinate behavior. Voting rules are set up in constitutions. Legislative dynamics and policy outcome are affected by voting rules. For example, simple majority tend to increase decisiveness and favors moderate positions; bicameralism, makes decisions more difficult and favors status quo; In an indirect democracy setting, decisiveness increases with a majoritarian system; in constitutions the delegation of power to the legislators can be reduced by rules, principles and checks and balances, that de facto reduce the decisional ability of the majority. Which kinds of constitutions are agreed among parties that are different in terms of history and preferences?

This is a difficult question to answer since constitutional negotiations can be very complex. However we can try to simplify our viewpoint by considering that, when there is no diversity, parties are “behind a veil of ignorance”, thus they have equal incentives to make decisions more or less difficult, and the same perspectives to belong to a majority or to a minority. Hence, when the parties do not know who they are they should unanimously agree on the same kind of constitution. In general, they should find convenient to adopt simple majority and low checks and balances for decisions in less sensitive policy areas. The idea is that, in such areas decisions have high expected advantages when a party belongs to a majority and low expected costs when she belongs to a minority. It can be shown that simple majority is the only voting rule that has the advantage of being ‘proper’ (only one majority can be formed in voting on a pairwise competition among two policies) and that maximizes the chance to take a decision. Moreover, if the parties have to vote on one policy, say against the status quo, and they ignore if that policy will be better or not with respect to the status quo, simple majority is the rule that maximizes the probability to take the right decision.

Thus when the parties do not know anything about their preferences, it is convenient for them to increase decisiveness as much as possible, since this means increasing the expected net advantage from the policy decisions. On the contrary, for decisions in more sensitive policy areas the parties should unanimously agree on increasing checks and balances or increasing the majority thresholds. In this case, making decisions more difficult is a way to protect themselves from the risk of falling into a minority, which can be very costly. Thus if the voting rules are set up in order to increase the expected benefits from future common decisions and the parties have ex-ante uniform preferences, we expect they agree on the same voting rules, but we also expect that the rules are such that the decisions are more difficult in policy areas where the losses from not being part of the majority is very costly with respect to the status quo. This idea is reflected in practice by the fact that usually in legislatures the most relevant issues are decided with stricter voting rules, such as more check and balances, higher qualified majority thresholds or a more complex decisional procedure that involves more institutions.

When the parties have diversified interests and preferences the constitutional scenario becomes very complex. In general diversity should emerge not when decisional rules have to be set up, but at the legislative stage, when these voting rules are applied. If the parties that negotiate about voting rules in constitutions are different, the constitutional negotiations produce a suboptimal outcome and the constitution is inefficient. Assume countries in the EU have to agree on which level of qualified majority to adopt for decisions in the indirect taxation area. Suppose also that for every country the status quo, say little integration, is worse than some other alternatives, which implies a higher level of integration; namely, all countries, could gain in shifting from the status quo to some alternative. At the constitutional stage parties have to agree on the voting rule that, in the legislative stage, will allow shifting from the status quo to an alternative that is preferred by everybody. Suppose that voting rule is 72% qualified majority. Assume further that a group of countries, that includes say UK and the Scandinavian members, has very diversified preferences with respect to the other countries, as regards taxation. It happens that if 72% were set up, there is a high probability that a winning coalition of countries that does not include

UK and the Scandinavians can form around alternatives that are not the first best for them. In other words, their expected benefits once 72% has been accepted by other countries are not maximized with 72%. Thus 72% cannot be a Nash equilibrium, and constitutional negotiations fail to produce an efficient outcome, that is the voting rule that passes the Pareto optimal policies.

Thus in constitutional negotiations among parties that are different in preferences, unanimous agreement on decisional rule is difficult to reach. It is self-evident that the risk of such a collapse is higher the higher is the degree of diversity in the preferences of the members.

In some sense, differences in preferences regarding policies are reflected by different preferences regarding voting rules. Another source of collapse in constitutional negotiations are the differences in risk attitudes of parties, which determined different preferences, even when the monetary consequences of policy decisions are the same. In this case, we can think of voting as a lottery, whose rules are set up in a constitution. If voting rules make majority formation easier, parties perceive a high probability of being part of a majority as well as a high probability of being part of a minority. For example, if the rule is the simple majority and votes are not weighted, then a majority is 50% likely to form. This means that if a policy A is opposed to a policy B, and a party prefers A to B, then it is 50% likely to win and 50% likely to lose. If it is indifferent to risk, then it will prefer simple majority rule. If it is risk averse, and if the status quo is better than the least preferred alternative, B, it is better off in protecting itself from the risk that alternative B passes. This can be done by increasing the majority threshold. Higher thresholds have, on the one hand, the positive effect of making the least preferred policy less likely to pass, and, on the other hand, the negative effect of making also the most preferred policy more difficult to pass. However, since the party is risk averse the first positive effect overbalances the second one: it dislikes losing more than it likes winning. Such a situation of different degrees of risk aversion on the same policy issues is sufficient to determine differences in preferences regarding voting rules, despite the monetary consequences of the policies are the same for all players. Given such differences, constitutional negotiations are likely to fail in a way that is similar to what described above.

The question then is about risk aversion of the member countries. What does exactly risk aversion mean in the European context? Here risk is about the fact that the majority decision produces losses to some members, thus it is the risk that comes out from relinquishing a part of the national sovereignty to the supranational authority. One can imagine that aversion to this risk is higher when a country is more jealous of his own self-determination or when its national government's ability of implementing the right policies is higher than the European institutions' ability. From above, we conclude that more risk averse countries prefer higher majority thresholds, or in general, they prefer higher blocking ability by individual countries. This perspective can explain why, while negotiating the new voting rules in the EU constitution, some European countries were more attentive to preserve their blocking ability than to facilitate decisional capabilities of the European government.

A related issue is the countries' attitudes toward relinquishing part of the national sovereignty in specific policy areas to the European political institutions. This attitude is measured by the Eurobarometer, which is a survey on peoples' feelings about the EU. Individual are asked for which policy domains and to what extend they would prefer that the EU takes exclusive competencies; in other words, they are asked if they prefer or not that, for example, monetary policy or defense policy is implemented at the European level rather than the national one. It can be shown that pro-relinquishing attitudes are highly correlated to the perception of the corruption or the inefficiency of the national government. This means that to some extent Euro-enthusiasm is due to a lack of satisfaction about the performances of the domestic civil servants. When this happens, countries with less efficient national governments tend to over-support European integration and have the propensity to over-delegate competencies at the European level. We have shown above that constitutional negotiations about decisional mechanisms tend to produce perverse or paradoxical outcomes when negotiators have diversified preferences. If differences concern which policy areas to centralize and if there is a powerful group of countries that tend to over-centralize, possibly the constitutional negotiation will assign the EU too many competences. In this case, the other countries will try to counter-balance this excessive centralization by asking for voting rules that make decisions more difficult. As an undesired result,

for policy areas in which centralization is beneficial to everybody, voting rules will be too restrictive. This theoretical prediction appears to be verified in the European practice. The level of non-confidence in the performance of the domestic government is lower in Southern and Eastern members that are in average also the most Euroenthusiastic ones. At the same time, during the negotiations for the EU constitution, and in general for any renegotiation of the voting rules, the Northern members have been more active in keeping blocking power or in asking for high qualified majority thresholds.

Another source of diversity is dimension. In the EU the largest member's population is almost 250 times bigger than the smallest member's one. A problem of democratic representation arises. At the constitutional level voting rules have to take this diversity into account. We show here that dimensional diversity can have several effects: first it can make changing of voting rules more difficult; second it can cause the collapse of the constitutional negotiations; third it can cause constitution to be too heavy or too light, in terms of the provisions and the rules that are included in the constitutional chart.

Political representation of the members has changed as the European Union has progressed towards deeper forms of integration. Until the Single Act, the prevailing voting rule of the most important political institution, the Council of Ministers, has been unanimity. With unanimity, weights are irrelevant and integration takes the form of an international agreement. Abandoning unanimity for qualified majority implies that each country bears the risk of falling into a minority; this means that countries surrender a quota of their sovereignty and integration takes a political dimension. In this case vote weighting becomes relevant: the higher the weight, the higher the probability to be part of a majority. The political integration process of the European Union is characterized by a particular form of diversity: even behind a veil of ignorance member countries know that they will count more or less, as a function of their voting weights. This heavily affects institutional reforms, and namely, reweighing negotiations. The passage from unanimity to qualified majority is a form of reweighing, at least regarding the policy areas that are involved. It is easy to expect that this passage is beneficial to everybody, in terms of making the decisional process

more efficient and facilitating policy decisions. However the distribution of the benefits is asymmetric if abandoning unanimity implies adoption of weighted voting: small countries that before were granted the same status of big members now count less because their voting weight is relatively low. In this situation we expect a certain amount of opposition from the smallest members. Presumably they will ask for compensations and we can imagine that during negotiations the weight itself can become a form of compensation. As a result, weights will not reflect the democratic dimension of each country but rather its strength in negotiations and eventually its power in the voting system that is being changed.

The issue of voting weights and democratic representation has been extensively studied. In a unicameral system, where legislators represent districts with different dimensions, the one-citizen-one-vote democratic principle is met if representatives are weighted by the square root of the district population. In the EU, over-weighting of small countries represents deviations from this principle that can be explained by the argument above about distortions in negotiations. That argument also explains why the reweighing that has followed each enlargement of the UE has been difficult because of the opposition by small countries or by countries whose blocking power decreased because of the enlargement (as it happened in the so-called Joannina compromise).

In synthesis, changing voting rules for the EU has always been difficult; more difficult than a theoretical situation in which countries negotiate without a history of acquired privileges and power. In the case of the Constitutional treaty, the new voting system represents clearly a loss of power for some countries; among them, Spain and Poland suffer the main losses. However, the new system is more democratic than the 'status quo system' agreed at Nice in 2000, in the sense that it distributes voting power across countries in a way that is more closely related to the countries' population. Thus, when we talk about losses, we do not mean losses in democratic representation, which on the contrary is higher in the new system. We rather mean losses with respect to the status quo. Poland and Spain benefited from extraordinary and non-motivated over-weighting in the Nice system. As a result, the negotiations on the new system have been highly disturbed by this status quo. In the EU, benefits

acquired in the past make progresses toward different and more involving form of political integration more difficult.

### **Diversity and the length of Constitutions**

By 'length' we mean the amount of provisions and principles that are included in a constitution. A "light" constitution includes basic principles and designs a decisional system, that is political institutions and voting system. A 'heavy' constitution also includes rules and laws that limit the ability of the legislators to take decisions in the future. The Constitutional treaty proposal is an example of heavy constitution. To some extent, heavy constitution delegates more executive power to the legislators and rather limits their legislative power.

As a result of this, if the constitution is heavy, the members bear lower risk of being tyrannized by any adverse majority in future legislative phases. In general, we expect that in federal systems in which states are unwilling to surrender power the legislative power is limited by strict principles and pre-determined rules. Thus we expect the federal constitution to be heavy, as it happens to the EU.

However, we show below that when parties are different in terms of voting power, as it happens to the EU countries, one can also expect that the length of constitution is endogenous to the distribution of the voting power, or at least that the amount of provision in the constitution is part of the negotiation in which also voting weights are allocated. In order to understand this point, first consider that the risk of being part of a minority is higher for smaller parties than for bigger parties. Due to this difference in voting power, parties have also different perception regarding how to protect from the risk of tyranny: the smaller parties will be willing to protect more, the bigger countries will like to protect less. As a consequence, the small ones will prefer heavier constitution to the large ones. In this situation of asymmetry in preferences there is no unanimous agreement on the kind of constitution. One can imagine that in constitutional negotiations differently dimensioned parties bargain on the length and on the weight apportionment. Two possible outcomes are either a light constitution with more power to the smaller parties, or a heavy constitution with small countries that accept to relinquish their power. A third outcome is the complete failure of the

constitutional negotiations, due to the absence of a Pareto optimal equilibrium, in the same spirit of the argument that we have presented above to illustrate failures in negotiations when countries are different in preferences.

## **Conclusion**

We have shown that when parties that negotiate voting rules for future common decisions are different, negotiation is particularly complex and it can produce paradoxical results. The optimal context for negotiating decisional rules that lasts in future is symmetry in preferences. This is not the context in which constitutional decisions have taken place in the EU. The member countries are different in several respects. They differ in preferences about the degree of centralization of common policies; this kind of diversities can produce too much or too few centralization with respect to the optimal allocation of power and competencies. Member countries differ in preferences not only about which policies to centralize, but also about how to design common policies; in this case, the expected cost of falling into a minority is asymmetrically distributed across countries; we have shown that causes difficulties in negotiating on decisional rules. Countries can have different degree of risk aversion; thus difficulties in constitutional negotiations arises because some countries are more sensitive than others to the risk of being tyrannized by the majority, and they tend to protect themselves by asking for increases in check and balances or majority threshold which make majority formation more difficult. Diversities characterize also the confidence in the domestic government; when confidence is low, people ask for more centralization at the supranational level; in this case, the Union centralizes too much. Finally, the diversity can concern the degree of leverage that countries expect to have on the final decisions: larger countries expect to have more leverage. In this case, the smaller ones will ask for higher voting weight or more checks and balances. These asymmetries on the desired voting rules can cause constitutional negotiations to break down completely.

This entire theoretical framework applies to the constitutional negotiations in the EU, and contributes to explain the difficulties not only in the process of designing the new decisional mechanism, but also in the ratification process.

