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Between Nice and Brussels or Life after Death

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The fiasco of the Brussels Meeting (12-13 December 2003) of the Intergovernmental Conference (IGC) of the European Union (EU) has engendered tensions that do not generate the best climate for Poland's incipient membership in the EU. The year 2003 brought forth not only the draft Constitutional Treaty, but also many worrisome events that the Union, floundering in the long "Iraqi shadow", could not cope with and slipped into a crisis of confidence and leadership.

The Brussels fiasco should not be glossed over by taking comfort in the argument that the EU is able to do business as usual, because, after all, the Treaty was intended to come into force in 2006 at the earliest. The Brussels IGC may, for various reasons, mark a political moment of significance to the future shape of the EU.

The Brussels Meeting set the scene for the blocking of the draft Constitutional Treaty as negotiated by the Convention. The main, though not single, pretext for the blocking was the proposed vote weighting in the Council. The political responsibility for this state of affairs is split. Poland's defence of the so-called Nice voting formula had some justice behind it, but failing to fully account for the exceptionally emotional and unyielding attitude demonstrated by both the (Polish) government and opposition. On the other hand, some large EU member states intentionally blocked any discussions and chances of a compromise solution, thereby accepting the deferral of the constitutional Treaty.

I.

1. While negotiating the Amsterdam and Nice versions of the EU Treaty, the member states failed to hammer out a satisfactory solution to all institutional questions. Given the prospect of a European Union enlarged to 25 states, the issue of Council decision-making continues to trigger contention and emotions, all the more so as it did not come up for an in-depth discussion by the Convention.

The to-date voting and vote weighting system¹ in the Council of the EU has rested on the political and non-formalized formula of *sui generis* balance between groups of states, whereby the weighting criteria have remained imprecise and largely flatten out the relationship between the

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¹ About weighted votes in the EU, vide M. de l'Ecotais, La pondération des voix au Conseil de Ministres de la Communauté Européenne, *Revue du Marché Commun et de l'UE*, 1996 (no. 398, 401) and 1997 (no. 408). About weighted voting in general, vide J. Kranz, Le vote pondéré dans les organisations internationales, *Revue générale de droit international public*, 1981, n° 2, pp. 314-346 ; S. Zamora, Voting in International Organizations, *American Journal of International Law*, 1980, nr 3, s. 566-608.

number of the votes held by large and by smaller states (with the population criterion being applied only indirectly).

As the Amsterdam (1997) and Nice (2000) Treaty amendments were being drafted, the debate on the Council vote reform revealed two conceptions: one in favour of retaining the existing vote weighting system albeit with some adjustments; the other in favour of establishing so-called double majority and stronger reliance on the population criterion. Some started regarding the population factor as a medicine for the problems arising in step with subsequent enlargements. That medicine would also ensure the indispensable retention of influence by four large states and to some degree medium-sized (Spain, Poland) in the context of a growing number of member states, particularly small ones.

2. Under the (pre-Nice) EU Treaty version, 26 (about 28.8% of the total) votes were needed to block a decision proposal submitted by the Commission². Thus, it took the votes cast by:

- three large states (the large states being Germany, United Kingdom, France and Italy), or
- two large states plus Spain (alternately two small states instead of Spain), i.e. at least 3 to 4 states³ altogether.

After the EU enlargement by 10 states (the Nice system taking effect on 1 November 2004), three criteria apply in decision-making: the formerly applicable threshold of weighted votes (72.3%) as well as two new criteria – the number of states (50%) and the population threshold (62%).

Ninety votes (28% of the total) are needed to block a draft decision. Hence, sufficient for that are the votes cast by:

- three large states plus any one other state, or
 - two large states plus one medium-sized (Spain or Poland) plus one of not the smallest states,
- or
- two large states, and, with no support from Spain or Poland, two smaller states plus one.

Thus, in terms of numbers, there should be at least 4 or 5 states to block a proposal. But this prospect changes, if we allow for the fact that the number of states representing 38.1% of the EU population is enough to form a blocking minority, and hence the minimum requirement is the votes cast by:

- three large states, or
 - two large ones (including Germany) and one medium-sized (Poland or Spain),
- which means that the number of states-votes required for that is the same as under the pre-Nice system. With this threshold, however, Poland's voting power does not stem from the 27 weighted votes, but from the population index.

² In the early state of the EU history, the blocking minority necessitated at least two large states - a rule that survived until the mid 1980s, and, to be exact, the enlargement by Spain and Portugal.

The Nice decision-making system is to some extent coincidental and results from the December 2000 crisis in the Franco-German relations, when France objected to a departure from the equal number of the votes held by Paris and Berlin in the Council. It was the time of surfacing egoistic aspirations for which France and Germany today loudly reproach the other states; in the context of Poland, *force de frappe* got even partially confused with *faute de frappe*. Thus, we owe the vicissitudes of the Convention and IGC in 2002-2003 to, among other things, a special “upward flight of European spirit” at Nice. Haphazardness notwithstanding, the Nice Summit ended in a compromise on the decision-making procedure in the Council. But even then, some states evaluated that outcome in negative terms and it was clear that demands for adjustment of the system were only a matter of time. Polish politicians were also fully aware of that.

The so-called double majority system as proposed by the Convention in the draft Constitutional Treaty fundamentally alters the vote weighting criteria in the Council. Under article 24 of the draft, if the European Council or the Council of Ministers make decisions by the qualified majority, the qualified majority comprises a majority of the member states (50% or 13 out of 25 states), representing at least three fifths (60%) of the EU population.

In comparison with the Nice system, the emphasis has been shifted in favour of the blocking minority now requiring the votes cast by:

- three large states (including Germany), or
- two large states (including Germany), one medium-sized (Poland or Spain) and one of not the smallest states.

Quite evident against the Nice formula is a certain obstruction in building up the blocking minority, as well as a strengthening of Germany and a weakening of the positions of Poland and Spain. At the same time, the building of the qualified majority is becoming easier. Inasmuch as the Council decision-making system as proposed by the Convention marks a departure from the original system by changing the vote weighting criteria, it does not carry a radical impact on the conditions of obtaining a majority and the blocking minority.

3. Some believe that the application of the population criterion affords greater transparency and strengthening of the Council’s democratic mandate. This argumentation appears superficial⁴, for it goes without saying that the direct application of the population criterion to the decision-

³ I leave aside here the so-called Ioannina compromise (Council decision of 29.3.1994 concerning Council decision-making by the qualified majority subsequently amended by the decision of 1.1.1995 - OJ C 105 of 13.4.1994, p. 1 and OJ C 1 of 1.1.1995).

⁴ “Regarding transparency, the double majority of the draft Constitution most definitely does *not* deserve to be termed transparent. It is indeed opaque in its effects. For we ask: what exactly is the implication for the distribution of power between member states? No-one, not a Council minister, not an EU citizen, can give an immediate answer to this question. One needs to have a grounding in the calculation of power indices, and we will encounter an area of contested answers in so doing”, B. Felderer, I. Paterson, P. Silárszky, Draft Constitution: The Double Majority Implies a Massive Transfer of Power to the Large Member States – Is this Intended? Institute for Advanced Studies, Vienna, June 2003, p. 3 - http://europa.eu.int/futurum/forum_convention/documents/contrib/acad/0475_r_en.pdf

making process in the Council has little to do with democracy, that it clearly differentiates between the member states and reduces to minimum the actual significance of smaller states.

The formulas of political balance in vote weighting, though hard to adapt to subsequent enlargements, are no less equitable than the referral to the population criterion, which undoubtedly favours four large and two medium-sized states. In invoking democracy, one also has to bear in mind two issues: firstly, the Union is not a state (nor a federal state); secondly, one of the essential elements of democracy is not only to recognize the will of the majority, but also to adequately protect the minority. Seen from this vantage point, the population criterion does not seem ideal at all times.

It also turns out in the light of mathematical analysis that “the influence of every citizen of the Union on the outcome of the Council vote will be the same, if the weight of a given country’s votes in the Council of the EU is approximately in proportion to the root extracted from that country’s population, rather than to the population number itself. This fact is well known to the voting theory analysts, but has been ignored by the authors of the draft Constitutional Treaty”⁵.

It appears, moreover, that the issue of democracy in the EU is more about the relationships between the legal orders, including the mandate of the Union legislator and the function of the national parliaments. Contrary to simplified opinions, the voting in the Council is not about democracy (which this system will never provide in the same sense as national law), but about a reasonably differentiated balance of influences. It is neither true nor confirmed by the practice of other organizations that the apportioning to their member states of the number or weights of votes in direct proportion to their populations is the best indicator of democracy⁶.

4. The specific vote weighting options and the setting of majority thresholds are not the original cause of one or another balance of forces, but only a tool for prior political decisions to delineate general objectives and parameters. Thus, one should not be seduced by technique alone, as, in the context of the Council decision-making, a given set objective (decision-making efficiency avoiding excessive dominant power by a few states) can be attained by the double majority method, or by modification of the previous weighted vote system, or by other methods. Also, the double majority method holds room for various options, for instance 60% of the states and 50% of the population, or an option of twice 55%. The claim that only the double majority or the Nice system are the best, smacks of a manipulation.

5. By applying appropriate mathematical-statistical methods, one obtains the voting power index, which indicates the probability of a given state’s decisive influence on the shaping of

⁵ W. Słomczyński, K. Życzkowski, Czy warto umierać za Niceę? - prawda i mity (*Is Nice worth dying for? – truth and myths*) *Rzeczpospolita* daily, 30.1.2004.

majority coalitions⁷. These calculation methods are indeed helpful, but they only point to a possible and not actual picture of the voting.

However, it follows unambiguously from the mathematical analyses that in comparison with the earlier Council decision-making procedures, the distribution of the votes and the qualified majority threshold as adopted in the Treaty of Nice for the Union of 25 states reduce to the lowest degree in the EU history the probability index for the formation of majority coalitions⁸. When compared against the Nice system, the formula developed by the Convention (potentially) facilitates decision-making.

The mathematical analyses also show that:

- The Nice formula, following the EU enlargement to 25 states, differs from the pre-Nice procedure in that it changes the voting power in decision-making in favour of four large states (notably Germany) and two medium-sized states (Spain and Poland)⁹,

- The Convention-developed formula is, in comparison with the pre-Nice procedure, advantageous for the voting power of the six largest states (though less so for Spain and Poland)¹⁰,

- The Convention-authored formula is different from the Nice procedure in that it favours four large states (particularly Germany) and detracts from the voting power of nearly all the other states, including medium-sized, or Spain and Poland (with the few smallest states gaining only very insignificantly)¹¹.

It is argued not without reason that, under the Nice system, Spain and Poland are over-represented. On the other hand, the Convention-proposed procedure benefits the big four, while relatively weakening Poland and Spain¹². Still, both procedures favour large as well as medium-

⁶ Opinion to this effect by Germany's ex-Chancellor, H. Kohl („Wir müssen uns von der Vorstellung lösen, die Größe eines Landes müsse sich präzise im Anteil der Stimmen widerspiegeln“) – interview for the *Frankfurter Allgemeine Zeitung*, 22.01.2004, p. 5.

⁷ On the same subject, see, for example, R. Baldwin and M. Widgren, The Draft Constitutional Treaty's Voting Reform Dilemma. With Postscript of 7 December 2003, CEPS Policy Brief, No. 44 November 2003 - http://shop.ceps.be/BookDetail.php?item_id=1075; D. Leech, The Utility of the Voting Power Approach, June 2003, Warwick Economic Research Paper number 678; R. Baldwin and M. Widgren, Decision-Making and the Constitutional Treaty. Will The IGC Discard Giscard? CEPS Policy Brief, No. 37/August 2003, http://heiwwww.unige.ch/~baldwin/papers/Decisionmaking_and_theCT.pdf; B. Felderer i inni (przyp. 4); J. A. Emmanouilidis and Th. Fischer, Answering the Question of Power from a European Perspective. A Comparison Between the Voting Procedures of Nice and the Convention's Draft Constitution, 04/2003 - <http://www.cap.uni-muenchen.de/konvent/spotlight.htm>; B. Plechanovová, The Treaty of Nice and the Distribution of Votes in the Council – Voting Power Consequences for the EU after the Oncoming Enlargement. European Integration online Papers (EIoP), Vol. 7 (2003) No. 6, <http://eiop.or.at/eiop/texte/2003-006a.htm> (Date of Publication: 6.5.2003); D. Leech, Designing the voting system for the Council of the European Union, Public Choice, vol. 113 (2002), pp. 437-464.

⁸ R. Baldwin and M. Widgren, Decision-Making (ref. 7), p. 7; R. Baldwin and M. Widgren, The Draft (ref. 7), p. 5.

⁹ R. Baldwin and M. Widgren, The Draft (ref. 7), p. 4.

¹⁰ R. Baldwin and M. Widgren, The Draft (ref. 7), p. 7.

¹¹ R. Baldwin and M. Widgren, Decision-Making (ref. 7), p. 10.

¹² Vide Lionel Mabilie - *Le Monde* dated 29.11.2003 and *Libération* dated 28.11.2003. In the same meaning, see also D. Leech, Designing (ref. 7), pp. 459-461: “The findings of the analysis of fair weights are: first, that the weights laid down by the Nice Treaty are approximately proportional to the voting power they

sized states. However, the aforesaid voting power differences within the respective vote-distribution formulas do not fundamentally change the Council decision-making. They rather mark certain shifts of emphasis to the advantage of large and medium-sized states at the expense of smaller states, the single vote of which is to be reckoned with mainly as an incremental chip towards 50% of the total number of the member states.

These considerations lead to the conclusion that both the Nice and Convention systems would require some adjustments. But France and Germany, with support from the Convention President, headed off any thorough debate on the subject.

6. Practice plays an important role in evaluating a decision-making process. In the EU case, the formal voting in the Council is an exception,¹³ even if the qualified majority is in fact attainable. Nor is there a way to make sure whether any permanent coalitions exist in practice, and even less so that such coalitions comprise three or four so-called large states.

The to-date practice has drawn some support from non-treaty decisions promoting the “spirit of blocking power”. No other country but France was the first to demonstrate such an understanding of interests by blocking the Council’s majority decisions by virtue of so-called prevailing national interest. Thus, France provoked a crisis that eventually ended in the so-called Luxembourg compromise (agreement to disagree). A *sui generis* follow-up on that practice (but then in favour of the Union’s southern states) was the Ioannina compromise in 1994¹⁴. According to the official EU sources, this compromise is expiring in 2004 along with the EU enlargement, but the validity of the Luxembourg compromise is being passed over in judicious silence.¹⁵

The Council voting practice shows a continuing search for consensus and allies. One can view this state of play from two perspectives: on one hand, decision-making based on the so-called lowest denominator is at times a protracted process; on the other hand, the climate for systematic imposition of solutions through formal voting is not arising. This practice also fails to supply proofs for routine domination by France and Germany, or even the four large states, because, all on their own, they are not in a position to impose any specific solutions on the others.

represent; second, that they are close to being fair for most members; third, that German and Romanian citizens will be under-represented, Spanish and Polish citizens over-represented. The results of the analysis of the threshold are: first, that the power of the Council to act will be very small because of the high level at which the threshold has always been set (about 71%) and will continue to be set unless the treaty is amended; second, the Treaty’s provision to raise it to almost 74% when many new members join makes this aspect considerably worse; third, there is a trade-off between individual member countries’ blocking powers and the power of the Council to act, but a direct relation between a country’s overall measure of power and the power of the Council to act. The main conclusion of this analysis is that decision making within the Council of the European Union is likely to remain rigid because of members’ being overly concerned with their own blocking powers, and for this to get worse with every enlargement”.

¹³ Years ago, I wrote about the voting practice in the Council and this practice has remained fundamentally unchanged until the present day. See: J. Kranz, *Le vote dans la pratique du Conseil des ministres des Communautés européennes*, *Revue trimestrielle de droit européen*, 1982, no 3, pp. 403-430.

¹⁴ Cf. ref. 3.

¹⁵ Question écrite E-1109/01 (2001/C 364 E/052) of 9.4.2001.

Of crucial significance for the future is an answer to the question of whether and how the consensus practice survives the EU enlargement in 2004? One should rather assume that the to-date practice will hold. This does not rule out some insignificant increase of formal voting cases, but they will not involve any coalition power play against the others, particularly less so in important matters. In view of the hundreds of pieces of legislation annually enacted by the EU, turning the voting into a rule could lead to the creation of a voting robot machine dangerous for all (including so-called large states), and hence to the bids “to pay it back in kind”. This is obviously a theory, as the practice above all hinges on the political will of states.

Still, a possible valid question remains: what is the purpose of this struggle for the vote weighting system and majority thresholds? Well, the point is that the treaty provisions are largely devised as safeguards against blocking powers and as compromise enforcers. Therefore, states are wrangling for not only an adequate number or legal value of votes, but also adequate qualified majority thresholds, with emphasis on a blocking option reserved to a small circle. The treaty allows making majority decisions, but in practice they are rare. In exceptional cases, the abuses of the consensus practice can be done with by putting decisions to a vote.

II

In view of the aforesaid remarks, one should ask why the Polish government resolved to “die for Nice”. The ensuing situation results from quite an extraordinary concurrence of external and internal causes, some of which are justified and others not very rational. Among the external factors, one should mention the leadership paternalism in the EU and the related perception of the EU enlargement as an unpleasant necessity, as well as the mounting egoism sprouting from, *inter alia*, the weaknesses of economic and social development of some member states. On the Polish side, the causes reside in all sorts of mistakes made by the government and the opposition forces.

7. On top of that, the entire contention looks like a paradox in the sense that the Nice voting system will stay unchanged for a few years ahead, and hence also after Poland’s accession and the enlargement by 10 states. Under the Treaty of Nice, this system is to be applied until the accession by the 28th member state, or, according to the draft Constitutional Treaty, until 2009. The coming into force of the Nice system (autumn 2004) after the EU enlargement to 25 states does not have to immediately spell a disaster for the decision-making process in the Union. Those who brandish the bogey of such disaster tend to forget that should it really be seriously imminent, the prime movers behind the Convention-devised formula would have most likely demanded that the double majority take effect sooner than in 2009. On the other hand, those who raise the spectre of catastrophe for Poland or Spain often forget to inform the public that this “calamity” will strike in as long as about 5 years.

The endeavour to lay down the Council voting rules in the Constitutional Treaty has a purpose to the extent that it restricts room for conflict in the future, particularly in subsequent EU enlargements, which, without that provision, would necessitate voting rules amendments in accession treaties, or prior revision of the EU Treaty. It remains to be seen whether and to what extent this reasoning and the linking of the states' votes to the population criterion withstands the test of time. Some refer in this context to Turkey's possible membership and its impact on the proposed double majority system¹⁶.

The fundamental question is whether it has at all been worthwhile to wage the struggle for the Nice voting procedure? Well, there were external and internal national reasons why the Polish government may have defended this procedure. Did it have to, how far it could go and in what manner is where doubts appear. What is more, if it indeed had to, it could have done it differently¹⁷. On the other hand, one could ask if the Brussels fiasco had to come about and why it happened. Here, an answer is to be found also beyond Warsaw. It is possible to believe that the manner in which the Brussels fiasco came about was a kind of trap into which some EU member states ensnared the Polish government.

8. The arguments offered by the Polish government reveal the following premises behind its staunch defence of the Nice voting procedure. Firstly, the Convention-proposed formula seriously enfeebles (in contrast to the Nice formula) Poland's position in the Council decision-making process. This is where the main point of contention and assessment resides.

The remaining arguments offered by the government are weaker. It is true that the scenario of Convention work outlined during the European Council's meeting at Laeken, failed to refer to the changes in the voting system in the Council of Ministers. But nobody charged that the Convention abused its competence.

Another argument refers to the fact that the pre-referendum campaign was conducted with the Nice voting system as the key assumption. It reflects the truth, but the Nice system has been limited in time since the very beginning, and, furthermore, the Convention has proposed to replace it with the new formula as late as in 2009.

Two other reasons for the Polish government's position appear less visible, though are significant. One is the will to see Poland maintain the strongest possible blocking power in the silent belief that, in view of the administrative inefficiency inwardly and the political weakness in building external coalitions, the only chance of defending the Polish interest can be seen in the maximum potential of the blocking power. The other reason concerns the weakness of the government itself and the government's excessive fear of the opposition.

¹⁶ On the same subject, see R. Baldwin and M. Widgren, *The Draft* (ref. 7), pp. 14-16.

¹⁷ J. Żakowski, *Minister spraw słusznych i przegranych* (*The minister of right and lost causes*), *Polityka*, no 07/2004: „When one hears Cimoszewicz speak about the defense of Nice, one can hardly resist the impression that emotions, ambitions and obstinacy have become the main chips in this gamble”.

9. The need to reflect upon the decision-making process in the enlarged Union has to be acknowledged, but on the condition that all member states participate on equal footing in the bid to redefine the arrangement of forces in the Council of the EU. And this is where specific facts were arising to give some justice to Poland's negative reaction¹⁸.

To wit, the Convention, at the inspiration of and with approval by France and Germany, came up with its proposal for the distribution of votes and the qualified majority thresholds at the end of April 2003¹⁹, or quite all of a sudden when the Convention work had already been in its final stage and shortly before the Polish referendum of 8 June 2003. That draft failed to be consulted with the remaining member states, although it was known, among other things, as a concept developed by the Commission²⁰. No in-depth discussion was held on this subject within the Convention, particularly because no working group for institutional affairs had been set up (possibly not an accidental outcome of the reluctance to do so by the Convention's Presidium), and subsequently a discussion on that subject was blocked in the IGC forum under the motto: whoever wants to change any one part must make sure that the others will not want to change the following parts and that the entire package can be re-wrapped again.

One expression of peculiar charm came when the German and French foreign ministries agreed their position on the new voting formula and did not even deem it proper to inform Poland about it, not to mention any prior consultation with Poland. To employ the Franco-German argument: from Warsaw's point of view, this was a specific kind of cultural differences and maturing to Europeanism.

Thus, the new Council voting formula represents an attempt to establish a *fait accompli*. In a climate of semi-scandal and due to the lacking support by the German members of the Convention, the Convention's President failed, after all, to push through the concept of reformed relations between the EU bodies (weakening of the Commission and strengthening of the Council). In turn, new areas to be covered by the qualified majority voting were defined in the final stage as part of so-called technical corrections that came already after the official submission of the draft by the Convention. Also, in the area of security and defence policy, the other states were not consulted on the wording inserted into the draft Treaty that referred to so-called structural cooperation (the Franco-German conception that was corrected in November 2003 under pressure of objections by other states).

Thus, the Polish reaction resulted from not only the proposed substance, but also the manner in which it was served. That manner exposed disregard for the other states and an incapacitating

¹⁸ "Despite the centrality of voting reforms in the draft Constitutional Treaty, voting reforms were not discussed openly and thoroughly at European Convention. Little wonder then that these reforms are drawing so much conflict at the on-going IGC", R. Baldwin, M. Widgren, *The Draft* (ref. 7), p. 13.

¹⁹ Document of the Convention Presidium CONV 691/03 of 23 April 2003 with the clear intention to hold a discussion on the subject in mid May.

²⁰ See the document by the Convention's Secretariat CONV 477/03 of 10.1.2003 (point 19).

tendency, the limits to which were set by the IGC Meeting in Brussels. Such a bad effect may repeat, if its causes recur and, besides, it is not only a matter of substance as rather a matter of style, which every European capital should put more work into.

10. Although European integration has not suffered under the German-French dictate so far, the recent two years have brought to notice a certain change. It is all about the Franco-German alliance - hardly constructive at times and divisive for the Union - which makes certain decisions without consulting the other partners. As they increasingly advance pre-agreed joint positions on the agenda of the EU bodies, France and Germany appear to believe that all such positions should be approved of without any major debates.

One indubitable proof of such Franco-German posture was the “pushing” of the Council voting proposal into the Convention Presidium. One can add to this many other instances: arrangements concerning long-term funding of the common agricultural policy, the position of France and Germany on the UN resolution giving a go-ahead to the armed intervention in Iraq and the communication in this respect with Russia without any consultations within the EU, the proposal for a defence union, the position on the Stability Pact²¹, the demand to depreciate the euro, and the talk after the Brussels fiasco about the inevitability of a Europe of two speeds. These are not the best of incentives to European unity, or to building a climate of confidence. What is more, the Franco-German leadership may face the risk of losing its effectiveness²².

Things were different before that: different positions, including those of France and of Germany, were clashing in the EU bodies, and coalitions seeking compromise were shaping up. The change of thinking has sprouted the belief that a joint Paris-Berlin proposal not consulted with the others is good for all, and, moreover, that every coalition needs to enlist France and Germany to be assured of success.

The policy presently pursued by some large EU states is not always conducive to the unity of communism-free and politically larger Europe. The uncertainty about France’s long-term political objectives is growing. On the other hand, Germany has cast itself in the role of France’s junior partner. There has been an evident deterioration of the Polish-German and Polish-French relations, and the responsibility for that cannot be dumped on one side alone²³. The situation outlined here also is partly responsible for the premises of Poland’s political thinking about the EU.

²¹ Vide J. Szomburg, *Peryferie szansą Unii (Peripheries – an opportunity for the Union)*, *Rzeczpospolita*, 2.10. 2003, p. A8.

²² Vide W. Schäuble, Vice Chairman of the German CDU - Der Kanzler ist rücksichtslos, Wolfgang Schäuble spricht mit der *Frankfurter Allgemeine Sonntagszeitung*, 07.12.2003, p. 4: „Die Verhandlungen sind schon in der Endphase des Konvents, vor allem aber in der Regierungskonferenz, erheblich erschwert worden durch eine deutsch-französische Zusammenarbeit, die Europa nicht voranbringt, sondern spaltet“.

²³ Vide, ex. W. Schäuble (ref. 22); H. Kohl (ref. 6): „Wichtig ist, dass kein Direktorium einiger großer Staaten entsteht, das die kleinen Staaten bevormundet“.

11. The process of building Europe's unity will (and probably needs to) allow for differences, but the important question is whether trust and openness, or disabling lecturing and arrogance instead, prevail among the member states.

After the Brussels fiasco, the French and the Germans began to vociferate about a Europe of two speeds, or, in other words, sounded a kind of warning for unsubmitive states. This manner of thinking points to a possibility, but it also carries the risk that its effects may eventually backfire on the thinkers.

Furthermore, this warning has some room for growth, as it does not immediately assume a disintegrating EU, and particularly not so within the 1st Pillar. However, as time goes by, if not permanent blocs, then informal groups for cooperation or consultation may shape up (including some going beyond the Union's treaty framework), a likely prospect in view of the increasing number of the EU member states. The object scope of such cooperation may cover all of the Pillars, but particularly non-Communitised areas of the 3rd Pillar (justice and home affairs) and the 2nd Pillar (foreign and security policy). But one can hardly presuppose under the 2nd Pillar that the Franco-German alliance will assure Europe of security.

The Union of 25 states is getting less and less manageable. For instance, in every meeting of government representatives (at various levels), only brief position statements take up several hours. That is why, advance work on positions becomes increasingly important and encourages coordination in smaller groups. This trend can hardly be staved off. London, too, shows a willingness to join the Franco-German duo²⁴. The Italian and Spanish foreign ministers have warned against such a triumvirate²⁵. On the other hand, ministers for European affairs in France and Germany see nothing wrong in the emergence of pioneer groups and criticise Poland for allegedly trying to build up a front against France and Germany²⁶. Still, one should take note of the statement by the German foreign minister, who, in a correction of his earlier views, said that the Union was in need of more integration and strong institutions, and not so much in need of so-called European vanguard²⁷.

The important thing is to make sure that informal groups do not generate coercion on positions, or the erosion of the legal and political role of the European Commission, or even the

²⁴ See *Telegraph* of 21.1.2004 ("Senior Foreign Office sources say the Prime Minister and Foreign Secretary want to hold trilateral policy meetings with their opposite numbers in Paris and Berlin roughly every six weeks. Britain believes that when the European Union enlarges to 25 member states in May, business will best be done among small groups of nations. (...) The Prime Minister and Foreign Secretary also fear that, following the Iraq war and the breakdown of talks on a new European constitution, the traditional Franco-German axis could sideline Britain and lay plans for closer integration among an elite inner core").

²⁵ Ex. *Financial Times Deutschland*, 23.1.2004.

²⁶ *Financial Times Deutschland*, 23.1.2004.

²⁷ *Berliner Zeitung*, 28.2.2004: „Ich würde die Humboldt-Rede heute in Teilen anders halten. Ich bin zwar mehr denn je überzeugt, dass Europa mehr Integration und stärkere Institutionen braucht. Aber klein-europäische Vorstellungen teile ich nicht mehr. Das Konzept einer europäischen Avantgarde /... also eine Gruppe einzelner EU-Länder, die in der Integration schneller voranschreiten will.../ kann unter Umständen zeitweise nützlich sein. Aber nur innerhalb des fest verankerten Rahmens der europäischen Verfassung. Die Idee von Kerneuropa ist passé? Ich meine: Ja“.

European Council. The Anglo-German-French triumvirate does not have to be a negative experience up front. A lot will depend on its working style as well as trust and support for it from the remaining member states. The triumvirate will fulfil its role only if it is a force of attraction rather than division. However, one must guard against an excess of institutionalism of such EU action forms, for the Union needs strong institutions of its own and also differentiated coalitions.

In fact, the Union is not being ridden, nor has any need for that matter, with the issues of triumvirates or directorates. But in 2004 it is facing the challenge of confidence, leadership and a serious debate between not necessarily equivalent but necessarily equalitarian sides.

12. The numerous Union crises in 2003 have brought to light something that at times tended to be ashamedly concealed: the Union is lacking in political maturity for the enlargement, even if economic and social prerequisites for that are in place²⁸. Since the disappearance of the “iron curtain” at the turn into the 1990s, the expansion of European structures has continued to pose a difficult challenge, not only for economic or institutional reasons; it appears as an unpleasant though understood necessity, but the genuine European unity has a different (West European) dimension²⁹.

Also, the weaknesses of the common foreign and security policy (not to mention defence policy) in spite of some progress should be viewed in categories of political immaturity. Europe’s chance after the collapse of communism consists in not only creating an area of economic cooperation and military security, but also in the striving for political community. In a sense, this is not only about European integration, but, in this form, also about a gradual integration of Europe.

One would like to believe that the not so lucky year 2003 for the Union marks a turning point. But it certainly remain as witness to the weakness of leadership, lack of confidence and a slipping standard of dialogue both within the EU and between the EU and some candidate countries. The attitude towards the candidate states has come to glaring light. It is: do something for them, but best without them.

On the other hand, it is fair to self-critically recall some Polish policy doings. For instance, Poland came out in support of the US policy line on Iraq, a position correct in principle, but ineptly presented and justified by the Polish government (ex. the Polish premier when conversing with the German chancellor failed to inform him about the intent to sign the so-called “letter of 8”). The Polish defence minister went public with a plan to involve the Germans in the Iraq operation, but

²⁸ *Der Standard*, 31.1.2004: <Verheugen sagte dem „Reutlinger General-Anzeiger“ (Wochenendausgabe): „Im politischen Sinne ist die EU nicht ausreichend auf die Erweiterung vorbereitet“. Zwar seien die Voraussetzungen im technischen Sinne, etwa was Binnenmarkt und Währungsunion anbetreffe, gegeben. Dennoch seien wichtige Ziele der europäischen Politik mittelfristig kaum lösbar. (...) Vehement kritisierte Verheugen „nationale Egoismen“ im Streit um eine EU-Verfassung. Dabei habe Beitrittskandidat Polen „sich in die Gefahr der Isolation begeben“. Dieser Fehler könne jedoch korrigiert werden. „Die Polen haben begriffen, dass sie falsch positioniert sind“>.

²⁹ J. Derrida, J. Habermas, Nach dem Krieg: Die Wiedergeburt Europas, *Frankfurter Allgemeine Zeitung*, 31.5.2003.

failed to enlist their approval. The Polish military intelligence “detected” that France had only recently delivered missile weapons to Saddam Hussein. The Polish foreign minister spoke in public in a lecturing tone³⁰.

Another risk surfacing in Poland is the tendency to view the Union as a factor annihilating national identity (as if the mass media or McDonald’s were not enough) and as an organisation „that is only busy thinking how to deceive us and what to do to make us feel smaller and inferior”³¹. The effect is a bad climate of mutual accusations, fears and suspiciousness, which is slowly beclouding issues important for Europe that require either a unified position or at least intensive cooperation within the Union. Under such circumstances, it is all too easy to lose sight of not only the style, but also political direction.

III

13. As far as the internal premises of Poland’s position are concerned, the pre-referendum tactics largely rested on suggesting Poland’s meaningful role in the Union in effect of Poland’s 27 votes in the Council. The emphasis on that formula in conjunction with Poland’s role as one of so-called play managers was not the wisest move, though it could have brought some success, had not the double majority proposal, sponsored by France and Germany, appeared in the Convention’s Presidium at the end of April 2003, or close on the eve of the accession referendum in Poland.

The Eurosceptic oppositionists in the Polish Sejm (Parliament) seized on that to launch their counteroffensive with the following argument: contrary to the government’s assurances, they are sapping our position. The government took that argument to heart and, concerned over the referendum’s outcome, attempted to mollify the opponents. After the referendum (8 June), the objections within the Convention did not prove strong enough, and eventually the so-called double-majority system became part of the draft Constitutional Treaty. The related Polish track-record in the Convention does not look most successful.

The Convention approved the proposed reform of the voting system in spite of the reservations voiced by a part of its members. To some extent, this came about under pressure of the deadline for the completion of the Convention work and in the belief that this issue, being *par excellence* political, still required top-level governmental decisions, i.e. the Intergovernmental Conference. But right on the heels of the Convention’s close, a few of the largest states (mainly France and Germany) began to insist on keeping the Convention’s draft intact.

³⁰ Ex. in an interview for *The Guardian*, 4.12.2003, the Polish minister for foreign affairs “attacked the patronising tone of western European governments towards their neighbours in the east” and “reserved special criticism for the German chancellor, Gerhard Schröder, accusing him of failing to understand how the EU functions”.

³¹ T. Mazowiecki, Broniń - ale nie do śmierci (*Defend, but not to the end*), *Gazeta Wyborcza*, 24.2.2004, p. 15.

In the context of adverse external circumstances, the Polish government stood a poor chance of ushering in a debate in the EU on the maintenance of the Nice formula. It also refused to accept the double majority, because, among other factors, it feared a backlash by the opposition forces that floated the slogan „Nice or death” – a parochial attitude motivated mainly on domestic considerations. Thus, a self-spiralling process began in the long shadow cast by the Iraqi crisis. The foreign prime movers behind the double majority formula rigidified their position, though the German foreign minister in his December lecture in Warsaw did not rule out a compromise within the framework of the double-majority formula. However, the same minister had earlier given to understand that the rejection of the double-majority procedure could hit back at the future EU budget. The Convention’s President let know a wish to punish Spain.

In turn, the Polish government recognised that the Council vote issue represented a kind of Polish *raison d’état* and national interest, but failed to signal any other proposals. More than that, it (consistently) had its hands tied ahead of the Brussels meeting (with the Sejm resolution passed by the ruling coalition and opposition parties). With that, the government self-restricted its room for manoeuvre during the Brussels conference, but also afterwards, as the Sejm resolution is still politically binding.

14. After the close of the Convention, a few largest states began to put pressure on the adoption by IGC of the draft Constitutional Treaty without any fundamental changes. However, support for the draft was lacking in the Union, not only because some countries opposed the double-majority system, but also because they favoured other threshold options to be set for the number of states and population within the double majority. Against the appearances, the Brussels result is not 23 to 2, because the blocking of a plenary debate in Brussels masked any differences of views.

This opinion was later confirmed by the President of the Council of the EU, Irish prime minister Bertie Ahern, who said that in addition to Spain at least three other states preferred the Nice system of decision making. Furthermore, in his view, in addition to the Council voting or problems with the preamble³², there were also a ten-odd not agreed items, including as essential as the definition of the areas to which the qualified majority voting should be extended³³.

A conclusion comes to mind that the Brussels showdown was inevitable, with some states planning for this fiasco in advance and pointing³⁴ at those to blame (mainly Poland)³⁴. There are many indications that such was the intention of France, approved by Germany. The weakness of the Presidency (the Italian premier) helped in carrying that scenario into effect. To available

³² As a marginal note to the dispute over the reference to Christian values in the preamble, one can only add that it is rare to read such a badly worded preamble to such an important treaty.

³³ B. Ahern in an interview for *Der Spiegel* no 7 of 9.2.2004.

³⁴ K. Ridderbusch, Die Großen inszenieren ihr Lehrstück. Das misslungene Ende von Brüssel war schon zuvor (fast) beschlossene Sache, *Die Welt*, 15.12.2003; „Polen trage die Hauptverantwortung für das

knowledge, the tacit readiness for compromise on the Polish and Spanish side did not go beyond leaving the future voting formula as an open issue and accepting that the final decision would be made in the future by the qualified majority of the votes. But there were not even any talks on this subject.

There was a shortage of the political will of compromise in Brussels and because it had been lacking even before that, no work on the compromise eventually took place³⁵. It is just the latter aspect proving that some member states were intentionally aiming at humiliating Poland and Spain and at the fiasco, while demonstrating the readiness to postpone the approval of the Constitutional Treaty. The context of this is pregnant with questions to which there are no clear answers.

The fact that a major clash (the need for a formal veto during the deliberations) was avoided is attributable to the United Kingdom, which did not subscribe to the Franco-German position (but did not support Poland and Spain straight on, either), and also (paradoxically) to the Italian Presidency, which did not bring about a plenary debate. Still, there was no catastrophe and both sides sometimes speak of a success – our side: we showed we are and we will not let us be ignored; their side: we have saved the draft EU Constitution from a dilution. But altogether it is more of a failure that has many fathers and not all of them are Polish³⁶.

Thus, the Brussels result was unavoidable for Poland for two reasons: the peculiar external intrigue and the internal impotence. Weighing on both was the Polish government's passivity (lack of political courage), absence of a convincing public presentation of arguments and wrongly set priorities; and on the other side, some EU partners demonstrated a lack of political will for discussion and compromise.

15. It comes as a paradox that the key EU partners began to reflect on this (even if negatively for Poland) and show the will to hold talks only after the Brussels fiasco, whereas not even the modest traces of such readiness could be noticed beforehand. But that is apparently not tantamount to Poland's success.

Even if the Polish government decided to die for Nice (and such was its resolve), it failed to secure major support among the member states or European public opinion. The ex-premier, Tadeusz Mazowiecki, rightly recalls: "Obviously, the government did say that the slogan 'Nice or

Scheitern, sagte der Parlamentsvertreter in der Regierungskonferenz, Klaus Hänsch“, *Frankfurter Allgemeine Zeitung*, 14.12.2003, which opinion is divorced from the truth and politically tendentious.

³⁵ H. Kohl (ref. 6), p. 5: „Es fehlte die Bereitschaft, auf die verständlichen Interessen der Nachbarländer Rücksicht zu nehmen. Während der Konferenz dominierten nationale Interessen“.

³⁶ After the close of the Brussels meeting, the six main net contributors to the EU budget demanded that the EU budget be kept at the same level in spite of the enlargement. Even if that proposal seemed right (which is not the case), it represents another instance of the new, already known, tone (probably intentional). If this is a dessert, it is proof of bad taste.

death' was not of its own making, but it said it so silently that it could hardly be heard. And, secondly, it did not say that it disagreed with and opposed that slogan"³⁷.

Thus, the balance-sheet does not look impressive. They did take note of us, but for what price? Did they understand what we wanted? The answer is negative. The Brussels fiasco is uncomfortable for Poland not so much because of its negative standpoint (things like that happen), but because Poland intentionally allowed to be cornered by some partners and positioned as the main perpetrator of blocking the whole Constitutional Treaty.

Perhaps in the search for dialogue and the absence of the readiness for it, the fiasco could not be avoided and it was necessary to hold to the objecting standpoint. Even if we accept this assumption, the government should have done a better job in public and argumentatively, thus also to convince European opinion that we were seeking compromise, presenting our options and wanted them to be taken on board. It was equally important in this case to actively work on the public response.

A certain way out of the predicament would have been at least a semi-official presentation in the summer or early autumn 2003 of the Polish compromise proposal, which, even if short of a speedy effect, would have slowed down the rigidifying of positions in Poland and abroad. After all, the fight against the Convention's draft while proposing to maintain the Nice system, and the search for a compromise between the Nice system and the Convention's proposal, are two different things. The choice of a rigid line by the government was consequential in that it restricted room for manoeuvre.

16. The tough insistence on the Nice formula signifies further blocking of the Constitutional Treaty. Does this and for how long it will lie in the interest of Poland and Europe?

The opposition forces striving for power in Poland must realise that the adherence to only the to-date position cannot last forever. On the government side, it seems that the prime minister did not have the sufficient forethought when after returning from Brussels he called for a united front of all the parties in the Sejm³⁸. In this way, he has become a hostage of the forces that are at times extreme, has relieved himself of independent thinking and has, moreover, diluted the government's responsibility.

After the Brussels summit, Germany and France demonstrate greater readiness for talks, but indicate that a compromise could be possible only within the so-called double majority. It appears that Germany and/or Polish-German consultation may determine the breaking of the deadlock, for

³⁷ *Gazeta Wyborcza*, 24.2.2004, p. 15. See also the interview with T. Mazowieckim, *Sparaliżowani Nicea (Nice-paralysed)*, *Rzeczpospolita* (supl. Plus/Minus), 6-7.3.2004.

³⁸ *Gazeta Wyborcza*, 20.12.2003.

which a subsequent agreement in the quadrangle of France, Germany, Spain and Poland will be required, and all of that in close cooperation with the EU Presidency³⁹.

At this point, however, a certain difficulty arises. The Polish-German relations have not been at their best for some time now, contrary to the expectations associated with the ostensibly ideational proximity of the ruling parties. On the German policy side, an assessment is now being made whether to seek agreement with Poland on some Union questions, or rather contain the risks originating with Poland. It seems that the German ruling camp is leaning towards the latter line of reasoning (also in the context of a likely change of government in Poland). This is not a good perspective⁴⁰, though without any doubt whatsoever there is a dearth of treating Poland like a partner on the German side.

17. The possibilities of compromise in the voting procedure may lead in a few directions:

- reform of the vote weighting system that has been followed since the birth of the Union (a variety of options),
- changes within the so-called double majority system (different thresholds, for instance twice 60% or twice 55%),
- postponement of the final decision, with the method of arriving at that decision being already determined (wherein only the qualified majority is rather the sole option) and the decision substance being outlined (retention of the Nice formula or the Convention-proposed formula with or without amendments): a certain pattern to follow is provided by art. 24 para. 4 of the draft Constitutional Treaty.

The virtues and vices of the Convention-proposed formula are overstated and so are those of the Nice procedure. But a compromise is feasible, if only the respective sides stop flexing their muscles. The outstanding problem is above all the lack of political will.

For many states (notably France and Germany) the double majority formula is the sole possible basis of compromise, though, let us not forget, it can have its mutations⁴¹. The political situation indicates that the key to compromise probably lies in the adoption of double majority as the general rule, whereas its possible adjustments and the manner and time of its entry into effect would be negotiable⁴². One should not rule out the adoption of a special procedure of decision-making in selected areas.

³⁹ After *Der Spiegel*, 19.1.2004 (Europa. Nur Chirac mauert): „In ersten Sondierungsgesprächen stellte der Ire die Bereitschaft der polnischen, spanischen und deutschen Regierungen fest, sich aufeinander zuzubewegen. Allein Frankreichs Präsident Jacques Chirac zeigte sich unnachgiebig“.

⁴⁰ Also within the Polish political class, Germany does not enjoy a particularly positive opinion at present. Some voice fears of a resurgent German domination. What is lacking is a concept coping with this situation.

⁴¹ For the latest signals from the German side, see *Frankfurter Allgemeine Sonntagszeitung*, 7.3.2004.

⁴² To this effect, see the Irish premier Ahern in his interview for *Der Spiegel* (ref. 33); also E. Brok, *Rzeczpospolita*, 6-7.3.2004.

The essence of compromise is that each side makes some concessions but does not capitulate. True, the unyieldingness of Poland and Spain before and after Brussels did not facilitate a solution, but some of the large states, too, rejected any talks of compromise and in advance accepted the fiasco. Hence, it is hard to assume that France and Germany were and still are right, and, on the other hand, that Poland and Spain have understood their mistake and are capitulating across the board. A compromise calls for agreeing on a common formula, allowing for co-responsibility and the political psychology aspect. It seems that the best of methods would be a temporary postponement of the Council voting decision, while outlining its substance and proposing a method that would enable the future adoption of the new voting procedure without the need to ratify such reform by the national parliaments.

The presentation of an eventual compromise in Poland should be preceded by a calm and public analysis of the various voting procedures and mark a turn-away from the black-and-white stereotypes. At the same time, we need in Poland a big educational work (now hardly anybody's concern) as the prerequisite for the acceptance of a compromise that in turn should be seen in the broader, long-term perspective of the Polish interests.

IV.

For the first time in a dozen or so years, Polish foreign policy has found itself in such an awkward predicament. 2003 was a difficult lesson in handling a twofold political context – transatlantic and European. The result is hardly satisfying.

The issue of the Council voting prompts a few more general conclusions.

The Nice voting system is not worth defending “to the last”, while the double-majority formula does not pose a threat that should be fought against whatever the price. Both formulas would require adjustments, but this has been blocked earlier by some member states.

In pursuing its policy, the Polish government revealed its negotiating weakness externally and the lack of courage domestically, whereas the opposition parties do not quite know which way to go in foreign policy. In effect, the government allowed to be drawn into a trap. At the same time, a negative role in blocking the Constitutional Treaty has been played by some EU partners, who succeeded in cornering the Polish government and who previously created a *fait accompli*, also with assistance from the Convention's President.

The EU enlargement increasingly brings to the agenda not only institutional questions, but also the issues of leadership and partnership. These problems will not disappear overnight, but the art of politics is about preventing them, if possible, and if not, it is about learning how to respond to them⁴³.

⁴³ J. Żakowski, Minister spraw słusznych i przegranych (*The minister of right and lost causes*), *Polityka*, no. 07/2004: „the Polish position expressed by Miller and Cimoszewicz is being read through the prism of presumed hidden intentions. This not only impedes the search for compromise on the Constitution, but also complicates Poland's status in the Union. We have developed a situation that encourages Brussels and

Poland's position and strength does not only stem from the population number and size of the country and it does not have to stem, either, from membership in the EU at any price. Poland needs to be strong with its economy, political thinking and wise politicians. It is only in this way that we can try to steer clear of the rocks of others' arrogance and our own political neuroses.

Poland's foreign policy, including towards the EU, is recently subject to dangerous turbulence and has become a stake in the domestic political struggle and a factor dividing Polish society – which is a new quality since 1989⁴⁴. The foreign policy dependence on the politically embattled internal scene threatens Poland with being sidelined, which is the biggest danger since the time when Poland freed itself from the Soviet communism. On the other hand, European policy is showing cracks that Warsaw has not caused. The course of events, also in respect of the Council voting incident, does not depend on Poland alone.

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many EU states to make decisions to our detriment. Unless we change this situation in the months ahead, we will be paying a growing price for it".

⁴⁴ P. Buras, *Dyplomacja czy szantaż? (Diplomacy or blackmail)*, *Rzeczpospolita*, 25.2.04: „The year 2003 has clearly demonstrated that the longtime consensus in Polish foreign policy is a thing of the past (...) The war in Iraq and the contention over Nice came at a time when the former objectives (membership in NATO and the EU) had been exhausted and no new objectives had yet been in place”.

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