



Area: Europe - ARI 66/2007

Date: 15/6/2007

Poland and Voting in the Council

Piotr Maciej Kaczyński *

Theme: Poland wants to reopen the debate about voting in the Council.

Summary: The Polish government has made public its desire to renegotiate the voting system in the Council. The main reason is that the voting system envisaged in the Constitutional Treaty implies a huge loss of voting power with respect to Germany and a break-up of the accession package which brought Poland to the EU. Whereas the previous government accepted the new voting system as a part of a global package, the new government considers that once the Constitutional Treaty is open for renegotiation, each and every member state has the right to place onto the agenda the elements it dislikes. Whereas this is not often clearly perceived from abroad, the Polish government has adopted a constructive position: rather than a 'Nice or die' position, it is demanding that new options be examined, discussed and eventually negotiated. One of them is the 'square root' formula, which offers some sort of middle point between the Nice system and the Constitutional Treaty, but there are other possibilities. But, first and foremost, the European Council should allow the issue to be included in the IGC's agenda. Not to do so would not only amount to repeating the mistakes made during the previous IGC negotiations but would open a question mark about the legitimacy of the EU's treaty-making processes and threaten the satisfactory conclusion and ratification of the new Treaty.

Analysis:

The Setting

There seems to be a wide consensus across the European elites that the Union requires a new Treaty with at least some changes in its institutional set-up. Most states back the Constitutional Treaty's institutional provisions. Issues such as the size of the Commission, the permanent Presidency of the Council or the granting of new powers to the European Parliament are not contested by any member state. The only two institutional novelties that do not meet the approval of all 27 member states are the Minister of Foreign Affairs' label and the new voting system in the Council, which is accepted by most member states but openly opposed by Poland and the Czech Republic. Since the earlier issue can and most likely will be resolved easily by changing the 'Minister' label into something more suitable, the latter issue attracts most of the attention.

Voting in the Council was a hot political issue during the Convention and the 2004 IGC. Then, Poland and Spain opposed proposals to change the Nice Treaty's voting system, based on weighted votes, to a new system which was predominantly based on the population criteria.¹ With the 2004 elections in Spain, the Madrid-Warsaw axis was

* *Institute of Public Affairs, Warsaw*

¹ Article I-25 - Definition of qualified majority within the European Council and the Council:

(1) A qualified majority shall be defined as at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union.

broken. Left alone, Poland accepted the modified Constitution voting model and on 29 October 2004 signed the draft Treaty together with the other member states. So, even if Warsaw agreed to the Constitutional model in 2004, it did so reluctantly.

The failure of the French and Dutch referendums in spring 2005 and the coming to power of new conservative governments in Warsaw and Berlin later that year had a major impact. The preceding left-wing Polish government signed the Constitutional Treaty without counting on the support of the domestic opposition. But following the 2005 elections the situation changed and both the ruling coalition (based on the conservative Law and Justice Party) and the main opposition party (the liberal-conservative Civic Union) are against the new voting system. Also, even if the new German government has not changed its position vis-à-vis the Constitution, Poland perceives it as less one-sided and more constructive towards other member countries' objections than its predecessor.

No Longer 'Nice or Die'

The first and most important point of reference for Poland in the upcoming negotiations is, once again, the Council voting system. But the similarity between the past and today overshadows some important differences. Some of the arguments used four years ago are repeated in the current context, yet there are important novelties in the Polish position in comparison with its previous one.

First, the 'Nice or die' motto, which symbolised the Polish position in the past, has gone. After acceding to power in 2005, the government had a twofold position concerning the European Constitution: on the one hand, the 'Constitutional Treaty was dead; hence there was nothing to talk about'; on the other hand, although the President made various public statements pointing out that there were a number of issues in the Constitution he did not like, he hardly referred to the Council's voting system. Therefore, during 2005 and 2006 there was almost no Warsaw perspective on the Constitution at large and the Council voting issue in particular. The 2003 'Nice or die' was replaced by a void.

In this context, the positions on EU institutional reform which Polish officials hold today are both new and old. The main difference between 2003 and 2007 is that the Polish government is no longer defensive, but offensive in its attitude towards voting in the Council. 'Nice or die' is no longer the Polish position's rallying cry. Back in 2003, Warsaw defended the status quo of the Nice Treaty provisions. In 2007, with President Lech Kaczynski agreeing the draft Constitution's text as a basis for further negotiations, Poland is not defending the status quo, ie, it is not defending Nice anymore but trying to modify the Constitution's provisions. Therefore its attitude can be described as 'offensive'.

Germany is the Point of Reference

For Poland, the key issue is its relative voting power vis-à-vis Germany. There have been a good number of studies on the transparency (or lack thereof) and effectiveness of the Nice system of voting, coalition-building potentials under the Constitutional model, the blocking minority principle, etc. However, the Nice Treaty is in force and none of the fears related to the Nice system of voting have actually materialised. Still, even if all these aspects are of great importance for Poland, there is one that is even more important. For

A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained.

- (2) By way of derogation from paragraph 1, when the Council does not act on a proposal from the Commission or from the Union Minister for Foreign Affairs, the qualified majority shall be defined as at least 72 % of the members of the Council, representing Member States comprising at least 65 % of the population of the Union.
- (3) Paragraphs 1 and 2 shall apply to the European Council when it is acting by a qualified majority.
- (4) Within the European Council, its President and the President of the Commission shall not take part in the vote.

Warsaw, the point of reference in the EU is Berlin, not Brussels, nor other member states, nor coalition-building potentials, etc.

Germany is the ultimate point of reference. Under the Treaty of Nice, Germany has 29 votes while Poland has 27. They are almost equal partners, as Polish votes constitute 93% of the number of German votes. But under the Constitutional model, the only important factor is population. Germany has around 82 million inhabitants, while only some 38 million people live in Poland. Therefore, under the Constitution, Polish votes are equal to 46% of Germany's votes. In comparison to Berlin, Warsaw loses more than half of its voting power. It cannot agree to this.

Obviously, the argument could be reversed. Germany can argue that with a population that is more than twice as large as Poland's, the Nice Treaty does not represent its population correctly. The (Polish) counterargument could be as follows: the Nice system of voting takes into account the population only to a limited degree. There is no mathematical formula that could objectively explain the Nice voting: therefore it is a result of political bargaining.

The Enlargement Package

Some of the top decision makers in Poland also mention another important argument in the discussion on the voting rights in the Council. The logic is as follows: enlargement is a process which includes the Nice Treaty, the 2002 Copenhagen negotiations, the 2003 Accession Treaty and EU referendum in Poland and, finally, 1 May 2004. This process has two solid legal documents, which together form an enlargement package. The current Polish leaders were never excited about the conditions under which Poland adhered to the Union, with accusations that the 2004 episode was the cheapest of all enlargements not being absent. Therefore, many see a balance between a bad Accession Treaty and a good and generous Nice Treaty. Changing the voting system thus means eliminating one of the best parts of the accession package which brought Poland into the Union.

Seen from Warsaw, the Nice Treaty was a great success, not a failure for European integration. It allowed the 2004 enlargement and it has all the legitimacy of having been signed and ratified by all member states. Therefore, no one in the EU-15 should ever expect a Polish politician to admit that Nice was a mistake. Also, most of the fears relating to the accession of new members in 2004 proved to be wrong. Yes, the Polish government signed a Constitutional Treaty in late 2004 which changed the voting rules. Yet it did so under massive pressure from the outside and was met by major opposition in Poland.

With the referendums in France and the Netherlands and the Polish elections, the year 2005 provided a new beginning. In Poland, the outgoing government had a feeling of 'owning' the Constitution; the new conservative rulers do not and, hence, do not consider themselves bound by its signing in 2004. They simply claim that the Constitutional Treaty 'was dead'. In this context, President Kaczynski's 2007 decision to base the negotiations of a new treaty on the text of the Constitutional Treaty was a big step forward. It means that the current government considers that the Nice voting system is history but, at the same time, wonders why the Constitutional provisions should prevail now that the Constitutional Treaty has been rejected. If the old Treaty is dead and a new Treaty is to be negotiated, this logically implies the possibility of introducing changes in many new areas, and also in the Council voting procedure.

The Representativeness Arguments

Somewhere between the Convention on the future of Europe and the signing of the Constitutional Treaty a wide consensus arose that the Constitutional voting model was more democratic and representative than the previous one. Certainly, the model based on the population principle is far simpler and more transparent. Yet the new system does not fully solve the representativeness issue. For example, one may ask why population-based voting better addresses the democratic deficit, if and when the 'European peoples' are represented in the European Parliament, not in the Council, which represents member states.

To keep a long discussion short, it seems evident that the Council and voting in the Council should have some population dimension. Yet the best way of addressing this challenge remains an open question. Hence the current Polish government's attempt to put the question of decision-making mechanisms on the new treaty negotiations' agenda.

Polish officials have proposed an alternative to the Constitutional model. The so-called 'square root formula' is not attractive or as transparent as the population census. Yet the Council proceedings are not about being attractive, they are about power. As already stated, the Polish government defines its power by referring to Germany's power.

The square root formula is not a new 'Nice or die' situation. Polish officials have repeated that the most important issue in the Polish position is the disagreement with the Constitutional model. Warsaw wants this model to be changed. What the new formula should be remains unanswered: it should be a compromise of 27 member states. The square root is, therefore, a proposal and one of many possible solutions. It is not, however, a final and definite position to defend –as 'Nice or die' once was–. The proposal also means that the Polish government is trying to think constructively, not just in an obstructive way. At least, so it claims.

The Square Root Formula

The term 'square root formula' is a mathematical concept ($\sqrt{\quad}$), in which the number of votes is calculated based on the population criterion. The idea dates back to 1946 (Lionel Penrose). In the European integration context, it was first taken up by the Swedish delegation during the IGC in 2000, and in 2004 by a pair of Polish mathematicians from Kraków. Square root models (there is more than one) are more beneficial than the double majority for middle-sized and small states and, conversely, less advantageous for the larger member states. For countries like Poland, the square root formula is useful because it reduces its voting gap with Germany.

Table 1. Voting Powers of EU Member States According to Different Models

	Nice Treaty		Square root ($\sqrt{\quad}$) of population		Constitutional Treaty	
	Weighting Votes	% of total	Votes as if in Nice ($\sqrt{\quad}$ of population*)	Change from Nice	In millions (2006)	% of total
Germany	29	8.4	33 (29)	+4	82.4	16.7
France	29	8.4	28 (24)	-1	63.0	12.8
UK	29	8.4	28 (24)	-1	60.4	12.3
Italy	29	8.4	28 (24)	-1	58.8	11.9
Spain	27	7.8	23 (20**)	-4	43.8	8.9
Poland	27	7.8	23 (20)	-4	38.2	7.7
Romania	14	4.1	17 (15)	+3	21.6	4.4
Netherlands	13	3.8	15 (13)	+2	16.3	3.3
Greece	12	3.5	12 (10)	0	11.1	2.3
Portugal	12	3.5	12 (10)	0	10.6	2.2
Belgium	12	3.5	12 (10)	0	10.5	2.1
Czech Rep.	12	3.5	12 (10)	0	10.2	2.1
Hungary	12	3.5	12 (10)	0	10.1	2.0
Sweden	10	2.9	10 (9)	0	9.0	1.8
Austria	10	2.9	10 (9)	0	8.3	1.7
Bulgaria	10	2.9	10 (9)	0	7.7	1.6
Denmark	7	2.0	8 (7)	+1	5.4	1.1
Slovakia	7	2.0	8 (7)	+1	5.4	1.1
Finland	7	2.0	8 (7)	+1	5.3	1.1
Ireland	7	2.0	7 (6)	0	4.2	0.9
Lithuania	7	2.0	7 (6)	0	3.4	0.7
Latvia	4	1.2	6 (5)	+2	2.3	0.5
Slovenia	4	1.2	4 (4)	0	2.0	0.4
Estonia	4	1.2	4 (4)	0	1.3	0.3
Cyprus	4	1.2	3 (3)	0	0.8	0.2
Luxembourg	4	1.2	2 (2)	-2	0.5	0.1
Malta	3	0.9	2 (2)	-1	0.4	0.1
EU-27	345	100	345 (299)		493.0	100

(*) The formula is: votes = $\sqrt{(P/1000)/10}$, where P is the population of a member state.

(**) The calculations based on the population data for 2003 (Eurostat). Had the calculations been based on 2006 figures, Spain would have 21 votes.

Source: the calculations for square root numbers (total of 299) are from *Making Europe Work. A Compromise Proposal on Voting in the Council*, College of Europe 2004, <http://www.coleurop.be/pdf/Making%20Europe%20Work.pdf>, p. 4. Population numbers are from Eurostat 2006.

The square root formula has some advantages. First, it is an objective way of determining the number of votes distributed among member states. Secondly, it is based on the population criterion. Third, even if this model does not fully address the question of why a national government should speak for its entire society, it allows for a certain separation of the politics of power from demographics. Fourth, it also softens the dramatic transition between the Nice and the Constitutional models. If the point of reference is Germany, the change from Nice to the Constitutional model is dramatic. Poland would lose more than half of its voting power compared with Germany. Any middle-ground solution is welcome. The square root is one way of solving this problem, yet not the only one. Any other possible solutions could also be a matter of discussion.

The major problem related to the Polish position is timing. In the aftermath of the French and Dutch referendums, the voting issue was never mentioned as something that needed reconsidering. Other issues were of greater importance: the social model and economic policies, the position of the Foreign Minister, climate change, immigration policy and energy security. However, voting in the Council has only been raised by Poland, supported by the Czech government.

Those who argue against re-opening voting in the Council say that the Union's new institutional setting is a very delicate matter and that the consensus is too fragile. Thus, they argue, opening the discussion on one front means that the entire institutional set-up will be once again open for discussion. But this argument does not stand close scrutiny: some member states are trying to prevent the Charter of Fundamental Rights from

becoming legally binding, other want to change the 'Foreign Minister' label, others want to increase the power of national parliaments, suppress references to the symbols of the EU or the primacy of EU law, etc. Why should these claims be allowed to enter the negotiation agenda and not the Polish ones?

Some people also argue that Warsaw is not interested in a new treaty, but just wants to postpone it. True or false, such an argument brings the European debate onto a different level of accusations based on emotions, not interests. This is the way to create distrust among European states, which might have far-reaching negative consequences.

On the other hand, Polish government officials have stated many times that Poland was opposed to the Council voting proceedings as described in the Constitutional Treaty. The potential use of the veto has been mentioned. Clearly, they cannot support the Constitutional model today without losing political face.

Possible Ways Out

Some Polish domestic commentators, however, point out that there is room for manoeuvre. First, some modifications in the Constitutional model are possible. However, this would require consent from the EU Presidency to re-open the institutional set-up discussions. This option seems unlikely for two reasons. For the moment, the Polish government admits it does not want to base new solutions on the Constitutional model. At the same time, most EU governments do not want to touch the Constitutional model. Yet since the option is not completely closed, let us explore it for a moment.

The first modification possible is to put a limit on the maximum population used by a member country in Council voting. This would mean that the German population used in the calculations for the majority would not exceed a given figure, such as 68 or 72 million. This seems difficult because it would restore the parity between the biggest EU nations (which was abandoned during the Constitutional process). Yet it was publicly presented by one of Poland's top opinion makers on European issues. Such a decision could have a positive side-effect in the context of a future Turkish accession.

Another option is to redefine the blocking minority. Currently, the blocking minority is formed by at least four states. If this were to be raised to five or six member states, the Polish position would be stronger. Also, lowering the blocking minority threshold (from the current 35% to 30%) or, conversely, raising the population majority threshold (ie, from 65% to 72%) could also satisfy Polish arguments.

Outside the voting system, but within the institutional changes, other ideas have recently been presented: for instance, in return for agreeing to the Constitutional double majority, Poland would gain a few seats in the European Parliament. Another bargaining option could be the extension of qualified majority voting (QMV) to certain areas, such as police and justice cooperation, which Poland opposes.

The second possible option is a trade-off by which the Polish government drops its opposition to double majority voting in return for benefits in other areas. This is a preferable solution for the EU Presidency; therefore it cannot be fully excluded. At the moment, however, the Polish government rejects the possibility. Still, what arguments could the EU negotiators use vis-à-vis Poland? Energy security, even if it is so dear to Warsaw, does not seem to be the right issue because Polish thinking is that it is in the interests of the entire Union, not only Poland's, to have a deeper common energy policy. Therefore, the Polish government will be reluctant to consider any link between energy issues and double majority voting.

Other potential concessions to Poland could be found within the fields of regional policy, enlargement, military capacity and relations with Russia and the US. Despite its 7.3% GDP growth in the first quarter of 2007, EU funds are vital for Poland. It will be of great importance for Poland that it remains a key recipient of European money after 2013 even if the Common Agricultural Policy (CAP) is modified. As regards enlargement, the Polish Foreign Minister Anna Fotyga recently reaffirmed that Ukrainian EU membership is a strategic objective of Poland's foreign policy. The Polish government has not explicitly stated that it would link Ukrainian membership with an agreement on Treaty reform, but Poland will try to ensure that the new Treaty maintains the door open to future enlargement, which means that this might also provide some scope for negotiation.

The 'Eastern question' brings us closer to Moscow. A unified EU position on Russia, which would encompass the interests of Poland and of other new member countries, also offers a certain potential. The recent EU-Russia summit proved that the Union can be united vis-à-vis Russia to protect a member state's interests. If this policy were to continue, it would be very welcome in Warsaw. Therefore, the Polish policy of 'keeping the Russians out of Europe' is certainly an option. Another could be described as 'keeping the Americans in Europe'. Hence, a broad pan-European consensus that transatlantic relations are of primary importance for the EU would also help to ease Poland's position on the future of Treaty reform.

Conclusions: It will not be easy to reach a consensus on EU Treaty reform. If there is to be an agreement, both those who oppose the Constitution and those who support it have to make concessions. To some degree, the March 2007 Berlin Declaration has already proved that the will, dedication and trust exist. One thing seems clear: the consensus-building process needs to be de-emotionalised. The argument that the Constitution is dead and that a new Treaty is thus necessary now seems to be well established. On the other hand, a majority of member states have adopted the Constitution; so the new Treaty should not differ from it too much. Europe's decision makers need to agree that the basis for negotiation should be the draft text of the Constitutional Treaty. They should accept that every member state has the right to put on the agenda the issues it is concerned about. Then, they should leave the final solution to the dynamics of negotiation, with a view to allowing a consensus to arise. This is after all what an Intergovernmental Conference is all about. Doing otherwise would imply repeating the mistakes of the past, thereby threatening both the satisfactory conclusion of the Treaty negotiations and the ratification of the resulting Treaty.

Piotr Maciej Kaczyński
Institute of Public Affairs, Warsaw