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Reform of the European Union

The Polish perspective¹

Executive summary

The suspended ratification of the constitutional treaty aggravates the uncertain condition, in which the European Union, found itself after the 2004 enlargement. The Union does have a solid treaty basis that allows it to function; in the long run, however, it needs institutional reform. One must expect that certain member states are going to insist so strongly on reviving the constitutional treaty, that it will no longer be possible to stick to the present arrangements or to modify them superficially. It should also be acknowledged that the idea of further enlargement of the EU has ceased to be a major factor influencing the discussions concerning the constitutional treaty. Certain EU countries are refusing to accept further enlargements without national referenda; which may render any further accessions impossible for a long period of time. The recent debate on “EU’s absorption/integration capacity” may be

¹ Executive summary of a report prepared by Natolin European Centre and published in a special issue of “Nowa Europa-Przegląd Natoliński”. A full Polish version of the report can be downloaded from http://www.natolin.edu.pl/publikacje_ne.html

another indication of such trend. This means that the link between further enlargement and further integration, which used to be central to all debates until 2004, is no longer underpinning the debate on the constitutional treaty.

Institutional reforms are not the only factor that will affect the future of the EU; it will also be strongly influenced by the review of the EU budget and policies. One must not forget that the constitutional treaty debate may coincide with the midterm budget review in 2008/2009. To some extent, budgetary issues will thus determine positions that the member states will take in the debate concerning the future of the EU– especially that preparations for the budget review are already under way,.. The mid-term review will be particularly important for Poland as a beneficiary of the so-called flanking of the EU (i.e. the agricultural and the cohesion policies).

It should remain a priority for Poland to try to tackle one fundamental problem, namely that of the distribution of power within the Council. This does not mean that other reforms introduced by the treaty should be completely disregarded. One should pay special attention to problems such as: the relation between the Commission and the Parliament, the role of the Minister of Foreign Affairs and the broadening of the solidarity clause.

I. Social attitudes towards the idea of the constitutional treaty in Poland

The majority of Poles (68%) have a positive attitude towards the idea of a European constitution. They perceive it as a lasting legal foundation allowing the enlarged European Union to function. Their support, however, must not be identified with support for the constitutional treaty as such, for the concrete contents of the treaty are not very well known in Poland.

Like citizens of other member states, Poles show a rather modest interest in the reform of EU's institutions or the first part of the constitutional treaty. Their attention tends to focus on particular Union policies and their further evolution – this includes such issues as subventions, security, energy, migration, environment, unemployment etc.

Poles realize that more efficient structures are necessary to organize integration between member states; on the other hand, though, they are afraid that Poland might lose some of

its independence and became dominated by the more powerful states. This is probably why such ideas as limiting the number of commissioners, appointing the Minister of Foreign Affairs and the President of the European Council, are not very popular in Poland. As far as the problem of constitutional treaty is concerned, the attitudes are on the whole moderate and conciliatory: 60% of the Poles believe that both sides should yield a little. 56% also think that European integration should keep the present pace. With this moderate approach, most Poles believe that in case of further difficulties with the ratification of the treaty, a new treaty ought to be negotiated (44% in favor and 22% against).

If Poland were to organize a national referendum on the present constitutional treaty, it will probably be very difficult to mobilize the population enough for the turnout to reach the necessary 50%. It is not clear, either, whether the supporters of the treaty would outweigh its opponents.

II. Possible scenarios of dealing with the constitution problem

In the present circumstances, the idea of adopting the constitutional treaty as it was formulated in 2004 must be considered unrealistic. Adopting it by some of the member states and thus deepening the integration in a narrower circle does not seem a very likely prospect, either.

There are three possible scenarios. One would consist in drafting a mini-treaty which would in fact include most of the provisions from the first part of the present one. It would contain the institutional changes unfavorable to Poland, concerning the distribution of votes in the Council. This mini-treaty probably would not have a preamble, but it could include extra protocols, concerning e.g. the social character of Europe.

Another option, seemingly the most favorable one for Poland, would be to pick the least controversial elements of the constitutional treaty and accept them through inter-institutional agreements between member states and EU institutions. This would allow for the circumvention of the problem of ratification. Member states would introduce particular solutions according to the actual needs of the Union. The risk involved in such

an approach would be that these changes might produce an incoherent result, rendering the Union ineffective and unpredictable.

Finally, there is the possibility of working up a completely new treaty that would become the founding document of the united Europe. It would no doubt have more legitimacy, having been prepared with equal and effective participation of the new member states, including Rumania and Bulgaria.

III. Institutional reform

The first part of the constitutional treaty includes institutional changes. So far, the efforts concerning the ratification of the treaty have tended to concentrate on those changes, while the reform of specific Union policies clearly did not constitute a priority. The focus on institutional reform has often been explained by the deep crisis form which the enlarged EU allegedly suffers. A new system of vote share-out will not solve all of the inefficiencies of the whole decision-making process. Those problems are caused by the sheer growing number of member states and by changes in the EU's political atmosphere. The debate on institutional reform should therefore put more stress on a) the way institutions have been functioning after 2004; b) the real needs following from the evolution of specific EU policies.

The constitutional treaty introduces many significant reforms, allowing the European Union to function more efficiently. The main advantage is that it consolidates the existing treaties and simplifies the EU's institutional system by limiting the number of decision-making procedures. One should also support those changes which strengthen the position of national parliaments in the process of European legislation, although it must be remembered that their role depends mainly on national arrangements and political cultures of particular member states.

The evaluation of some institutional reforms entailed in the treaty depends on one's general beliefs about the future of the integration project. Those in favor of the community method, as well as those who share the opinion that the relatively weak states should be seeking support in supranational institutions, will be in favor of such reforms as the increase of the European Parliament's prerogatives or more frequent recourse to

voting by qualified majority. Those in favor of the intergovernmental method may have a different opinion. The European Parliament tends to side with the weaker member states and to defend the common market orthodoxy, which is something Poland should support. Sometimes, however, it becomes dominated by advocates of anachronistic economic solutions.

Some decisions in the treaty are hard to evaluate unequivocally – it is, for instance, difficult to predict in what ways appointing a full-time president of the European Council is going to affect the future of the decision-making system in the EU. Is it going to strengthen the community method, or quite the contrary? Won't the role of the president be too dependant on the individual character of whoever happens to be holding the office? Doesn't this make the EU's institutional system more unpredictable?

There is no doubt that certain proposals of the treaty do not go hand in hand with the Poland's national interest. These include especially the double majority voting system, which changes the present balance of power within the Council and weakens the power of coalitions whose meaning for Polish interests (such as the liberalization of services in the EU, the Eastern policy and the structural policy) is crucial. So far, the Council's performance in the enlarged Union does not justify questioning the Nice system. It is, however, a different question whether the Nice system is politically fair. We must consider whether there is still enough time left to keep searching for a compromise based on a different formula (such as, for instance, a system based on the square root of the population). In this respect, though, Poland cannot be acting all by itself: if our attempts are to be effective, we must present our suggestions to other member states and seek their support.

The constitutional treaty changes the system of EU presidency, passing it every time to a group of three states and removing the foreign affairs and the activities of the European Council from the remit of its prerogatives. It is a questionable solution because the presidency has been an extra instrument allowing member states to influence the evolution in which the EU develops. Another element that may raise doubts is the growing politicization of the Commission, which may eventually weaken its role as an independent arbiter. The European Union above all needs a strong European

Commission. From this perspective, it seems a dubious idea that the president of the Commission should be elected on the basis of the majority of existing within the European Parliament. As for the members of the Commission, a choice should be made between equal rotation and the giving the president a free hand in choosing the commissioners.

It is becoming questionable, to what extent the institutional changes are actually necessitated by the prospect of further enlargement. Countries such as Croatia can without doubt be accepted as new members without the constitutional treaty. Admitting large countries like Ukraine or Turkey, however, will not be possible without institutional reform.

IV. Common Security and Defence Policy

This policy is the one least institutionalized by the constitutional treaty. Most of its formulas are already put into use outside the framework of the treaty, simply as a result of agreement between member states. Hence, further cooperation in this sphere is being initiated from below (e.g. the organizing of Battle Groups and the European Arms Agency) and thus isn't deeply affected by the constitutional crisis of the Union.

The constitutional treaty does not make the EU a defense union. The mutual defense clause, which applies to military aggressions on EU territory, is therefore a dead clause and should be eliminated. We should stop looking at EU's military aspirations through the NATO lens (i.e. making the development of the European Security and Defense Policy conditional on the situation inside the NATO) and focus on defending its interests within the ESDP. This means remaining involved in supporting the EU, organizing Battle Groups and participating in European Arms Agency's projects.

As far as the member states' actual security is concerned, the most important element is the clause of solidarity, which has already been applied in practice after the Madrid bombings. The way it is defined by the constitutional treaty, however, it only applies to terrorist threats, natural or man-made disasters. The Union needs a broader definition of the clause, so that it would include threats to member states' energetic security.

V. Common Foreign and Security Policy

The constitutional treaty introduces a number of fundamental changes which affect directly the functioning of the Common Foreign and Security Policy. It eliminates national presidencies from the realm of foreign policy, which obviously means limiting the national governments' role in determining the foreign policy of the Union as a whole. The change means a disadvantage to the smallest EU countries as well as for the new member states.

Instead, the treaty gives the EU a Minister of Foreign Affairs, whose office is to be situated in the Commission and in the Council, and equipped with a powerful instrument, namely the European External Action Service. This change would probably weaken the Commission's role in foreign affairs, while seriously contributing to the europeanization of big member states' foreign policies. The newly established European External Action Service may eventually become a new, autonomous political player with both the knowledge and skills to influence the EU's decisions and actions concerning foreign policy. The Service's political position will be the crucial element of its role. The optimal solution would be to situate the Service as close as possible to the Commission, both institutionally and financially. Although it is in everyone's interest to keep a strong position within the Council, it seems necessary to defend such institutional solutions that will enable the Union to rely on the support of a strong European Commission.

It can be expected that establishing the new minister's office and the Service will guarantee a greater continuity of the EU's foreign policy. It is probably for the same reason that the treaty proposes appointing a president of the European Council. It does not seem reasonable, however, to give the president the prerogatives to represent the EU abroad, as they will naturally intersect with his/her activities as a minister. The president's function should be thought through once again; perhaps his/her role should be limited to activities directly linked to the preparation of the European Council's meetings.

The introduction of a new minister and a president does not change the intergovernmental nature of the common foreign and security policy as it functions nowadays. It is still impossible for one member state to be outvoted by the others. What

does change is the institutional order of decision making. So far, foreign affairs have been the member states' domain. Now two new players would appear: the Minister of Foreign Affairs and the European External Action Service on the one hand, and the president on the other – both would certainly try to gain more autonomy.

VI. Area of Freedom, Security and Justice

It seems clear that since the enlargement, the tendency of EU's internal security policy has been to become more fragmented. Groups of member states are beginning to cooperate more closely outside the Union treaty structures. Their explanation is that the existing institutional and legal frameworks are not sufficient; the main factors, however, are lack of mutual trust and divergent national interests. There is thus reason to worry that the constitutional treaty can change this tendency only to a limited extent.

No matter what fate awaits the treaty, the option before the Union are as follows

- 1) cooperating selectively outside the treaty,
- 2) supporting solutions that favor closer cooperation between governments, and finally,
- 3) opting for a more integrated community (the so-called passarelle clause, which allows introducing new decision-making rules in relation to issues included in the 3rd Pillar). This means that particular spheres of cooperation can be communalized and that in some specific cases, the decision-making procedure can be changed to a majority vote.

Since there are other member states, too, which are cautious about introducing the community method within the internal security area by the passarelle mechanism, no one should rule out a more tactical approach to the issue, without excluding the possibility of applying this mechanism in special situations (e.g. a common threat to the member states), and in such areas as fighting terrorism or police cooperation. In some circumstances, this solution would allow switching the decision-making mechanism from the time-consuming unanimous vote rule to the swifter majority vote.

Conclusion:

The constitutional treaty is in no way a revolutionary document. Its significance must not be overestimated nor gain mythical status. There is no doubt that the European Union needs a treaty reform. However, most of the problems the EU is facing will not be solved by the constitutional treaty. These problems have to do with the growing number of member states as well as the growing selfishness of large member states, and they will not be resolved by any single institutional recipe.

The constitutional treaty introduces many significant reforms which make the EU more effective. Many of its provisions, however, can be subject to different interpretation, due to both various views and the unclear nature of some of the wording. The constitutional treaty as presented for ratification suffers from a number of major weaknesses. First of all, the arrangements of the treaty do not constitute a sufficient answer to new challenges (such as globalization, or EU's ambitions as an international political actor) or recent experiences stemming from the functioning of the enlarged Union. There is serious risk that some of the arrangements (the institutional ones, for instance) are in fact ideological in nature and do not reflect the actual needs of the enlarged European Union. It gives excessive political preference to large member states, thus threatening the internal balance within the Council. Some of the solutions may lead to an excessive politicization of the supranational institutions of the EU. This may eventually make the entire system of the European Union much less predictable and more vulnerable to internal competence clashes.

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