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**Opinion on the formula of making decisions in the Council
of the European Union by qualified majority***

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1. Establishment of a formula of making decisions by qualified majority in the Council has been, ever since the inception of the Communities, a difficult political compromise, entailing a balance of interests between small, medium and large countries. Until the time when the Nice Treaty entered into force, all the decisions in this mode were taken exclusively on the basis of the weighted votes. This has always been a source of considerable turbulences during the successive waves of enlargements of the EC/EU, because it entailed a new division of votes as well as fixing of thresholds necessary for taking or blocking decisions. In the course of work leading to the Nice Treaty a new formula was pondered. Its objective was to reflect to a greater extent the potential of the Member States. The tests introduced by the Nice Treaty of the majority of states (securing interests of the small states) and demographic majority (reflecting the potential of the bigger states) was still accompanied by the test of the weighted votes. It was only the Constitutional Treaty which established exclusively the so-called double majority, namely the formula of reaching decisions in the Council by qualified majority on the basis of a test of majority of states and demographic majority.

2. The formula put forward in the Constitutional Treaty guaranteed Poland the decision-making potential comparable to the one established by the Treaty of Nice. This formula differentiated the group of 'big' member states and particularly Germany came to occupy the first place according to its demographic potential. The remaining 'big' member states accepted this situation. When it comes to the justifiable objections of Poland which were voiced with regard to the original proposal of the Convention, they were largely addressed by raising both thresholds, clarification of the definition of the blocking minority and attachment of the so-called safeguard clause. The formula of making decisions by qualified majority in the Council proposed in the final text of the Constitutional Treaty is accepted by an overwhelming

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majority of the Member States (among them, needless to say, by the eighteen countries which have ratified the Treaty) and is envisaged to enter into the the new revision treaty.

3. The transfer of the institutional package (included in the Constitutional Treaty) to the new revision treaty obviously does not preclude further amendments in the so-called double majority rule. The proposal announced by the Polish government to substitute demographic test with the weighted votes on the basis of the square root of the population of the Member States (so-called method of equal clout) failed to convince nearly all the other countries. The reasons for that are manifold:

- The method of the 'square root' has been known in the theory of international organisations for a few decades as a way of measuring decision-making power of states in the international organisations. It has not been applied in practice- to the best of authors' knowledge- mainly for its failure to reflect the political nature of the contract which is a pre-condition of agreeing a formula of taking decisions by qualified majority;
- In case of the decision-making process in the EU this shortcoming is clearly noticeable when analysing the procedure of co-decision (article 251 of the TEC), in which the EU Council decides by qualified majority, however the European Parliament is a co-legislator (the 'square root' method does not take into account allocation of seats in the European Parliament as an important part of the decision-making power); this method also fails to take into account some circumstances from the past- like for instance the fact that the 'big' Members gave up their 'second' Commissioners for the benefit of the enlargement and explicitly required political compensation in other fields (what comes into play is precisely the formula of making decisions and allocation of seats in the European Parliament);
- The political objective of the proposal is unclear: Poland only marginally consolidates its decision-making position as a result of its adoption, while the position of other big EU Member States, in particular Germany, would be weakened. Group of 'big' Members, to which Poland belongs, has therefore fundamental difficulties with understanding the rationale of Polish proposal;
- The "square root" formula itself is also difficult in the political perception. It was considered during the IGC in 2000 and early in 2004 during 2003/2004 IGC but it was 'quietly' abandoned.

To conclude, the formula of the 'square root' has little chances to succeed. For that reason it should be rather treated as a point of departure for the modification of the so-called double majority in the formula proposed by the Constitutional Treaty. Treating the 'square root' formula as *conditio sin qua*



non of finishing work on the new revision treaty might, in all likelihood, lead to the failure of the entire exercise.

4. The above-mentioned circumstances should be also taken into account because withing the so-called double majority proposed by the Constitutional Treaty there are numerous important areas in which the status of Poland should be reinforced. Among them there are in particular the following:

- The modification of thresholds in double majority- position of Poland is consolidated with lowering the threshold of countries and increasing the threshold of population- as well as adjustment of the definition of population conducive to Poland's interests;
- Possible widening of the number of areas in which, due to the 'sensitivity' for Poland's interests, when making decisions in the Council by qualified majority the test of Member States would be strenghtened (in the Constitutional Treaty the test of 'superqualified majority' is 72 % compared to the ordinary test, equivalent of 55% plus one state);
- Modification of the so-called safeguard clause (proposed in the declaration number 5 to the Constitutional Treaty) through, for instance, a sort of its permanent fixing;
- Agreement on the top-level of the demographic potential (the most often mentioned figure is 70 million) which would be taken into account for the demographic test. This proposal might be approved owing to the overall demographic trend in 'big' Member States. Irrespective of that, it would have considerable impact upon possible opening the prospect for future accession of Turkey;
- Resumption of the debate on the allocation of seats in the European Parliament and an increase in the number of the Polish MEPs. This option should not be disregarded, because the role of the European Parliament constantly grows (in particular within the co-decision procedure, where the Council decides by qualified majority). Regardless of that, it is a feasible option.

5. As it appears, the central, political point of reference of the proposal made by the Polish government based on the idea of 'square root' is an attempt to weaken the position of Germany in the EU decision-making process. Such an approach should be put to verification: Germany is an efficient and democratic state, one of founding members of the Communities. It should have an opportunity to take an adequate place in the decision-making process of the European Union. One must not forget, however - and such was the intention of the fathers of European integration- that Germany remains linked with other European countries through the membership in the European Communities and the Union. It is subjected to the community method and if other steps fail- within the field of applicability



of the Community legislation- Germany must obey the independent control of the Community courts. Lack of reform of the legal foundations of the Union may entail a weakening of the integration ties, which in turn might lead to the temptations of different nature. Therefore, it is in the interest of Poland to preserve good relations with a group of 'big' Member States, in particular Germany, as a neighbouring country, active in the region and showing, until now, understanding for the new Member States. A common denominator of such relationship should be to increase cohesion and efficiency of the European Union.