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Germany's Stance on the EU Treaty Reform in the Years 2005–2009

Introductory remarks

The objective of this paper is to analyse the position of the German Government on Treaty reform of the Union in 2005–2009. The first part of the article analyses Germany's position on the constitutional crisis of the European Union. The second part describes the activities of the Federal Government during the German EU Presidency. The third part of the work reconstructs the German attitude to the 2007 Intergovernmental Conference and the content of the Treaty of Lisbon of 13 December 2007.¹

1. Germany's Run-Up to the Presidency of the European Union during the Constitutional Crisis

The ratification of the Constitutional Treaty encountered unexpected difficulties already in 2005, when it was rejected by referendum first in France (29 May), and then in the Netherlands (1 June) by citizens of the said countries. The negative outcomes of the referenda in France and the Netherlands triggered a serious political crisis in the European Union called the constitutional crisis. In this situation, heads of state or government of the EU Member States adopted on 18 June 2005 in Brussels a declaration stating that the rejection of the Treaty by France and the Netherlands requires introduction of a “period of reflection.” The said period, which was to take one year, was intended to serve for launching in each Member State a broad debate on the Treaty ratification process with citizens, civil society, social partners, national parliaments and political parties (EC. Declaration HSG 16–17.06.2005, pp. 1–2; Węc, 2006a).

A discussion on this subject was continued at the EC meeting in Brussels of 15–16 June 2006. The EC appreciated the “period of reflection” at the time and called upon the European Union to undertake a two-pronged action aiming to restore public confidence in the EU. First, it would require exploiting possibilities offered by treaties existing at the time for consolidating national parliaments in their position in the Union, introducing changes in immigration policy and creating grounds for common energy policy. Second, steps should be taken simultaneously to overcome the constitutional crisis and to conclude the system reform of the EU. Consequently, the

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EC decided that in the first half of 2007 the German Presidency, having conducted thorough consultations with the Member States, will present before the EC a report involving an assessment of the debate so far on the future of the Constitutional Treaty and an analysis of further developments. On this basis, the EC was to decide on “how to continue the reform process [...] during the second semester of 2008 at the latest”, i.e. under the French Presidency (EC. Conclusions, 15/16.06.2006, p. 17). Although the meeting participants did not formally extend the “period of reflection,” it became clear that fundamental decisions on the EU Treaty reform were postponed until the second half of 2008.

Immediately after the negative outcomes of the referenda in France and the Netherlands, the German government, as well as governments of Austria, Ireland, Spain, Estonia and Lithuania, joined a small group of countries supporting the adoption of the Constitutional Treaty without any major modifications (Thalmaier, 2006, pp. 4–10). Its stance on this case did not change even when the CDU/CSU/SPD grand coalition came to power in Germany in November 2005, and remained fundamentally the same until 1 January 2007, when the Federal Republic of Germany took over the Presidency of the EU. However, in the years 2004–2005 highly important changes occurred in German European policy. After the greatest enlargement in the history of the European Union of 2004 and the unsuccessful constitutional referenda in France and the Netherlands that followed, the strategy earlier employed in German European policy, which considered deepening and extending the scope of integration implemented within the EU as two sides of the same coin, was replaced with a strategy aiming to consolidate the Union both internally and externally. The exhaustion of the European Union’s capacity for integration was already referred to in 2005 by Angela Merkel, leader of the parliamentary faction CDU/CSU and the candidate of Christian democratic parties for chancellor in the upcoming parliamentary elections. In her opinion, the EU reached its limits while implementing the enlargement strategy so far. For that very reason, Merkel proposed that the EU first delivers on its promise of accession made to Bulgaria, Romania and Croatia, and then develops an alternative political strategy. Moreover, she spoke in favour of changes in the distribution of competences between the EU and the Member States proposed by the Constitutional Treaty by means of establishing a mechanism that would allow competences to be conferred back upon the Member States (PAP, 23.06.2005).

From the perspective of Germany, the system reform envisaged by the Constitutional Treaty played a highly important role in the strategy of internal and external consolidation of the EU. It was one of the reasons why the German government was so explicitly keen to ensure that the Treaty enters into force. In a new coalition agreement of 11 November 2005, the CDU/CSU/SPD supported, among others, “continuation of the ratification of the European Constitutional Treaty in the first half of 2006, which shall be given a new impulse under the German Presidency in the first half of 2007.” The coalition also proposed further systemic changes in the European Union that were even to go beyond the provisions of the Constitutional Treaty. The said changes were to take the form of regulations ensuring that competences of the Member States are not undermined (*Aushöhlung*) by the European Union and that the intergovernmental architecture within the EU would be strengthened by encouraging the EC to “employ

its right to prompt (*aufzufordern*) the European Commission in individual cases to withdraw its draft legislative acts,” and even the withdrawal of “existing legislative provisions, if needed” (CDU/CSU/SPD-Koalitionsvertrag, 11.11.2005, pp. 147–151). Consequently, on 30 November 2005, newly-appointed Chancellor Angela Merkel in the political platform declaration of the CDU/CSU/SPD coalition government submitted to the Bundestag ensured that her cabinet was substantially interested in “the success of the Constitutional Treaty, even if today it seems somewhat illusory” (DB Plenarprotokoll 16/4, p. 88). Justifying her stance in this matter, Merkel clearly stated that the Treaty will considerably strengthen the identity of the European Union, an element “Europe cannot do without”, referring to obligations of the Christian democratic parties and social democrats arising from the coalition agreement.

On 11 May 2006, Merkel specified for the first time in a government announcement on European policy the concept of internal and external consolidation (*Verfasstheit*) of the European Union. Considering the negative outcomes of the referenda in France and the Netherlands as a “step backwards” in the treaty reform process, the Chancellor of Germany stressed once again that the European Union “strictly needs a Constitutional Treaty,” as it would ensure for the EU a full capability to act. In this context, she drew attention to the provisions of the Treaty that consolidated the EU from inside and outside, namely: extension of the EU axiology, strict distribution of competences between the EU and the Member States, increased competences of national parliaments in the EU legislative process, strengthened common foreign and security policy, as well as changes in the institutional system, particularly aiming at establishing the office of the Foreign Minister of the EU, providing the EP with powers to elect the President of the European Commission, determining the new composition of the European Commission and introducing double majority in the decision-making in the Council of Ministers. Nevertheless, the Chancellor of Germany did not hide that the inclusion of a reference to the Christian roots of the Europeans to the Constitutional Treaty was a matter of high importance. Moreover, she suggested that the provisions of Constitutional Treaty specifying categories of competence distributed between the EU and the Member States could be amended. This would consist in, i.a. creating formal possibilities for redelegating to the Member States competences in some policies subject at the time to the category of shared competences. However, in each case this would take place only if seen as beneficial for the EU citizens, their social security, employment, as well as internal and external security. At the same time, Merkel stated reassuringly, to a great surprise, “we urgently need a Constitutional Treaty to make Europe capable to act. This issue shall be further addressed by the German Presidency” (DB Plenarprotokoll 16/35, pp. 2892–2895). It was a clear declaration, though, that during its EU Presidency in the first half of 2007, the German government will focus on settling the future of the Constitutional Treaty.

On 22 September 2006, in her speech delivered in the Bertelsmann Foundation at the opening of an international forum titled *The Future of the European Union*, Chancellor Merkel specified five priorities governments of the Member States should focus on in the coming years, namely: further development of axiology, enhanced integration, extended internal cohesion, the challenges of globalisation and the Constitution of the EU. According to Merkel, the development of the Union’s axiological founda-

tion should consist in, among others, creating conditions for an intercultural dialogue, including an inter-religious dialogue. Consequently, this would require resumption of discussions on the inclusion of the *Invocatio Dei* to the preamble of the Constitutional Treaty. In this respect, the Chancellor stated that the German Presidency will refer to this issue in a special declaration of the EU to be signed by heads of state or government on 25 March 2007 on the occasion of the fiftieth anniversary of the Treaties of Rome (Merkel, 22.09.2006, pp. 3–10).²

In Merkel's opinion, the enhanced integration and internal consolidation of the European Union should take precedence over the Union's enlargement strategy, as a simultaneous implementation of both these objectives was unrealistic from the point of view of the German government, especially after the greatest enlargement in the history of the European Union of 1 May 2004 and in the face of the accession of Romania and Bulgaria planned for 1 January 2007. Thus, the strategy of simultaneous enhancement and enlargement of the EU so far required the above-mentioned strategy of the internal and external consolidation of the EU. The programme of internal consolidation envisaged by the Constitutional Treaty was aimed to improve the cohesion of the European Union. However, the internal cohesion of the EU was to be consistently developed by, i.a. completing the internal market, research and technological development, addressing the issue of excessive bureaucracy, and strengthening parliamentary control in the EU. One of the major challenges facing the European Union was also the globalisation process. In order to be recognised as an important actor on the international arena, the EU had to become consolidated also externally. A programme for such consolidation was provided by the Constitutional Treaty, involving, i.a. establishment of a new office of the Foreign Minister of the EU, enhancement of cooperation between the EU Member States within international organisations. However, the external consolidation of the EU would require further strengthening, primarily by means of consistently extending the scope of the common foreign and security policy of the EU. Therefore, the analysed Merkel's speech, as in the case with her *exposé* of 11 May 2006, clearly exposed the relation between the internal and external consolidation of the EU and its system reform, codified in the Constitutional Treaty. As in the case of the mentioned *exposé*, the Chancellor of Germany supported rather the conclusion that the internal and external consolidation of the European Union should be conditioned on completing the system reform of the EU. For that very reason, Merkel unequivocally advocated that the Constitutional Treaty ought to be retained in its current form (Węc, 2016, pp. 54–55).

When preparing the action programme for its EU Presidency in the first half of 2007, the German government was well aware of the challenges to be faced. In a working document titled *Auswärtiges Amt*, which served as the basis for developing the said programme, the focus was put on the obligation of the federal government to elaborate "a proposal for further action with regard to the Constitution that would be acceptable" for every EU Member State, particularly France and the Netherlands. This

² Merkel's speech largely drew on the so-called Plan D of the European Commission (democracy, dialogue and discussion) of 13 October 2005, the latter's contribution to the debate on the future of the Constitutional Treaty (Commission, Communication COM (2005) 494, pp. 1–3; Hobe 2007, pp. 73–74).

was caused by the need to take into consideration opinions of the governments of the said countries that for obvious reasons categorically opposed re-submission of same treaty for ratification. Nevertheless, the German government assumed the Member States that did not “ratify the treaty cannot impose their position on those that did.” Moreover, it opposed any incomplete solutions, i.e. conducting a system reform of the EU based on treaties existing at the time or even concluding a new revision treaty, the latter solution being supported by increasingly more politicians of the governments of the EU Member States over the year 2006 (Silberberg, 4.10.2006, p. 1). Thus, though Chancellor Merkel, as was the case with Prime Minister of Spain Zapatero and Prime Minister of Ireland Berti Ahern, unequivocally supported over the year the ratification of the Constitutional Treaty in a barely modified form and the continuation of the ratification process, French Minister of the Interior and future French presidential candidate Nicolas Sarkozy demanded already in January 2006 that a mini treaty limited to provisions of the constitutional Part I be arranged. Furthermore, in September 2006, he stated that the Constitutional Treaty was dead and further specified his former proposal to conclude a mini treaty. In April 2006 heads of the French Ministry of Foreign and European Affairs sent to the President of the Austrian Presidency a note involving plans to address the constitutional crisis based on treaties in force. At the same time, Prime Minister of the Netherlands Jan Peter Balkenende demanded that the Member States conclude a new revision treaty, which would serve as an alternative for the Constitutional Treaty. The signing of a revision treaty was also supported by British Prime Minister Blair and Foreign Minister of Italy Massimo D’Alema, though the latter made this decision dependent on Parts I and II of the Constitutional Treaty (at least) being included to the revision treaty (Thalmaier, 2006, pp. 1–12). Considering the strongly diverging stances, Merkel’s cabinet stood out among governments of the EU Member States owing to its rigorous consistency in assessing the Constitutional Treaty, yet it also limited its very own room for manoeuvre required to make the future compromise, which could be crucial given the fact that Germany was to assume the Presidency of the European Union.

On 30 November 2006, the federal government submitted a programme of the German Presidency titled *Europe – Succeeding together*. The said programme specified four priorities, the first of which directly pertained to the issue of overcoming the constitutional crisis. It also declared intensive consultations with the governments of the Member States, the EU institutions and bodies “to continue the EU reform process.” As a result of the said consultations, the German Presidency was expected to develop and submit to the EC of 21–22 June 2007 a report on the future of the Constitutional Treaty, which in turn was to decide on “how the EU reform procedure should be continued.” (Präsidentschaftsprogramm, 2006, pp. 1–6). Therefore, the federal government not only was determined to retain the Constitutional Treaty but also announced a new impetus to be provided to the ratification process. Although several scenarios for overcoming the constitutional crisis had been considered in Germany until the end of 2006, the federal government’s belief in the necessity of signing the new revision treaty became increasingly significant with the approaching EU Presidency, though the said revision treaty was to be based to a considerable extent on the provisions of the Constitutional Treaty (Węc, 2006b, pp. 214–215; Maurer, 2005, pp. 165–184; Maurer, 2006, pp. 1–36).

2. German Presidency of the European Union

The assumption of the Presidency of the European Union on 1 January 2007 undoubtedly required Germany to make its former stance on the Constitutional Treaty more flexible, since each Presidency has always been confronted with the question of what is more important: defending one's own national interests or ensuring effectiveness of actions of the entire European Union. In her opening speech in the EP on 17 January 2007, Chancellor Merkel announced the end of the "period of reflection" on the Constitutional Treaty declared by the EC in June 2005. In accordance with the tradition, she also discussed the programme of her Presidency, pointing to all the above-mentioned policy priorities. In reference to the first priority of the system reform of the EU, Merkel drew attention once again to the revolutionary impact of the Constitutional Treaty both for the very internal reform and the position of the EU on the international arena. In line with the EC conclusions of June 2006, she declared that new decisions with regard to the Treaty should be made by the end of the German Presidency. Therefore, she stated that the federal government will seek to develop not only a report, as obliged by the EC conclusions of June 2006 but also to present a 'schedule' for the future of the Treaty, which was not mentioned in the conclusions. It was in the interest of the European Union, the Member States and the EU citizens, she claimed, to ensure that the process of the system reform of the EU "is successfully concluded (*einem guten Ende*) before the forthcoming EP elections in the (late) spring of 2009" (Merkel, 17.01.2007, pp. 4–5).

Importantly, this declaration made by Merkel was certainly a surprise, since it assumed settling the future of the system reform of the EU a year and a half before the date provided in the EC conclusions of June 2006. However, the declaration was not necessarily in conflict with the contents of the said conclusions, as the latter involved a statement of fairly general wording that the decision on "how to continue the reform process" should be taken "during the second semester of 2008 at the latest" (EU. Conclusions, 15–16.06.2006, p. 17).

2.1. Berlin Declaration

Prior to the decisive settlement on the future of the Constitutional Treaty, an issue of developing a political declaration to mark the fiftieth anniversary of the signing of treaties establishing the European Economic Community and the European Atomic Energy Community was put on the agenda of the German Presidency – a task it was obliged to address under the EC conclusions of June 2006, as mentioned above (EU. Conclusions, 15/16.06.2006, pp. 16–17). The development and drafting of the declaration were preceded by confidential diplomatic consultations between the German government and representatives of the Member States conducted using the 'confessional' method. Held from January to March 2007, the said consultations were held on behalf of the German government by German Foreign Secretary of State Reinhard Silberberg and Director of European Affairs in the Federal Chancellery Uwe Corsepius. Each Member State was represented by two so-called sherpas. Poland was represented by

Marek Cichoński and Ewa Ośniecka-Tamecka. Other individuals engaged in the negotiations were representatives of the European Commission and the EP. The first phase of the consultations ended in early February 2007, resulting in a preliminary draft declaration developed by the German delegation in agreement with the representatives of individual Member States. At the end of February of that year, the said draft was also consulted with the representatives of the European Commission and the EP (Goosmann, 2007, p. 254).

The course of the said consultations demonstrated to the German Presidency significant differences among governments of the Member States regarding their views on the content of the declaration. Most controversy was triggered by the issue of possible incorporation of formulations regarding the future of the Constitutional Treaty, the *Invocatio Dei*, guarantees on national sovereignty of the EU Member States, a reference to European solidarity, common currency (the euro) and the social dimension of the EU.

The German government did not hide that it intended to investigate positions of individual Member States on the possibility to overcome the constitutional crisis during the consultations. According to German Foreign Minister Frank-Walter Steinmeier (SPD), the declaration was to involve a commitment of the Member States to imminently create necessary grounds for completing the system reform of the EU before the EP election of 2009 (Steinmeier, 14.03.2007, p. 1). Similar expectations were presented by EP President Hans-Gert Pöttering (CDU), who postulated that the declaration should involve a formulation on the necessity to retain the 'substance' of the Constitutional Treaty including Part II with the Charter of Fundamental Rights. The stance adopted by the German Presidency on this issue was supported by other Member States. Austria pressed for including in the declaration a paragraph on the necessity for the German Presidency to develop a 'roadmap' for further proceedings regarding the Constitutional Treaty. Whereas Romania expected the contents of the declaration to be combined with the agenda of the EC meeting planned for June 2007. However, many Member States acted with utmost restraint in this matter (e.g. Finland and France) or even strongly opposed the mentioned proposals (e.g. the Czech Republic, the United Kingdom and Poland). Czech Prime Minister Mirek Topolánek argued that the declaration should involve only formulations pertaining to the past, particularly the achievements in the field of European integration so far. At the same time, he warned that the dispute on the Constitutional Treaty might put at risk the very idea of adopting the declaration. The Czech Prime Minister's opinion was fully supported by British Minister for Europe Geoff Hoon and some French and Finnish diplomats. A similar stance on the Constitutional Treaty was presented by Poland, which additionally demanded incorporating to the declaration the *Invocatio Dei*, guarantees on national sovereignty of the EU Member States and a reference to European solidarity (Goosmann, 2007, pp. 252–254).

Initially, the German Presidency supported (at least tactically) Poland's postulate to include the *Invocatio Dei*, yet as a result of France's firm opposition and doubts of other countries, it changed its position in this matter. It was not only until Chancellor Merkel's visit to Poland on 16–17 March 2007, particularly the meeting with President Lech Kaczyński in Jurata, that Poland's support for the declaration was obtained.

According to Poland's expectations, the declaration was to include a reference to sovereignty of the Member States and to the solidarity principle. Kaczyński agreed to abandon the *Invocatio Dei* and accepted Germany's position that the declaration was to serve as a starting point for further proceedings on the Constitutional Treaty. The President justified the change in his view and emphasized that "Poland has reservations about the provisions of the Berlin Declaration, but if we did not sign it, we would be the only country that would not do it" (Węc, 2016, pp. 62–63). Some commentators considered that, given the above, Poland thus gave permission for the adoption of the Berlin Declaration (Presse, 19.03.2007). Apparently, Kaczyński had no intention of having a direct contribution to blocking the development of the declaration, still, changing his mind did not mean that Poland gave up on all its former reservations.

Nevertheless, the Czech Republic continued to lodge serious objections regarding both the contents of the declaration and the way in which the German Presidency held diplomatic consultations. On 22 March 2007, three days before the signing of the declaration, the Czech government highly criticised the fact that the declaration specified the date of the EP elections of 2009 as the date of resolving the dispute on the Constitutional Treaty. Therefore, Czech negotiator Jan Zahradil openly warned the Presidency that Germany was hence assuming all responsibility for the drafted text, contrary to the Czech Republics' expectations (Węc, 2016, pp. 63–64). Nevertheless, the German Presidency approved the final version of the declaration on 24 March 2007.

On the following day, Angela Merkel, José Manuel Barroso and Hans-Gert Pöttering officially signed the *Declaration on the occasion of the 50th anniversary of the signature of the Treaty of Rome* in the German Historical Museum in Berlin. The declaration was an unquestionable diplomatic success of Germany, though offset by the Presidency's abandonment of the original intention that the declaration would be signed by heads of state or government. This was due to the German delegation's concern that such a solution would require all details of the developed document to be fully consulted with the twenty-six governments, which could put at risk the very idea of adopting the declaration. With this in mind, a decision was made that the declaration will be signed in the presence of heads of state or government of all the EU Member States by the German Presidency, the President of the European Commission and the EP President (Goosmann, pp. 256–257). The Berlin Declaration comprises an introduction and three chapters. Chapter III involves commitments related to the future of the European Union. The signatories ensured therein that the Union "will continue to promote democracy, stability and prosperity beyond its borders," and also "always renew the political shape of Europe in keeping with the times." At the same time, they committed to place "the European Union on a renewed common basis before the European Parliament elections in 2009" (Declaration, 25.03.2007, pp. 1–2).

Nevertheless, opinions were divided on the last of the listed commitments included in the Berlin Declaration. At a joint press conference attended by Merkel, Barroso and Pöttering, which was organised at the conclusion of the anniversary celebrations in Berlin, the Chancellor made it clear that the German Presidency considered the declaration a great success also in the sense that the said document was to serve as a starting point for the final settlement regarding the future of the system reform of the EU. Consequently, Merkel declared that at the forthcoming EC session of June 2007,

a 'schedule' for the new treaty will be established, followed by an intergovernmental conference. It was the first very clear statement that a new international agreement will be elaborated based on the 'substance' of the Constitutional Treaty by the intergovernmental conference. The contents of the Berlin Declaration were similarly interpreted by Pöttering and Barroso. The former even claimed that the declaration stated the issue of the Constitutional Treaty would be resolved until June 2009. Therefore, as Pöttering argued, the ratification of the new treaty (which at that time would probably have a different title with the substance of the Constitutional Treaty preserved regardless) was to be completed by June 2009 (Merkel, Barroso, Pöttering, 25.03.2007, pp. 1–2).

However, at the very same time, Czech President Václav Klaus indicated that Berlin Declaration did not have legally binding force, meaning that the commitment to place "the European Union on a renewed common basis" was only of political significance. Other critics also pointed to the fact that even the politically binding force of the declaration is extremely doubtful due to the method applied by the German Presidency for holding diplomatic consultations and the lack of any public debate on the provisions of the said declaration (Goosmann, 2007, p. 257). Moreover, Polish President Kaczyński also questioned parts of the declaration that referred to process of the system reform of the EU ending by June 2009 (Węc, 2016, p. 67).

Importantly, the formulation in the Berlin Declaration of placing the EU on a renewed common basis by June 2009 unquestionably expressed willingness to complete the system reform of the EU by that time. In this sense, the declaration could be considered by the German Presidency as an important step towards this goal, as it was the first document since the rejection of the Constitutional Treaty in the 2005 referenda held in France and the Netherlands to contain a clear political message addressed to all Member States on undertaking new actions to overcome the constitutional crisis and to complete the system reform of the EU.

2.2. Mandate for the Intergovernmental Conference

During the negotiations on the Berlin Declaration, in March 2007 at the latest, the German government changed its former stance on the future of the Constitutional Treaty and the conduct of negotiations with other Member States. From then on, negotiations held at the level of sherpas were to be aimed at concluding a new revision treaty, which was the essence of the first change. However, it was largely to be based on the provisions of the Constitutional Treaty, since retaining the Constitutional Treaty at all cost became thoroughly unrealistic, particularly given the above-mentioned proposals made in 2006 by government representatives of some Member States. Nevertheless, the German government planned to act very arbitrarily during diplomatic negotiations dedicated to overcoming the constitutional crisis. At first, it intended to take into consideration, above all, the position of the French and the Dutch governments, assuming that the Constitutional Treaty could not be resubmitted for ratification in its original form in the said two countries. The second position on this unofficial scale of priorities, which was nevertheless applied by the German government, was taken by the Member States that did not ratify the Constitutional Treaty at all or did not intend to do so under

the German Presidency. The Member States that already ratified the Constitutional Treaty were ranked third, which was the third change (Maurer, 2008, pp. 6–7).

The methodology of the federal government's actions involved confidential bilateral consultations and multilateral discussions with sherpas previously appointed for negotiations on the Berlin Declaration, with the aim to investigate stances of individual Member States on the treaty reform. In order to ensure that consultations are fully confidential, not only did the German Presidency intentionally limit the exchange of views between individual delegations (as the first plenary meeting of the sherpas did not take place until 15 May 2007) but also presented no interim report on the said consultations.

The first (initial) phase of the bilateral consultations took place in February and March 2007. As a result, the German Presidency developed an informal questionnaire containing twelve most important (according to the German Presidency) amendment proposals to the Constitutional Treaty with opinions given by the Member States that adopted a clear stance on these issues. In early April 2007, the said questionnaire was sent to governments of the Member States. At the same time, the Presidency requested them to provide any other proposals on which they conditioned their support for the future Treaty. The first proposal included in the questionnaire pertained to the reestablishment of the classic treaty revision method while granting a single legal personality to the EU. This would mean a renouncement of the revocation of TEU and TEC, as stipulated by the Constitutional Treaty. In this matter, France spoke in favour of a consolidated mini treaty that would revise the treaties in force, the United Kingdom advocated only technical changes in the said treaties, whereas the Czech Republic and the Netherlands demanded that all analogies to the constitution be avoided. In line with the second proposal, Part I of the Constitutional Treaty (specifying the most important institutional provisions, objectives, values and the working methods of the EU) would be retained. This solution was favoured primarily by France and Italy. The third and the fourth proposals concerned 'de-constitutionalisation' of the Constitutional Treaty, i.e. abandoning the title of the document, the title of the Foreign Minister of the EU, new names of legal acts (European laws and European framework laws), as well as symbols of the EU, such as the flag, the anthem, the motto, the currency and Europe Day. This was expected mainly by the Netherlands, the United Kingdom, the Czech Republic and Poland, whereas nearly all Member States (except for Belgium and Luxembourg) demanded that the EU symbols be abandoned. The fifth proposal concerned abandonment of articles on the primacy of the EU law over national law. This was advocated by the Netherlands, the United Kingdom, the Czech Republic and Poland. In turn, the United Kingdom with the support of Poland were in favour of replacing Part II of the Constitutional Treaty (the Charter of Fundamental Rights) with a special regulation referring to the CFR that would make it legally binding (which constituted the sixth proposal). The seventh proposal concerned the retention of the package of institutional regulations specified in the Constitutional Treaty. This solution was favoured by most Member States, while it was strongly objected by Poland with the support of the Czech Republic. The eighth proposal contained a question on the retention of other systemic changes envisaged by the Constitutional Treaty. This later inspired the Netherlands and the United Kingdom to propose a postulate for strengthening the

position of national parliaments in the EU legislative process. The ninth proposal concerned the introduction to the future Treaty new provisions on energy policy, climate and illegal immigration. This proposal was created by the United Kingdom, Poland, Lithuania, Latvia, Estonia, Hungary, Germany, Austria and the Netherlands. In turn, France and the Netherlands with the support of Austria and Germany were in favour of granting treaty status to the Copenhagen criteria or including a special referring regulation to the Treaty (which constituted the tenth proposal). The eleventh proposal foresaw the strengthening of the social dimension of the EU in the future Treaty. This was particularly sought by France, Germany and Belgium. The twelfth proposal concerned the possibility to give some Member States opt-out measures and/or special rules of enhanced cooperation in areas where the powers of the EU institutions were to be strengthened. Opt-out measures were supported by the United Kingdom and Poland, while enhanced cooperation was favoured by Belgium, Luxembourg, Italy and Germany (Węc, 2016, pp. 68–70).

This informal questionnaire provided a clear picture of the scope of the emerging changes proposed by individual Member States and confirmed that the German Presidency considered the Constitutional Treaty not solely a starting point but also the foundation of the system reform of the EU. According to the Presidency, the changes in the Constitutional Treaty were to be limited to what is necessary, yet they also were intended to allow for a compromise and to ensure that the future Treaty is ratified by all Member States. The mentioned questionnaire constituted the foundation of the second phase of confidential bilateral consultations between the German Presidency and the sherpas, which took place on 23 April–4 May 2007. As a result, nearly all Member States initially accepted the listed proposals. The most contentious issues identified during that phase of consultations were subject to negotiations held between the highest representatives of the German Presidency and their partners from individual Member States (Węc, 2016, pp. 70–71). Moreover, in close consultation with the German Presidency, the newly elected French President Nicolas Sarkozy, as well as Prime Ministers of Spain (Zapatero), Luxembourg (Juncker) and Italy (Silvio Berlusconi) held exploratory discussions with leaders of the United Kingdom, Poland and the Czech Republic.

On 15 May 2007, the first plenary session of the sherpas took place in Berlin, indicating that consultations held at this level entered a phase of multilateral negotiations. On 6 June of that year, the sherpas submitted to the German Presidency a preliminary report on the results of the bilateral and the multilateral consultations that contained important information on the possibility to reach compromise on the most contentious issues. The list of twelve proposals from early April 2007 was scaled down to three openly disputed matters, namely, symbols of the EU, the primacy of EU law over national law and the legal nature of the Charter of Fundamental Rights. Furthermore, four new postulates submitted during consultations by some Member States required clarification. The United Kingdom advocated the introduction of regulations that would clearly stress the specificity of the common foreign and security policy, as well as the common security and defence policy of the European Union. The Czech Republic demanded the distribution of competences between the EU and the Member States be further specified and that provisions on delegating competences back to the Member

States by the EU be adopted. The Netherlands pressed for further strengthening of the role played of national parliaments in the EU legislative process (the so-called 'red card' procedure). Whereas Poland expected, above all, that qualified majority in the decision-making in the CEU and the EC will be redefined (Maurer, 2008, pp. 4–5).

On 14 June 2007, based on a preliminary report prepared by the sherpas, the German Presidency presented a final report on its own proceedings. It was the only official report of the Presidency on the results of the bilateral and multilateral consultations it conducted. It was stated in the report that after two years of uncertainty stemming from the constitutional crisis, final decisions must be taken on the treaty reform, since further uncertainty in this matter will compromise the Union's capability to act. What is more, the Presidency noted that there is a high demand in the Member States for higher effectiveness, strengthened democratic working methods and improved coherence of external actions of the EU. At the same time, it referred to the allegedly unanimous position of the Member States incorporated in the Berlin Declaration, which concerned the necessity for a new international agreement to enter into force before the EP elections of 2009. The Presidency also indicated that all Member States approved four issues: the reestablishment of the traditional treaty revision method as a path leading to the signature of a new international agreement at the intergovernmental conference; the 'de-constitutionalisation' of the Constitutional Treaty; the retainment of the institutional reform package; and the inclusion to the new Treaty of provisions that were not included in the Constitutional Treaty and pertained to the area of energy security, combating climate change and granting treaty status to the Copenhagen criteria. However, these provisions could not contribute to the extension of the Union's competences in the listed areas. At the same time, the Presidency stated that several issues, including the above-mentioned proposals submitted by the Member States during consultations, would require further discussion. These included: symbols of the EU, the primacy of EU law over national law, the legal nature of the Charter of Fundamental Rights, the specificity of the common foreign and security policy, further specifying the distribution of competences between the EU and the Member States, consolidating national parliaments in the EU, and the scope of changes in terminology (*Report*, 14.06.2007, pp. 2–5).

In its recommendations, the Presidency called on the EC to decide to convene an intergovernmental conference as soon as possible at its session in June 2007. However, this would require the EC to adopt a precise and comprehensive mandate for the conference at the very same session. This in turn would allow for concluding negotiations on the signature of the new treaty by the end of 2007. The Presidency proposed to reestablish the classic treaty amendment method. Consequently, the intergovernmental conference was to develop a treaty reforming the European Union that would amend, yet not revoke, the treaties in force. The Treaty on the European Union would maintain its current name, whereas the Treaty establishing the European Community would become a Treaty on the Functioning of the European Union (TFEU). Both treaties would have the very same legal power and would provide the foundation for the EU, while the Union itself would be granted a legal personality for the first time (*Report*, 14.06.2007, p. 5).

The results of the negotiations held with governments of individual EU Member States were presented by Chancellor Merkel in a government statement made on

14 June 2007 in the Bundestag. The Chancellor justified therein the need for basing the reform treaty on the Constitutional Treaty, pointed to the necessity for a stricter distribution of competences between the EU and the Member States with the aim to strengthen their national identities, and declared abandonment of granting treaty status to the EU symbols. Merkel regarded the issue of redefining qualified majority in the decision-making in the Council of Ministers and the EC as one of the matters yet to be solved, which in her opinion should be done unanimously for the benefit of the entire European Union (DB Plenarprotokol 16/103, pp. 10568–10569).

On the very same day, on the proposal of the CDU/CSU/SPD government coalition, the Bundestag adopted a resolution titled *In favour of an effective solution to concerns on the consolidation of the European Union: in favour of a clear and precise mandate for the intergovernmental conference* by large majority. It was stated in the resolution that the reforms stipulated by the Constitutional Treaty remained “substantial grounds for improving the legitimacy and transparency of the European Union, as well as increasing its capacity to act.” At the same time, the Bundestag called on the federal government to maintain at the negotiations all institutional provisions and political objectives of the EU contained in Part I of the Constitutional Treaty, which in its view was a satisfying compromise between the Member States. These involved, in particular, a legal personality granted to the European Union; inclusion of the CFR to primary law; introduction of a strict distribution of competences between the EU and the Member States; establishment of double majority in the decision-making in the CEU and the EC, as well as extended scope of double majority to new cases; consolidated role of the EP owing to an extended scope of its competences and the co-decision procedure transformed into an ordinary legislative procedure; establishment of a permanent President of the European Council; strengthened common foreign and security policy; limited composition of the European Commission, and also a strengthened role of national parliaments in the EU legislative process due to an early warning mechanism (the ‘yellow card’ procedure), and the right to bring action before the Court of Justice for infringement of the subsidiarity principle in EU legislation (DB Drucksache 16/5601, pp. 1–3). On 14 June 2007, the Presidency’s final report with a diplomatic note that contained a new questionnaire (this time an official one) was forwarded to all Member States. In the said note, foreign ministers of the Member States were called to present answers to five questions within three days at the session of the General and Foreign Affairs Council of 17–18 June 2007. The Presidency asked in the note if the Member States agree to the following changes: to re-establish the traditional treaty revision method; to grant legal personality to the European Union; to abandon the pillar-based structure of the UE while retaining the specificity of the common foreign and security policy of the EU; to retain the full text of the Charter of Fundamental Rights in the new treaty or to exclude it from the treaty and to make it legally binding under a special regulation introduced therein; to introduce changes in terminology, particularly to abandon the term ‘constitution’ and to grant treaty status to symbols of the EU; to grant primacy to EU law over national law (Note, 14.06.2007, pp. 1–2). Importantly, the questionnaire did not refer to many important unresolved disputes, such as: further specifying the distribution of competences between the EU and the Member States, defining qualified majority in the CEU and the EC, the role of national parliaments in

the European Union, energy policy, combating climate change and combating climate change and granting treaty status to the Copenhagen criteria.

The questions provided in the said questionnaire were to be discussed at the session of the General and Foreign Affairs Council of 17–18 June 2007 in Luxembourg at the level of foreign ministers. However, the meeting was in fact limited to individual delegations' agreement or disagreement with the Presidency's proposals, and the matter was deferred until the EC meeting in Brussels planned for 21–22 June 2007, where a compromise was to be sought. Therefore, the German Presidency clearly indicated that it intended to limit the scope of discussion in the final phase of negotiations as much as possible. However, the course of the session of the General and Foreign Affairs Council, particularly the atmosphere and the number of reservations clearly indicated that the reaching a consensus in Brussels by heads of state or government will be neither easy nor obvious (Kremer, 2008, pp. 25–26; Herma, 2008, pp. 8–9).

Based on the Presidency's final report of, German sherpas prepared the first version of a mandate for the intergovernmental conference. Multilateral consultations on the report and the draft mandate were continued on 19 June 2007 at the second plenary session of sherpas. The issue that was most interesting for the Polish delegation, namely, the re-defining of qualified majority in the CEU and the EC, was included merely as a footnote (!) stating that it was demanded only by two Member States, with no information on which states in particular (Herma, 2008, pp. 6–7; Kremer, 2008, p. 25). Following amendments proposed by the Legal Service of the General Secretariat of the CEU, the second version of the mandate was discussed at the third plenary session of sherpas held on 22 June 2007 (Maurer, 2008, p. 5). The second version of the mandate included amendments proposed by individual Member States directly before the meeting and at the EC meeting in Brussels.

The EC meeting held in Brussels, which was originally intended to take place on 21 and 22 June 2007, went on until the early hours of 23 June of that year. Though it was not the longest one, it was definitely one of the most dramatic sessions in the history of the European Union. Negotiations were held both on issues already considered by the German Presidency in its report as 'pre-agreed' and those seen as requiring further discussion. Moreover, at the EC meeting, delegations of numerous Member States submitted new proposals for amendments to the draft mandate, with the highest number of concerns regarding the draft mandate expressed by governments of the United Kingdom, Poland, the Czech Republic and the Netherlands. The British delegation opposed, most of all, the proposal to make the Charter of Fundamental Rights legally binding. It also demanded that the scope of qualified majority voting be limited in the area of the common foreign and security policy, and in policies of the freedom, security and justice area, as well as that competences of the Foreign Minister of the EU be scaled down. The representatives of Poland called for five fundamental changes in the draft mandate: first, to modify the definition of qualified majority in the CEU and the EC; second, to further specify regulations on the distribution of competences between the EU and the Member States, to specify provisions on national security clearly stating that it falls within exclusive competences of the Member States, and to further specify provisions on the legal personality of the future European Union; third, to abandon the treaty status that was to be granted to the principle of the primacy of

EU law over national law; fourth, not to include the CFR in the new treaty; fifth, to introduce the solidarity principle to energy policy and to further specify the principles of energy security. As for the definition of qualified majority, the Polish government proposed to modify double majority stipulated by the Constitutional Treaty (55% of votes of the Member States as a minimum, representing 65% of the EU population as a minimum). The said modification would consist in lowering the threshold population from 65% to 62% and increasing the threshold number of the Member States required for creating a blocking minority from 4 to 5 or 6, while maintaining the threshold of 55% of votes of all states necessary for forming a qualified majority. The Polish government, which lost the most on the abandonment of the Nice system by the EU, argued that in line with the voting theory, the EU citizens would have the equal impact on the outcome of a vote in the CEU and the EC if the significance of a given state in a vote was approximately proportionate to the square root of its population figure, and not the population figure itself. Importantly, the system of equal influence (square root) referred to the principle of degressive proportionality applied for calculating a distribution of mandates in the EP. Whereas the very threshold population of 62% was applied in the CEU in acting by qualified majority in line with the rules of the Nice system. The Polish government intended to make the blocking minority include 38% of the EU population and at least 5 or 6 Member States. Consequently, the average population share of a blocking state would equal to 7.6% of the EU population, i.e. approximately the population share of Poland in the total EU population, which was 7.7% (Kremer, 2008, pp. 28–29).

As was the case with the German Presidency, Poland also supported the main postulate of the Czech Republic for further specification of the provisions on the categories of competences shared between the EU and the Member States. In this regard, the Czech government even demanded that a mechanism be established for delegating competences back to the Member States by the EU. The Czech Republic and Romania were in favour of the Dutch main postulate for the strengthening of the role of national parliaments in the EU legislative process. In this matter, the Dutch delegation pressed for a 'red card' procedure, i.e. provisions allowing for draft legislation of the European Commission to be blocked directly by national parliaments in a situation where they consider that such drafts prejudice the subsidiarity principle. Likewise, many delegations mutually supported their proposals in other cases or even submitted largely identical postulates. A convergence of views characterised primarily the stances adopted by Poland and the United Kingdom on further specification of provisions in the area of national security, the opinions of Poland and Lithuania on the introduction of the solidarity principle in energy policy and the specification of principles of energy security, the expectations of Poland, France and the Netherlands on the CFR not being included in the new treaty, the desiderata of Poland, the United Kingdom and the Netherlands with regard to abandoning the concept of granting treaty status to the primacy of EU law over national law, the proposals of the Netherlands and Germany regarding partial exclusion of services of general economic interest from the scope of Community regulations on competition, the efforts of France supported by Germany as regards exclusion of the provision on free and undistorted competition from the list of EU objectives, the postulates of Poland and most Member States regarding further

specification of provisions on the legal personality of the EU, i.e. explaining whether the future European Union will have a legal personality at the time the new treaty enters into force or whether it will take over the legal personality of the European Community (Kremer, 2008, pp. 28–29).

Nevertheless, during the discussion held at the EC meeting, there was a number of votes against many of the mentioned postulates. Belgium proved particularly active in this regard, as it even succeeded at forming *ad hoc* a coalition with Italy, Luxembourg, Greece, Spain, Slovenia and Hungary. Delegations of these states opposed, i.a. the establishment of the ‘red card’ procedure, the revocation of the idea of granting treaty status to the principle of the primacy of EU law over national law, as well as previously agreed modifications in the common foreign and security policy of the EU. Moreover, the Belgian government demanded that the threshold be changed for the Member States willing to establish enhanced cooperation from the one-third of the total number of the Member States stipulated by the Constitutional Treaty to nine (Węc, 2016, pp. 75–79).

As a result of highly intensive and occasionally dramatic negotiations, the participants of the EC meeting eventually managed to reach a compromise on most contentious issues. Only delegations of three states, namely, the United Kingdom, the Netherlands and Poland failed to force through all their postulates. The failed attempts involved the British initiative to limit the scope of qualified majority voting in the common foreign and security policy and in the area of freedom, security and justice, to restrict competences of the Foreign Minister of the EU, and to deprive the Charter of Fundamental Rights of the legal force. Nevertheless, the British delegation managed to achieve a compromise, which entailed a change in the name of the Foreign Minister of the EU to the High Representative of the Union for Foreign Affairs and Security Policy. It also obtained assurance that the future treaty might be extended to include a special protocol to prevent British citizens from pursuing some claims arising from the Charter of Fundamental Rights before British courts. This was followed by a reservation made by Poland and Ireland in the negotiating mandate to the right to join the said protocol, which was hereinafter referred to as the British protocol. Though the Dutch delegation did not manage to convince the meeting participants to establish the ‘red card’ procedure instead of the ‘yellow card’ procedure, the dispute on this issue ended in an agreement that the protocol on the principles of subsidiarity and proportionality annexed to the future treaty would include a slightly less radical procedure of the so-called ‘orange card’, which is discussed below. Together with the ‘yellow card’ procedure it was to serve as an integral part of the early warning system. However, the ‘orange card’ procedure consolidated the EU legislators (the EP and the CEU) in their roles instead of strengthening the role of national parliaments in monitoring the respect of the principle of subsidiarity, as demanded by the Dutch delegation. The Polish delegation also failed to force through its main postulate for the modification of the definition of qualified majority in the CEU and the EC, still, other proposals of Poland were taken into consideration by the meeting participants.

The discussion on modifying qualified majority led to a severe disagreement within the EC. The position adopted by the Polish delegation was substantially undermined by the fact that from the very beginning, the solution it proposed was opposed by

nearly all governments. What is more, Prime Minister Jarosław Kaczyński's unfortunate speech made shortly before the EC meeting was very poorly received by the meeting participants. In his speech, Kaczyński referred to wartime losses incurred by Poland during World War Two, which he used as an argument in his attempt to retain the Nice system (Węc, 2016, p. 80). In this atmosphere, President Lech Kaczyński at first attempted to defend Poland's proposal regarding the square root system, which nevertheless proved ineffective.³ Only the representatives of the Czech government lent silent support to Poland on condition that the said issue would not block the entire negotiations as a result. In this situation, on the night of 21 to 22 June 2007, President Lech Kaczyński suggested in a conversation with Chancellor Merkel that the Nice system should be retained until 2020 in return for Poland's possible surrender of the square root system. Likewise, the said proposal was opposed by Merkel, who demanded that the mentioned period be shortened to 2014. For a long time, the conversations held on this issue between Merkel and Lech Kaczyński on the second day of the meeting did not bring any results. In that situation, Prime Minister Kaczyński in an interview for Polish television in Warsaw threatened that if the new proposal of Poland was not adopted, his government would veto such decision and the summit would be hence knocked flat. Nevertheless, Jarosław Kaczyński's dicey opening proved thoroughly ineffective, since the German Presidency, acting in agreement with several other delegations, warned the Polish delegation that it could propose the EC to adopt a mandate for the intergovernmental conference regardless of the opposing position adopted by Poland, whereas the convening of the conference would be exercised by a simple majority (Węc, 2016, pp. 80–81; Herma, 2008, p. 12). Though such a solution was compatible with Article 48 TEU, it would be the second time in the history of the European Community and the European Union since 1985 when an intergovernmental conference was convened regardless of a different position adopted by one of the Member States (Węc, 2012, p. 185).

However, at that time the decisive stance of Chancellor Merkel was criticised by several states, particularly the Czech Republic and Lithuania. A representative of the Czech delegation declared to support Poland in its stance against the adoption of the mandate in the presented version. In this situation, a compromise was yet again attempted by French President Sarkozy and British Prime Minister Blair, who tried to convince Prime Minister Kaczyński by telephone to adopt the German proposal. Shortly after, the last chance was offered by Prime Minister of Luxembourg Jean-Claude Juncker and Chancellor of Austria Alfred Gusenbauer, suggesting that the decision-making by double majority should enter into force already in 2014 with a transition period that would end by 2017,

³ The Poland's proposal might have been approved if it had not been strongly opposed by Germany, the state that would benefit the most from double majority, as well as if not for the lack of interest on the part of medium-sized and small Member States, which either did not gain anything from double majority or enjoyed solely insignificant benefits (e.g. the Netherlands). Moreover, the proposal was submitted too late to allow the Polish government to effectively form an *ad hoc* coalition of Member States to force it through. This was caused, among others, by the tactics adopted by the German Presidency, which consisted in fast-tracking the sherpas' proceedings in the last weeks of its term and by the fact that, contrary to the expectations of other EU Member States, the German Presidency prepared a draft mandate for the intergovernmental conference, which already contained a prepared draft revision treaty (Węc, 2016, pp. 80–81).

allowing each Member State to apply the Nice system if required. Moreover, in line with President Sarkozy's former idea, the criteria for the applicability of the so-called Ioannina mechanism were to be modified after 2017. The change was to involve a reduction in both threshold population and threshold of the number of Member States from 75% to 55%, which was essential for forming a blocking minority. Though the proposals of Luxembourg and Austria were opposed by Belgian Prime Minister Verhofstadt, eventually he withdrew his reservations and thus, in the early hours of 23 June, a consensus was successfully reached (Węc, 2016, pp. 81–82).

Shortly after, the EC adopted the final version of the mandate, which was to provide “the exclusive basis and framework for the work of the IGC [...]” The conference was tasked with developing a draft revision treaty referred to as the reform treaty. In line with the provisions of the mandate, the reform treaty was to contain two substantive clauses amending TEU and TEC, with the latter titled the TFEU. Whereas technical changes in the TEAEC (and in the protocols annexed to the treaty) should be introduced under protocols annexed to the reform treaty in accordance with the provisions adopted at the intergovernmental conference of 2003–2004 (EC. Conclusions [IGC mandate], 21–22.06.2007, pp. 16–31). The mandate provided for a transfer of a majority of the provisions of the Constitutional Treaty to the revision treaty, with most of them incorporated into TEU and others into TFEU. At the same time, it contained provisions that depart from the Constitutional Treaty, agreed during consultations held by the German Presidency (the original version of the mandate of 19 June 2007), and later at the EC meeting in Brussels in June of that year (the original version of the mandate of 23 June 2007). These were to be incorporated both into TEU and TFEU, as well as into protocols and declarations annexed to these international agreements (Węc, 2016, pp. 82–84; Herma, 2008, pp. 9–14).

The EC conclusions of 21–23 June 2007 involve a report of the German Presidency that was “welcomed” by the Council, which agreed that “settling this issue quickly is a priority.” To this end, the EC called on the Portuguese government, which was to assume Presidency in the second semester of 2007, to take immediate action in accordance with the provisions of Article 48 of TEU with the aim to convene an intergovernmental conference by the end of July 2007. In the further part of the conclusions, the EC stressed yet again that works of the said conference ought to be conducted strictly in accordance with the mandate adopted on 23 June 2007. Consequently, it also invited the Portuguese government to compile a new draft treaty based on the provisions of the mandate and to submit it immediately after the opening of the conference meeting. The said meeting was to be concluded “as quickly as possible, and in any case before the end of 2007, so as to allow for sufficient time to ratify the resulting Treaty before the EP elections in June 2009” (EC. Conclusions, 21–22.06.2007, p. 2).

Owing to the great determination, highly precise methodology of proceedings decisions that were and often arbitrary, the German Presidency not only did prepare a report on the condition of the discussion on the reform of the EU so far, as obliged by the above-mentioned EC conclusions of June 2006 but also compiled a comprehensive draft mandate for the future intergovernmental conference. The said draft envisaged the signing of the new revision treaty that was to change treaties in force at the time and to maintain about 90% of the provisions provided in the Constitutional Treaty.

3. Intergovernmental Conference of 2007. The Treaty of Lisbon

3.1. Meetings of the Intergovernmental Conference

The intergovernmental conference opened the meeting on 23 July 2007 in Lisbon. The said meeting was held at the level of foreign ministers, yet the crucial role was played by Working Group comprising legal experts. This was due to the fact, that at that time the conference had an almost-complete draft revision treaty at disposal, which was drafted by the Legal Service of the General Secretariat of the CEU in principle based on the negotiating mandate. Nevertheless, the actions of Working Group were not limited merely to drafting adjustments to the draft treaty but also involved introducing essential amendments⁴ to the said document. On 18–19 October 2007, at an unfortunate meeting in Lisbon, the EC adopted the draft treaty reforming the European Union. Less than two months later on 13 December of that year, heads of state or government and Foreign Ministers of the twenty-seven Member States met again in the capital of Portugal to officially sign the new treaty, which was called the Treaty of Lisbon from then on. The said document involved provisions revising the Treaty on the European Union and the Treaty establishing the European Community. Moreover, under Protocol no. 2 annexed to the Treaty of Lisbon, the Treaty establishing the European Atomic Energy Community was also amended (*Treaty of Lisbon*, OJ C, 2010, 83, p. 309).

Less than three weeks prior to the inauguration of the intergovernmental conference, on 4 July 2007, a special debate on the treaty reform in the EU was held in the Bundestag. Members of parliamentary factions forming the government coalition pointed to the great success of the German Presidency, i.e. the drafting of the mandate containing an almost-complete revision treaty. Angelica Schwall-Düren (SPD) noted that this circumstance to a great extent facilitated the end of the struggle for the system reform of the EU undertaken by the Portuguese Presidency. An even more explicit and descriptive statement was made by Gunther Kirchbaum (CDU/CSU), who claimed that owing to the work of the German Presidency, “80% of tasks” to be otherwise tackled by the intergovernmental conference were “already solved,” while “the last 20% [...] are to be solved by the Portuguese Presidency.” He also expressed his appreciation for the methodology and the style of work adopted by the entire federal government, “whose actions were consistent, conscientious and level-handed even in relations with smaller Member States.” Referring to the controversial situation with Poland regarding the modification of double majority and the strengthening of a blocking minor-

⁴ These included, i.a. the preamble to the reform treaty, transitional provisions on the status of legislative acts adopted as part of judicial cooperation in criminal matters and police cooperation, the extension of the provisions of Protocol no. 4 on the position of the United Kingdom and Ireland (annexed to TEU and TEC under the Treaty of Amsterdam) on judicial cooperation in criminal matters and police cooperation and laws building upon the Schengen acquis, changes in the EU institutional framework, further specification of some provisions on legislative procedures and acts, provisions on the EU citizenship, the method for issuing the Charter of Fundamental Rights, provisions on increasing the number of Advocates General in the Court of Justice (Węc, 2016, pp. 92–99).

ity, Schwall-Düren claimed arbitrarily that Germany “need Poland to manifest confident behaviour (*selbstbewusstes*) and willingness to constructive cooperation without a stigma (*geprägt*) of permanent distrust towards the European Union.” Michael Roth (SPD) regretted that “the dispute on the demands of the Polish delegation appeared to have formed a barrier between the allegedly small and the allegedly large states,” while “in reality, the small EU Member States are large states as well,” and “Germany has always been as a good promoter of small Member States’ interests.” Thomas Silberhorn (CDU/CSU) admitted that in early 2007, no one in Germany ever expected that the federal government would succeed in elaborating anything more than a “road-map” (*Zeitplan*) for the forthcoming intergovernmental conference, and yet it managed to compile not only a mandate but also an almost-complete draft revision treaty (DB Plenarprotokoll 16/107, pp. 10988–10991, 10997–10999).

All representatives of the government coalition who participated in the debate emphasised that the system solutions incorporated in the draft mandate will substantially strengthen both internal cohesion and international position of the European Union. According to Roth, this draft satisfied four fundamental expectations of the Bundestag: first, it granted a legal personality to the EU and transformed it into an international organisation; second, it dissolved the pillar-based structure; third, it introduced the CFR to primary law of the EU; fourth, it maintained the compromise established under the Constitutional Treaty on changes in the EU institutional system. However, Roth was critical about the British protocol that concerned the CFR, the provisions that allowed the Member States to receive back their competences formerly granted to the European Union, as well as changes introduced as part of the so-called ‘de-constitutionalisation’ of the Constitutional Treaty (abandoning the following terms: constitution, European law, European framework law, Foreign Minister of the EU; granting treaty status to symbols of the EU, etc.). Consequently, the SPD member the system reform of the EU to be continued in the future and the paradigm in the functioning of the EU to be shifted, which was to involve “abandoning unilateral focus on economic matters” and giving a greater value to the principle of solidarity. Since the regulations contained in the draft mandate were in his opinion thoroughly insufficient for overcoming the democratic crisis in the EU, the primary objective of subsequent treaty reform was to strengthen its parliamentary legitimation (DB Plenarprotokoll 16/107, pp. 10996–10998).

The CDU/CSU member Silberhorn had a somewhat different opinion on the draft mandate. In his view, the key objective of the system reform of the EU was to amend the institutional system in a way that would strengthen the European Union both internally and externally. He attached particular importance to the following changes: to introduce qualified majority voting as the decision-making principle in the CEU, to establish the double majority system in the CEU and the EC, to consolidate the President of the European Commission in his or her role and to create the office of the High Representative of the CEU for Foreign Affairs and Security Policy. Moreover, Silberhorn considered the establishment of a strict distribution of competences between the EU and the Member States, and the possibility for the latter to receive back powers formerly delegated to the EU a highly important *novum*. In his opinion, these changes should result in restricted competences of the Court of Justice of the EU or even in some of its judgements from several past years being overturned. Furthermore,

he placed much significance on restrictions regarding the application of the flexibility clause, particularly the provision laying down that the said clause must not be used for strengthening the powers of the EU and for circumventing the treaty revision procedure. This was due to the fact in the past, the flexibility clause was repeatedly used for unjustified extension of the EU competences to the detriment of the Member States. As for weaknesses, Silberhorn considered competences granted to national parliaments in the EU legislative process to be the weak points of the draft mandate, though “rather insignificant.” Nevertheless, he expressed his hope that in the case of the ‘orange card’ procedure, the EP or the CEU will have the power to efficiently block drafts of the European Commission that would prejudice the subsidiarity principle (DB Plenarprotokoll 16/107, pp. 10999).

In general, representatives of the parliamentary opposition positively assessed the draft mandate (except for the Left), pointing out mainly to provisions that strengthened the position of the EU. However, Markus Löning (FDP) regretted that under the influence exerted by President Sarkozy, the term “undisrupted competition on the internal market” was excluded from the list of objectives pursued by the Union specified in the draft mandate, whereas as a result of Lech Kaczyński’s opposition, the double majority system was not to apply until 2014. According to Löning, the said system was to be introduced somewhat sooner due to its significance for the democratisation of the European Union, as it reflected “our understanding of democracy, namely, the ‘one vote per citizen’ principle.” The FDP MP ignored on that occasion the above-mentioned stance of the Polish delegation, which indicated, referring to the voting theory, that the most democratic decision-making system in the CEU was the square root system. Furthermore, Jürgen Trittin (Alliance 90/The Greens) criticised the fact that the double majority system was not to apply until 2014. In contrast to Löning, he drew attention to provisions that unquestionably strengthened the democratisation process within the EU, such as restricting the veto right of the Member States by substantially extending the scope of qualified majority in the CEU, enhancing the decision-making powers of the EP, strengthening the position of national parliaments in the EU legislative process, as well as rendering the CFR legally binding. In turn, Alexander Ulrich, representative of the Left, did not spare the federal government harsh criticism for the style and methodology applied in the run-up to the intergovernmental conference. Although the German Presidency was to be held following the concept “Europe– Succeeding Together,” the federal government failed to encourage direct participation of citizens and – which was even worse – did not ensure that the Bundestag was engaged in a constructive manner. The European concept was also undermined by the dispute with Poland on double majority, in principle used by Germany to exploit its position of a ‘stronger’ Member State acting against a ‘weaker’ one. Moreover, the dramatic course of the EC meeting in June was not to be blamed on Poland alone, since other delegations were interested in modifying the double majority system as well. Referring to the provision included in the draft treaty on deferring the date of the entry into force of double majority until 2014, which was criticised by some MPs, Ulrich noted that exceptional provisions were in fact oftentimes applied with regard to the United Kingdom, and that the Polish delegation “has done nothing more than exercise its right guaranteed under

the treaties in force.” Regarding the entirety of systemic changes in the EU proposed in the draft, Ulrich referred to a postulate on the necessity for adopting a new treaty in a general EU referendum, as raised repeatedly by the Left for several years (DB Plenarprotokoll 16/107, pp. 10993–10994).

The tactics adopted by the federal government at the intergovernmental conference of 2007 were similar to those employed in the proceedings of the German delegation at the intergovernmental conference of 2003–2004. The primary concern of the German government was to ensure that the mandate adopted by the EC in June 2007 was the only foundation and the sole framework for the conference to build on. Moreover, it pursued to further specify the treaty provisions that were not ultimately settled in the mandate or supported (oftentimes unofficially) proposals and postulates of other countries. Consequently, the representatives of Germany contributed to, among others, providing the final form to provisions specifying rules of qualified majority voting in the CEU and the EC (the double majority system), the provisions allowing for conferring competences from the EU back on the Member States, regulations strengthening the position of national parliaments in the EU legislative process, as well as norms referring to social security systems of the Member States and services of general economic interest. Furthermore, the German delegation together with other countries demanded that the ECB be left outside the institutional framework of the EU, that treaty status is granted to the Copenhagen criteria and that a special declaration on symbols of the EU is developed. In consequence, the intergovernmental conference approved under Article 16 TEU that the double majority system was to enter into force on 1 November 2014. In Protocol no. 36 on transitional provisions it provided that during the transitional period of 1 November 2014–31 March 2017 rules of the Nice system are allowed to be employed, whereas from 1 April 2017 voting is to be executed solely by double majority (Article 16 TEU, Article 3(1–4) Protocol no. 36). The same timeframe was to apply to reduced threshold population and threshold of the number of Member States from 75 to 55% under the Ioannina mechanism, which was essential for forming a blocking minority, thus making it considerably more flexible (Declaration no. 7). Moreover, under the influence of the Polish delegation the intergovernmental conference adopted Protocol no. 9, stating that a change or a revocation of the Ioannina mechanism by the CEU requires a unanimous approval of the EC (Protocol no. 9).

On the initiative of the Czech Republic supported by Germany and Poland, a mechanism was established to allow for competences to be delegated back from the EU to the Member States (Declaration no. 18). On the proposal of the Netherlands, which received support from, i.a. the delegations of Germany, the Czech Republic and Romania, the ‘orange card’ procedure was incorporated to the early warning system, which was to strengthen the role of the EP and the CEU in monitoring the respect of the subsidiarity principle in a situation where national parliaments decided by a majority of over 50% votes that a proposal for a legislative act of the European Commission reviewed under the ordinary legislative procedure is not compliant with the subsidiarity principle (Article 7(3) Protocol no. 2). On the initiative of Germany and the Netherlands, the intergovernmental conference also adopted Protocol no. 26 annexed to TEU and TFEU, which indicated, i.a. the fundamental role and the broad powers of national,

regional and local authorities with regard to providing, commissioning and organising business services of general economic interest in a way most aligned with the needs of consumers. Moreover, the Protocol upheld the exclusive competence of the Member States in the area of providing, commissioning and organising non-economic services of general interest (Article 1–2 of Protocol no. 26).

Furthermore, with the support of the German delegation, the conference consolidated the referral procedure specified under Article 48 TFEU concerning the adoption of legislative acts on coordinating social security systems by qualified majority. This was possible due to a reservation that in the case where no consensus is reached in this matter in the EC within four months, a given proposed act would be deemed not adopted regardless whether the EC asks the European Commission to draw up a new legislative proposal (as stipulated by the Constitutional Treaty) or if no action is taken in this regard. The coordination of social security systems was to secure for employed and self-employed migrant workers resident in the territories of the Member States aggregation of all periods for the purpose of acquiring the right to benefits and payment of benefits (in accordance with the right to freedom of movement). However, it was subject to the condition that the mentioned legislative act specifying the procedure for calculating the amount of benefits and payment of benefits does not affect the fundamental principles or the financial balance of the social security system of the host Member State (Article 48 TFEU).

Moreover, the conference adopted on the initiative of Germany, Spain and Luxembourg Declaration no. 52 on the symbols of the European Union. This was related to the revoked provisions of the Constitutional Treaty under which the said symbols acquired treaty status. The declaration, ultimately signed by Germany, Spain, Luxembourg and twelve other Member States, stated that the flag of the EU, featuring a circle of twelve gold stars on a blue background, the anthem based on *Ode to Joy* from Ludwig van Beethoven's 9th Symphony, the motto "United in diversity", the euro serving as the EU currency and Europe Day held on 9 May – all remain considered symbols of the sense of community of the EU citizens and their relation with the organisation (Węc, 2016, pp. 102–103, 107).

The German delegation failed to force through its stance on two issues it considered essential. When the Portuguese Presidency, which followed the opinion of the legal experts of Working Group, decided to include the ECB to the Union's institutional framework, governments of Germany, Spain, the Netherlands, Denmark and Luxembourg together with the President of the ECB opposed the above solution for fear of politicisation of the said institution. Nevertheless, the Portuguese Presidency supported by the European Commission and governments of several other Member States managed to force through this decision (Article 13 TEU). It was argued that the principle of institutional balance in the EU, which implied that each institution should act in accordance with its competences conferred on it by the treaties under specified conditions and purposes, provides a sufficient safeguard against politicisation of the ECB (Węc, 2016, pp. 97–98). Likewise, efforts taken by the delegations of France and the Netherlands with the support of Germany and Austria to complement Article 49 TEU with clear accession criteria, particularly, to grant treaty status to the Copenhagen criteria, proved unsuccessful.

3.2. Ratification Process of the Treaty of Lisbon and the Judgement of the Federal Constitutional Court in Germany

As in the case with the Constitutional Treaty, the Federal Republic of Germany was among the first Member States to initiate the ratification procedure for the Treaty of Lisbon. At the ratification debate held in the Bundestag on 24 April 2008, the representatives of the government and the parliamentary opposition in almost full agreement stressed the historical significance of the treaty for the system reform of the EU. In her speech, Chancellor Merkel pointed to eight issues she considered the most essential for the success of the said reform. These included: first, to extend the procedure for decision-making in the CEU by a qualified majority to improve the decision-making system and the effectiveness of the EU comprising twenty-seven Member States; second, to introduce double majority voting to the decision-making in the CEU and the EC. However, this time Chancellor Merkel did not emphasise this change as a condition for improving the political importance of Germany in the decision-making system, as was the case on 12 May 2005 at the ratification debate on the Constitutional Treaty but referred to the principle of democracy instead, which provided that each citizen of the European Union should have the very same influence on decisions taken; third, to establish a strict distribution of competences between the EU and the Member State, and – in contrast to the Constitutional Treaty – a new mechanism allowing for competences to be conferred back from the EU on the Member States; fourth, to enhance cooperation in the area of freedom, security and justice, which was highly important given new challenges to be faced by the European Union (i.a. combating terrorism and organised cross-border crime); fifth, to introduce regulations allowing for a common fight against climate change and solidary cooperation in the area of energy policy; sixth, to render the CFR legally binding, which (according to Merkel) provided grounds for shaping “the European economic and social model” in the future, which was to reflect the German model of social market economy; seventh, to consolidate the position of national parliaments in the EU legislative process by establishing an early warning mechanism (equipped with the ‘yellow card’ and the ‘orange card’ procedures) (*ex-ante* control), and granting each national parliament the right to bring action before the Court of Justice of the EU to review the legality of formerly adopted legislative acts suspected to be in breach of the subsidiary principle (*ex post* control); eighth, to establish two new offices, namely, the EC President and the High Representative of the Union for Foreign Affairs and Security Policy with the primary objective being to strengthen the capacity of the EU to act on the international arena. In Merkel’s opinion, all the mentioned systemic changes should contribute to an internal and external strengthening of the European Union, which was beneficial also for Germany, and which ought to be the principle of an effective European policy pursued by every German government (DB Plenarprotokoll 16/157, pp. 16451–16454).

The revolutionary impact of the Treaty of Lisbon was also indicated by representatives of all parliamentary factions represented in the Bundestag (except for the Left). According to the leader of Chairman of the FDP Guido Westerwelle, the said treaty was, above all, an outcome of the European enlargement in the years 2004–2007. Though he considered the Constitutional Treaty adopted by referendum a far better

solution to the system reform of the EU, the Treaty of Lisbon ensured the “essential capacity to act” for the EU27, consolidating its position in international politics and constituted a reasonable answer to the challenge of globalisation. The last of the listed opinions was shared by Deputy Chairman of the Alliance 90/The Greens group Jürgen Trittin, who claimed that the European Union was the best answer at the time for the major challenges of globalisation, whereas the “substance” (*Kern*) of the Treaty of Lisbon are system reforms of the EU that foster “democratisation” of the Union and improve its “capacity to act” on the international arena. In turn, Chairman of the SPD Kurt Beck considered the Treaty of Lisbon a culmination of the unification of Europe that was taking place from the end of World War Two. According to Beck, the major systemic changes of the EU stipulated by the treaty were the provisions that were to improve the functioning of the EU institutions and consolidate the position of national parliaments in the EU legislative process. Opinions on the decisive role of the Treaty of Lisbon for the European integration were also shared by Prime Minister of Bavaria Günther Beckstein (CSU). In his view, the most noteworthy provisions of the treaty were primarily those regulations that strengthened the axiology of the European Union, consolidated the position of national parliaments in the EU legislative process, strengthened common foreign and security policy, as well as policies in the area of freedom, security and justice. However, during parliamentary debates of 2003–2005, Beckstein, as was the case with the CSU members, continued to express his serious doubts as to the distribution of competences between the EU and the Member States provided by the treaty. In his opinion, the above distribution gave the European Union in many areas excessive powers that might have been much better exercised by the Member States or even federal states or regions. The said areas involved, in his view, i.a. sports, tourism, services of general economic interest, and even asylum and immigration policy (DB Plenarprotokoll 16/157, pp. 16454–16459, 16462–16469).

Still, the most critical opinions on the Treaty of Lisbon, as during the debate on the Constitutional Treaty of 2005, were expressed by representatives of the Left. Primarily, they demanded that the treaty be ratified by a EU-wide referendum. At the very beginning of his speech, Lothar Bisky stressed that the entire Left will vote against the treaty. He claimed that the new international agreement nevertheless involved some positive systemic changes compared to the Treaty of Nice. The said changes were, i.a. provisions that extended the legislative powers of the EP or consolidated the role of national parliaments in the EU legislative process. However, it does contain numerous provisions that might pose risk in the future, such as those establishing permanent structural cooperation, which could be the first step towards a “European military nucleus” (*militärisches Kerneuropa*) or prove harmful to the EU citizens, such as provisions on competition and price stability with regard to the EMU (DB Plenarprotokoll 16/157, pp. 16460–16463).

The debate on the Treaty of Lisbon was wound up with a vote on the Ratification Act. On 24 April 2008, the Bundestag ratified the Treaty of Lisbon by a qualified majority of two-thirds of the votes. As many as 515 deputies of the SPD, the FDP, Alliance 90/The Greens and the CDU/CSU voted in favour of the Ratification Act, 58 deputies of the Left, Non-attached members and some of the CDU/CSU voted against, while 1 deputy of the Alliance 90/The Greens abstained (DB Plenarprotokoll

16/157, pp. 16483–16485). On 23 May 2008, the act was approved by the Bundesrat by a majority of two-thirds of the votes. As in the case of the Constitutional Treaty, 15 federal states voted in favour of the Ratification Act. A representative of Berlin was the only one who abstained due to a strong opposition of the Left, a coalition partner of the SPD in the said federal state. Actions against the Treaty of Lisbon were brought before the Federal Constitutional Court. In consequence, on 30 June 2008, President Horst Köhler suspended the signing of the instruments of ratification pending a decision from the said Court.

On 30 June 2009, the Federal Constitutional Court delivered a judgement in which it declared the Treaty of Lisbon compatible with the Basic Law of the Federal Republic of Germany of 23 May 1949, demanding at the same time that the powers of the Bundestag and the Bundesrat be strengthened within the European Union. With reference to its judgement of 12 October 1993 on the Treaty of Maastricht, the Federal Constitutional Court held that having received a legal personality, the European Union remains an “association of states” (*Staatenverbund*), and not a federation. The term “association of states” stands for a “close and permanent group of sovereign states” that exercises public authority under treaties and whose system is subject to the Member States only. The “nations” resident in the territory of the Member States remain entities of democratic legitimacy of the European Union (sentence 1) (*BVerfG*, 30.06.2009, p. 1).⁵ According to the Federal Constitutional Court, the Treaty of Lisbon did in fact begin a new phase of the European integration, yet Germany would nevertheless remain a sovereign country governed by international law after it enters into force (paragraph 298). Whereas the possible transformation of the European Union into a federation would require the Union to be directly legitimised by the German people and to adopt a new constitution with accordance to Article 146 of the Basic Law (paragraph 113).

Moreover, the Federal Constitutional Court redefined its own role as a guardian of “constitutional identity,” stating that constitutional courts of the EU Member States cannot be “deprived of responsibility to ensure constitutional boundaries for the integrative authority and the non-transferable constitutional identity” (paragraph 336). In consequence, it declared that the principle of the primacy of EU law refers solely to the primacy of application of the said law over German law and shall not imply an obligation to revoke the latter if it would put at risk the effectiveness of EU law. It also stated that the constitutional court of a Member State can identify a given EU legislative act as non-compliant with its own constitution, saving itself “the right to the last word” but hence agrees to “the necessity to bear international consequences” (paragraph 340). This is due to the fact that German law gives rise to the primacy of EU law, whereas the competence of the Federal Constitutional Court arises from Germany’s sovereignty as a EU Member State (paragraph 339).

Furthermore, the Federal Constitutional Court held that the EU institutions cannot change the treaty base of the EU independently neither based on two simpli-

⁵ In the judgement of 12 October 1993, the Federal Constitutional Court stated that the Treaty of Maastricht established an “association of states” (*Staatenverbund*) that was an implementation of an increasingly more concise Union – of people of Europe – organised as states [...], and not a state based on a European nation (*europäisches Staatsvolk*)” (*BVerfG*, 12.10.1993, p. 155).

fied treaty revision procedures (Article 48(6–7) TEU) nor under specific *passerelle* clauses nor under the flexibility clause (Article 352 TFEU), nor based on appeal procedures allowing for suspending the ordinary legislative procedure and to submit a given proposal for a legislative act to the EC at the request of a Member State that could be outvoted where vital national interests of the said state could be affected. Therefore, it pointed to the need to significantly strengthen the powers of the Bundestag and the Bundesrat in these areas. It stated that a failure to satisfy requirements provided for by German law on cross-participation of parliamentary chambers in the shaping of Germany's position in the EC and the CEU in the conferral of 'sovereign powers' would constitute a violation of the 'constitutional identity' of the state, since the responsibility of German constitutional authorities for compatibility of the integration process with constitutional requirements (*Integrationsverantwortung*) is not exhausted in a single treaty ratification agreement but also pertains to its implementation. Hence, this also concerns constitutional conditions for the conferral of sovereign rights of Germany on the European Union or possible amendments to the Basic Law, which requires statutory authority compliant with provisions of Article 23(1) of the Basic Law (paragraph 236).

After the judgement was delivered by the Federal Constitutional Court, the CDU/CSU/SPD government coalition parties agreed on a package of the so-called accompanying legislation (*Begleitungs-gesetze*), which comprised four acts of law, namely, the Act extending and Strengthening the Rights of the Bundestag and the Bundesrat in European Union Matters; the Act amending the Basic Law for the Ratification of the Treaty of Lisbon; the Act amending the Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union, as well as the Act amending the Act on Cooperation between the Federation and Federal States in Matters concerning the European Union. The said acts were adopted by the Bundestag and the Bundesrat on 8 and 18 September 2009, respectively. As a result, on 23 September 2009, President Köhler signed the instruments of ratification. Hence, the treaty ratification process in Germany was concluded.

It is stressed in the German doctrine that the judgement of the Constitutional Court of 30 June 2009 is one of the most controversial court verdicts in the history of European constitutional law. Some representatives of the doctrine note that as a result of this judgement, the definitions and acceptable limits of action of the EU institutions, particularly the Court of Justice of the European Union, were redefined. Others even speak of a "sensational" redefinition of the own role of the Federal Constitutional Court in Germany as a guardian of "constitutional identity" and expect its case-law to collide with the case-law of the Court of Justice of the European Union as a possible implication in the future, though it would force the latter to observe the principles of conferral and subsidiarity more effectively than before. Others again even claim that the Federal Constitutional Court opposed in its judgement the idea of establishing a European federal state as the target model for the European integration, as it imposed restriction on Germany as regards the conferral of sovereign rights on the European Union (Scholz, 2009, pp. 7–8; Tomuschat, 2009, pp. 1259–1262; Niedobitek, 2009, pp. 1267–1275; Müller-Graff, 2009, pp. 331–360; Ruffert, 2009, pp. 1197–1208).

Conclusions

Both in the final phase of the Presidency and during the meeting of the intergovernmental conference in the second half of 2007, the German government succeeded in implementing all of its major postulates on the system reform of the EU specified in the Bundestag resolution of 14 June 2007, later confirmed in the Treaty of Lisbon signed on 13 December 2007. There were at least three reasons for the interest of the German government in the system reform of the EU. First, the reform actually allowed for an internal and external consolidation of the European Union, thus providing grounds for strengthening the EU on the international arena and to enhance the very integration process. Second, the Treaty of Lisbon also consolidated the position of Germany in the European Union, particularly in the decision-making in the CEU and the EC, which, together with the scope of qualified majority voting radically extended to as many as 49 articles, provided for a change in the balance of powers within this international organisation. The last reason pertained to the fact that due to its economic and demographic potential, and thus its political significance (particularly the capacity to establish coalitions with other Member States), Germany was (and still is) much more likely to reconcile its national interest with the need for surrendering certain attributes of sovereignty. This is because the benefits arising from Germany's presence and action in transnational institutions at times outweigh the benefits of traditional diplomatic activities. Hence, the system reform of the EU carried out under the Treaty of Lisbon has formed a potential that serves to not only consolidate the role of the EU both internally and externally but also to further strengthen Germany's position within this international organisation. Instead of connecting Germany with the Union even more, veto restrictions on the Member States and the radical strengthening of the community method in the EU provided by the treaty formed possible grounds for their domination in the EU.

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Summary

The research objective of the article is the reconstruction of Germany's influence on the system reform of the European Union in the Treaty of Lisbon (December 13, 2007). The author formulates a research hypothesis that the Treaty of Lisbon has strengthened Germany's position in the European Union. Instead of connecting Germany with the Union even more, veto restric-

tions on the Member States and the radical strengthening of the community method in the EU provided by the treaty formed possible grounds for their domination in the EU.

Key words: Constitutional Treaty, European Union, European Council, Council of the European Union, German Government, Berlin Declaration of 25 March 2007, Intergovernmental Conference, Treaty of Lisbon of 13 December 2007, Federal Constitutional Court in Germany

Stanowisko Niemiec wobec reformy traktatowej UE w latach 2005–2009

Streszczenie

Celem badawczym pracy jest rekonstrukcja wpływu Niemiec na reformę ustrojową Unii Europejskiej dokonaną w traktacie lizbońskim z 13 grudnia 2007 r. Autor formułuje hipotezę badawczą, że traktat lizboński znacząco wzmocnił pozycję Niemiec w Unii. Ograniczenie prawa weta państw członkowskich oraz radykalne wzmocnienie metody wspólnotowej w Unii dokonane w tym traktacie zamiast jeszcze bardziej związać Niemcy z UE, stworzyły potencjalne przesłanki nawet do ich dominacji w Unii.

Słowa kluczowe: traktat konstytucyjny, Unia Europejska, Rada Europejska, Rada Unii Europejskiej, rząd niemiecki, deklaracja berlińska z 25 marca 2007 r., konferencja międzyrządowa, traktat lizboński z 13 grudnia 2007 r., Federalny Trybunał Konstytucyjny w Niemczech

