Centre for Europe, University of Warsaw

Introduction to European Studies:

A New Approach to Uniting Europe

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From the Editors

Today, European Studies as broadly understood have become an important discipline within the humanities and social sciences. The reason for this is, first of all, the contemporary significance of the issues covered by European Studies, that is the processes of European integration and the functioning of Europe both politically and as a specific cultural area. These issues generate a great deal of interest owing to Europe's fluid position in the contemporary world. While not without objective limitations, it remains one of the key actors in the international arena and its influence still extends to all corners of the world.

At the same time, European Studies are one of the most interesting disciplines at they are in a state of constant development, still searching for its own field and research matter as well as its own methodology and research instruments. As demonstrated in this book, these complex issues often give rise to doubt and controversy. Hence the attempts to analyse them are both fascinating and important, and have attracted the interest of a growing number of academics all over the world, and within the last 25 years increasingly often of Polish scholars as well.

These Polish scholars include the research staff of the Centre for Europe of the University of Warsaw, one of the oldest academic units of this profile in Poland. Not long ago, we celebrated the 20th anniversary of the establishment of the Centre. Although 20 years might not seem impressive compared to similar centres operating in the Western part of Europe, we have to take into account the specificity of the Polish context, which is dealt with in the first group of texts in this book. This is a time for a reflection, summing up the achievements made in various disciplines and emphasising that in the two decades of our operation we have come a very long way.

The Centre for Europe started as a unit of the University of Warsaw established to promote knowledge and information about European integration. This task was realised in the form of trainings, conferences, seminars, exhibitions, etc. Over time, our scope of activity was considerably broadened and, what's more important, gradually became ever more academic. Presently, the Centre has

attained the status of an autonomous, full-fledged organisational unit functioning as a faculty of the University of Warsaw.

Our intensive activity includes didactics in the form of both undergraduate and graduate programmes in European Studies (*europeistyka*), as well as academic research. The results of our research are presented at various scientific conferences in Poland and abroad, as well as in numerous publications. We still play an important role as a centre spreading information and knowledge, e.g. through our highly esteemed library, which also plays the role of European Documentation Centre.

We also have our own Publishing Programme, under which we issue two academic periodicals: the Polish quarterly "Studia Europejskie" and the English-language "Yearbook of Polish European Studies". Furthermore, we publish various books in Polish and in foreign languages in the form of academic textbooks, studies and monographs, including the present work. While not wishing to engage in self-praise, we nonetheless should point out that our activity has been appreciated by external entities, which is shown, for instance, by the fact that the Centre for Europe has been placed in the highest category in the official ranking of academic units compiled by the Polish Ministry of Science and Higher Education.

We also try to perceive our activity in the broader perspective, not only as the functioning of a single institution. The two decades of the Centre's existence is an important symbol of the transformations taking place in Poland and in Polish science. The launching of studies on European issues was only possible because of the general democratic transformations taking place in Poland, and its opening up to the world, especially to Europe. Our activity constitutes proof that Polish academic science has made the adjustments necessary to meet the requirements of modernity and that it continues to focus on the important challenges accompanying the rapid changes taking place in the world.

We would like our anniversary to constitute a symbol of the increasingly close ties between Poland and the European Union, of which Poles remain enthusiastic proponents, even despite the current problems facing the EU. At the same time, we desire ever fuller and closer cooperation with our EU partners, as we consider this an important element in furthering the development of Polish science. We hope that the Centre for Europe will continue to contribute to this development, which is one of the aims underlying this publication.

This book is the result of an international research project conducted by the Centre for Europe, University of Warsaw, in cooperation with Ukrainian universities, in particular with the Institute of European Integration and Faculty of International Relations at the Ivan Franko National University of Lviv. The project was co-financed by the Minister of Foreign Affairs of the Republic of Poland under the cyclical programme 'Cooperation in the Field of Public Diplomacy 2012'. One of the key goals of this undertaking was to prepare a book containing a methodological and factual introduction to European Studies. Our publication is not aimed at presenting the achievements of Polish scholars in this

discipline, but at facilitating university education and academic research in this field.

Hence we are not trying to devise a full compendium of knowledge about the various aspects of the phenomena and processes of European integration, or to put it broadly – Europe treated as a specific civilisational area. As the title suggests, in this work we try to outline the most important notions which, in our opinion, European Studies should be dealing with. We know that the issues in question are interdisciplinary, hence the authors approach them from various perspectives: political science, law, economics, social studies, cultural studies.

The publication consists of seven parts, comprising a total of 33 chapters. They correspond to individual groups of notions and concern the following problems: the methodology of conducting research under broadly-defined European Studies; the genesis and course of the integration processes in Europe; the functioning of EU law and the EU institutional system; the principles and mechanisms of European economic cooperation; the analysis of the selected key policies implemented by the EU; issues related to EU foreign policy and its significance in the contemporary world; and social issues and the role of culture in Europe. Apart from focusing on the contemporary context of these problems, we also take into account their historical background and future prospects.

The authors of this publication are mainly members of the research staff of the Centre for Europe, University of Warsaw, who have devised the concept of the work and wrote the majority of its chapters. In this endeavour, they enjoyed ample and invaluable support from researchers from other Polish and foreign universities, especially from the Institute of International Relations and the Faculty of Management at the University of Warsaw, as well as the Warsaw School of Economics, the University of Warmia and Mazury in Olsztyn, the Kozminski University in Warsaw, the National University of Lviv, and the University of Latvia in Riga. Herewith we would like to express our thanks to all those who contributed to the content of this book, as well as to those who helped us in terms of organisation and funding – in particular the Polish Ministry of Foreign Affairs and the University of Warsaw.

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Part I

Methodological Introduction

Dariusz Milczarek

Theoretical Aspects of European Studies

This article is an attempt to answer several fundamental questions about the functioning in Poland of the fields of science dealing with broadly understood studies on Europe – namely, questions when and in what conditions there appeared an interest in these problems, how the new disciplines can be classified, what was the object and research field of these studies, and what were the difficulties in this respect.

Genesis

The system transformation which took place in Poland and other post-Soviet states of Central and Eastern Europe after 1989 brought many revolutionary political, economic, social and cultural changes in virtually all areas of life in the region. This also applied to the sphere of science, which was clearly manifested by the emergence of new disciplines, and among them the one which is of greatest interest to us in the present study – the study of European integration and, more broadly speaking, studies on Europe as a specific civilisation.

Such studies essentially did not exist in Poland and the other countries of the region until the late 1980s and early 1990s for obvious political and ideological reasons. Once the possibility appeared, there were many questions as to how to formulate the subject, the scope of research and instruments of these new disciplines. In addition, they aroused great interest, as most of the Central European countries started efforts to join the Western European integration structures. In these circumstances, the new field of science was expected, in addition to its academic function, to become an instrument meeting the practical requirements of the European integration process. This concerned in particular the very important need for academic institutions educating competent staff. Having properly trained officials, businessmen, managers or journalists was necessary for managing the process of adaptation to the requirements faced by the countries

striving for membership in the European Union and later for the smooth participation in the organisation.

As we can see, the emerging disciplines faced great challenges, concerning both practice and theory. In Poland, one of the first academic institutions dealing with European issues was the Centre for Europe at the University of Warsaw. For more than 20 years, it has been making every effort to contribute to the development of research on Europe (including this publication), as well as to educate specialists needed in various areas of European integration.

Naturally, this applies also to other academic centres in Poland, successfully conducting research and didactic activities. Numerous dissertations and academic textbooks published on these subjects, as well as lively academic debates in this field show how dynamically it has been developing. However, the fact that the new disciplines lack a clearly defined scope of research gives rise to a lot of confusion, a variety of interpretations, disputes, or even controversies.

Classification of European Studies

These problems concern, first of all, the distinction of new directions of research, and then determining the relations between them. The two main disciplines which have developed in Poland are: (1) the study of European integration, and (2) the European Studies, in Polish referred to as *europeistyka*.

Without going deeper into the definition, we can say that these two disciplines are related in terms of the subject matter that includes – generally speaking – everything that is going on in Europe, what is related to it and what it involves. The spectrum of issues examined by these disciplines is very broad, ranging from purely material (such as geographic conditions, or the demographic or economic potential), through the broadly understood social life (including institutions and social structures, political systems, organisation and management of the economy), to the sphere of intellectual values (philosophies, ideologies, science, art, religious beliefs, etc.).

In this context, the key distinguishing feature of both disciplines is their scope of research. The study of European integration should focus, according to its name, on the analysis of various aspects of the phenomena and processes of integration which have been taking place in the European Communities/European Union since the end of World War II to the present day, whereas *europeistyka* should be akin to the discipline which has existed in the West for several decades, known as 'European Studies'. The latter deals with the entirety of the problems – very broadly defined – related to Europe, with the extent and approaches characteristic of various social and humanistic studies.

In very general terms, we could say that the study of European integration deals only with the part of European problems which concerns various aspects of the process of unification: institutional, legal, economic, etc., while European Studies deal with a much broader spectrum of problems related to the function-

ing of Europe as a specific civilizational area, covering much more than just the European Union.

In consequence of the above, we should remember that despite the similarities between these two disciplines, there exist some distinct differences between them, and therefore they should not be considered equivalent. The first of these two separate disciplines has a much narrower scope than the other. Therefore, the study of European integration – although essentially a separate discipline – might be considered an important, but not the sole component of European Studies.

However, this is not that obvious in academic research and teaching practice. Some approaches might make the study of European integration the instrument of a very broad analysis of the political, legal, economic and social processes taking place on the continent as a whole. At the same time, some might try to reduce European Studies to a kind of 'regional studies', dealing only with selected elements of the European reality. The situation is further complicated by the fact that in foreign studies in this field, especially in the West, the definition and methodology are also unclear. In the British and American academic circles the approach to European Studies is different than in continental Europe, and there are even differences between the continental schools, e.g. French and German. Therefore, Polish academics, who have been shaping these new disciplines for only 20 years, find it difficult to refer to works of their foreign counterparts, who have more experience and achievements in this field.

Notwithstanding the controversies, we could put forward a thesis that European Studies (or what the Polish term *europeistyka* stands for) has the broadest scope of research as a discipline and in fact dominates in Polish studies on broadly understood Europe, as proved by the fact that it has been introduced as a separate major at Polish universities. This does not mean, however, that there is no longer any controversy regarding its still unspecified and vague content. The subject and scope of research is still interpreted in many various ways, and consequently the programmes of the studies under the same name may differ substantially between universities.

It seems that the only relative consensus is that the new studies should be interdisciplinary. Hence, they should take into account the solutions applied by older disciplines of social and humanistic studies: political science, history, law, international relations, economics, social and cultural science. This approach always furthers the development of the emerging studies, as it gives a broader overview of the issues studied, and at the same time prevents excessive narrowing and the formation of 'academic ghettos'. Furthermore, interdisciplinarity allows the new field of research to find its own place among the existing ones, as well as to check which of the methodologies applied are best suited to partial or full use in the new circumstances.

It should also be noted, however, that not all academics pursuing the study of Europe agree with the interdisciplinary approach. Moreover, some of them even believe that the new field of study is only a specialisation within the framework

of political studies, law, economics or social science, or at least are in favour of methodological and substantive domination of their own disciplines. This kind of narrow view is supported by the aforementioned fact that so far European Studies have not had enough time to develop specific research instruments which would be characteristic of only this particular discipline. (These issues are discussed in depth in the next chapter of this book.)

Exceptionality of research matter

Despite all their weak points, the European Studies make all effort to create new scientific 'added value', which would help it construct its own research identity. It is not an easy task, as in addition to the difficulties concerning methodology or classification, the research matter itself is problematic. The integration structures – in the form of the European Communities or the present European Union – and Europe as a whole are very unique, complex, and essentially vague and unspecified subjects of study.

The European Union is the only example in the history of mankind of an international community integrated to such an extent, both in terms of the depth of solutions adopted by it (e.g. the exclusive competence of EU institutions in some areas), and in terms of integration measures. By gradually expanding, it has covered practically all spheres of life (though to various extents): economy, politics, legislation, social and cultural issues, defence, etc. The same applies to its organisational structure. No other world grouping has achieved such an advanced level of institutional development. At the same time, it is a very complex structure in terms of institutions, laws and functioning, and it should be treated as a kind of collective category, as it includes both the EU structure proper and its Member States, which have retained the fundamental attributes of sovereignty.

We should remember that as a structure *in statu nascendi*, the European Union is subject to constant transformations and is an ongoing process rather than a final outcome. Therefore, it does not easily lend itself to evaluation, analysis, and in particular categorisation. From the research perspective, as the former President of the European Commission Jacques Delors aptly put it, the EU is an '*unidentified political object'*.

Any comments of this kind refer as well – or maybe even to a greater extent – to Europe perceived as a specific civilisation, which has always been attributed a unique position, as well as a unique economic, military, cultural, and political role in the history of mankind. We should remember how much the European continent has contributed to the greatest spiritual and material achievements in human history: philosophy, democracy, the rule of law, modern science etc. In the colonial period Europe was undeniably the leading region of the world in each respect, and today it still plays an important role in the civilizational development of the world.

The complexity of Europe as a phenomenon stems from the complicated situation in practically every area of life on this continent. Although it is not an

exception, there are really few other regions in the world with such a large variety of historical experience, cultural traditions, ethnical composition, political structures, economic development, etc., not to mention climatic and geographic diversity.

As regards the vagueness of the concept of Europe, to avoid any deeper deliberations on this problem it suffices to point out how difficult it is to give a precise answer to the fundamental and seemingly simple question: Where exactly are the geographic, historical, political and cultural borders of Europe?

Consequently, we are faced with an enigma, which is all the more difficult to solve as the 'European research matter' is almost endless and involves a great amount of information, knowledge, data, etc. Its vagueness usually makes it difficult to specify the precise scope of research and the set of instruments which could be applied in all disciplines of interest to us.

As regards methodology, we should also remember that the research problems in question require a theoretical analysis in the form of proposed definitions or classifications, but have a practical dimension as well, involving certain phenomena, processes, ideas, measures, mechanisms, etc. Consequently, it requires adequate theoretical and empirical tools, which are still under development and are discussed with various, sometimes controversial, results.

This collective publication, presenting various thesis, opinions and views formulated by the authors, is a good example of such a debate. The book does not pretend to be a compendium of European Studies, as no one has ever fully managed to compile such a work. Nevertheless, the authors attempt to make an outline of this field of study by posing questions rather than providing explicit answers. The theses presented herein should therefore be further discussed, including the above assessment of the genesis and classification of the academic disciplines in Poland dealing with European issues in broad terms. We should hope that the experience and achievements of Polish academics will prove useful in general developing of the European Studies.

Conclusions

In Poland, studies on European issues could emerge only after the political transformation at the end of the 1980s and in the early 1990s. The two new disciplines which emerged at that time were: study of European integration and *europeistyka*, originating from the tradition of Western European Studies. Despite a similar object of research, the two disciplines have their own distinctive characteristics and separate scope of research: the study of European integration deals with the processes of integration in the EU, while European Studies (*europeistyka*) deal with Europe as a civilisation. The broader European Studies may comprise the narrower study of European integration, although this classification is not commonly accepted by Polish academic circles, and neither is the idea that these new studies should be interdisciplinary. In their further development, these disciplines

must additionally overcome the challenges resulting from the unique character of the subject matter and the problems with developing their own methodology.

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Wojciech Gagatek

Research Trends in EU Studies

Introduction

In May 2000, the European Union adopted 'united in diversity' as its official motto. It means accepting the differences between the states and peoples of the EU, while striving for unity. As we can read on the European Union website, united in diversity *'signifies how Europeans have come together, in the form of the EU, to work for peace and prosperity, while at the same time being enriched by the continent's many different cultures, traditions and languages'*.[1] EU studies as a research field is, to some extent, in a similar position.[2] On the one hand, quite a few academic disciplines are interested in the processes of European integration. Simplifying a little bit, and without belittling the achievements of other disciplines, it seems that the study of European integration is dominated by political scientists, lawyers, economists, and sociologists. Obviously they are different from one another by many standards: their objects of study, theories, methods, language, etc. How do these natural differences manifest themselves as far as EU studies are concerned? This question is particularly important from the perspective of the status of EU studies: is this an academic discipline *in statu nascendi*, or rather a field of specialisation within each of the disciplines interested in European integration? Is it united in diversity? One way to find it out is to review research directions in EU studies, or more precisely, how European integration is studied from the point of view of different academic disciplines. This is the precise aim of this paper. By 'directions' I mean all aspects of research, but here I will particularly focus on objects of study, theories and methods. Space considerations

[1] http://www.europa.eu/about-eu/basic-information/symbols/motto/index_en.htm (last visited 15.02.2013).

[2] At times various authors (see Milczarek in this volume) make a distinction between European Studies in a narrow sense (i.e. devoted to the processes of European integration) and in a broader sense (where Europe is not just limited to European integration, but embraces many other processes not necessarily related to the EU). In this paper the term EU studies obviously refers to the former sense.

allow to analyse the input of four disciplines only: political sciences, law, economics and sociology. Let me start with the first one.

Political sciences

For many years, the representatives of political sciences have been waging an internal dispute about the identity of their discipline.[3] The elementary division is the one between political science and international relations.[4] This distinction is particularly important for the development of EU studies. For many years, the research and theory of European integration was dominated by a paradigm of international relations based on neo-realist perception of the state, supplemented by game theory and international negotiation theory. Its basic assumption was the central role of the state as an actor in international relations. Consequently, the EU (and its institutional predecessors) were considered international organisation (there was a dispute whether this was a typical or a *sui generis* international organisation), in which the Member States play the key role, while the role of the EU institutions is only ancillary. Over time (roughly in the mid-1980s), some scholars representing this direction, as for example R. Keohane and S. Hofmann, noticed the importance of supranational institutions and interests, which however has not changed that fact that the state was still perceived as the main object of analysis.[5] Today, a modified version of this approach is referred to as liberal intergovernmental approach and its main promoter is A. Moravcsik. In this case, the driving force of integration are the interests of the Member States and the determinant of their success is their negotiating power.[6] Therefore, it is not surprising that the most important field of research activity is the European Council. If we were to look for a theory of European integration, it is certainly the liberal intergovernmental approach that deserves to be called a mid-range theory as a combination of the liberal, rationalist theory of the preference formation and the neo-realist approach to international relations.

The first attempt to challenge this state-centred approach was neo-functionalism (drawing attention to the role of supranational actors), and since the 1990s, the comparative politics approach. Political scientists who presented the latter

[3] See: A. Żukowski, *Politologia jako dyscyplina naukowa i kierunek kształcenia. Zarys problematyki (Political Sciences as a Scientific Discipline and as a Field of Study)*, Olsztyn 2006; T. Klementewicz, *Rozumienie polityki. Zarys metodologii nauki o polityce (Understanding Politics. An Outline of Methodology of Political Studies)*, Warszawa 2010.

[4] On international relations as an academic discipline see: J. Czaputowicz, *Teorie stosunków międzynarodowych: krytyka i systematyzacja (Theories of International Relations: Criticism and Systematisation)*, Warszawa 2008, pp. 22–29.

[5] A. Warleigh, *Learning from Europe? EU Studies and the Re-thinking of "International Relations"*, "European Journal of International Relations" no. 1/2006, vol. 12, pp. 31–33.

[6] A. Moravcsik, *Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach,* "Journal of Common Market Studies" no. 4/1993, vol. 31, pp. 473–524.

approach decided to use the full theoretical and methodological potential of political science to study the EU as a political system (which does not mean that they considered the EU a state). Research covered political parties, interest groups, trade unions, elections to the European Parliament, European citizenship, euroscepticism, Europeanisation, all topped with concern for the democratic deficit, representativeness and accountability of the European Union. Thus, there was a qualitative shift towards treating the EU as a political system, with all its theoretical and methodological consequences. The most important representative of this approach is S. Hix.[7]

One of the most important disputes between political scientists and researchers in the field of international relations concerned the changing role and perception of the state as the primary reference point for the development of theories. Namely, do the integration processes lead to erosion of the nation-state, and if so, in what direction? Are the nation-states able to control these processes, and if so, why have they agreed to such a significant limitation of their powers in exercising their sovereignty?[8]

Hence, there has long been a dispute between the researchers in the field of international relations and political scientists about what should be the major object of study as regards European integration, and why. It should also be noted that these different approaches to the role of political actors and processes in which they participate blur the definition of European integration or cause it to be identified with Europeanisation. For what is this European integration? Who is integrating – only the states or the societies and citizens as well? Is European integration everything that is happening in the EU or everything that the Member States undertake? This dispute reflects the division within the discipline of political sciences and affects the research on European integration, the subjective scope of which is defined very broadly, even if only within the limits of political sciences.

However, there is no doubt that debates and disputes about the theory of European integration have taken place primarily among the representatives of political sciences and in political science journals. Some political scientists believe that it is for this reason that EU studies are included as a sub-discipline of political sciences, precisely because of theoretical inspiration.[9] It is political sciences that

[7] S. Hix, *The Study of the European Community: The Challenge to Comparative Politics*, "West European Politics" no. 1/1994, vol. 17, pp. 1–30.

[8] See: L. Hooghe, G. Marks, *European Union?*, "West European Politics" no. 1–2/2008, vol. 31, pp. 108–129; S. Sulowski, *Państwo narodowe w procesie integracji europejskiej (The Nation-State in the Process of European Integration)* in: *Integracja europejska. Wstęp (European Integration. An Introduction)*, K.A. Wojtaszczyk (ed.), Warszawa 2006, pp. 66–83.

[9] A. Wierzchowska, *Studia europejskie z perspektywy nauk politycznych (European Studies: A Political Science Perspective)* in: *Studia europejskie. Zagadnienia metodologiczne (European Studies. Methodological Aspects)*, K.A. Wojtaszczyk, W. Jakubowski (eds.), Warszawa 2010, pp. 22–26.

formulated the abovementioned neo-functionalism, neo-realism, the liberal intergovernmental approach, the comparative politics approach, and many others, including two of the three main trends of neo-institutionalism.[10] As part of these deliberations, despite the differing opinions as to what should be studied, political scientists and international relations scholars build their theoretical prospects based on common general theories, such as rational choice. They use the same language and conceptual apparatus, and they alternate qualitative and quantitative analysis.

Law

Studies of European integration from the legal perspective can be relatively easily summarized by looking at the period until the mid-1980s. As the EU was perceived as an international organisation, European integration fell to specialists in public international law. Their research focused on three main areas. First of all, they were interested in the nature of the Community legal order (with particular emphasis on the relations between Community law and national law). Secondly, they focused on the European institutions and decision-making process. And thirdly, they dealt with the common market (mostly the four freedoms and competition law). Their research methods were traditional legal methods, based on exegesis of legal acts and commenting the judgements of the European Court of Justice.[11] From this perspective, any common area of interest of law and political sciences concerns the role of institutions in the formal sense (and not, as defined by sociologists, the institutions as a kind of practice or social norms). One of the fields in which legal and political analysis can be successfully combined is, for instance, the principle of institutional balance. However, we must remember that there is a visible animosity between the styles of analysis cultivated by the representatives of the two disciplines, in particular in terms of scientific language. Political scientists accuse lawyers of too much formalism, bigotry and lack of methodological and theoretical reflection, while lawyers accuse political scientists of failing to understand the instruments and nature of law and of padding.[12]

The research fields and theoretical perspectives in the study of European law have been significantly extended since the adoption of the Single European Act. By embracing ever new areas, European integration has become an element of interest of all the sub-disciplines of law, not only public international law. Thus, the scope of legal perspectives has significantly expanded, while maintaining the

[10] See: P.J. Borkowski, *Polityczne teorie integracji międzynarodowej (Political Theories of International Integration)*, Warszawa 2007; *European Integration Theory*, A. Wiener, T. Diez (eds.), Oxford 2009.

[11] A. Arnull, *European Union Law: A Tale of Microscopes and Telescopes* in: *Research Agendas in EU Studies: Stalking the Elephant*, M.P. Egan, N. Nugent, W.E. Paterson (eds.), Basingstoke 2010, pp. 168–188.

[12] Ibidem.

three major research trends practiced by specialists in the field of public international law. A tangible result of this process is that today articles on European law are no longer published only in journals strictly devoted to EU matters, but basically in every legal journal.

As regards the theoretical and methodological perspectives, while the non-English language literature is still dominated by the traditional approach described above, in English language academic texts on European law the decisive role was played by a new wave, initiated by US researchers,[13] including in particular J. Weiler.[14] First of all, they have challenged the thesis of methodological autonomy of law by arguing that in order to understand what law is and how it works one has to refer to other disciplines, including political sciences, history and sociology. Secondly, and in consequence of the above, they departed from doctrinal deliberations and focused on identifying the role of law in the social and political context. The main idea was to analyse the impact of law on the general process of European integration (integration through law) and the impact of legal norms on European integration or disintegration. There have appeared a number of previously unprecedented concepts in the study of European law, such as soft law or the open method of coordination, generally associated with what is called governance. Some lawyers stuck to the old methods, but they too had to subject their deliberations to a broader analysis, especially after the famous *Maastricht judgment* of the German Federal Constitutional Court. How was the traditional legal methodology to resolve the issue of *Kompetenz-Kompetenz*, i.e. who has the authority to determine the competence of the EU, if not by referring to the achievements of other disciplines?[15]

Looking at the development of the theories related to legal perspectives, an eternal problem, concerning not only law, was whether due to the *sui generis* nature of the EU and European law lawyers should develop new theories, or whether they should apply the general theory of law to analyse developments in EU law. According to N. Walker, most lawyers opt for the second solution.[16] The primary reason for this approach is that EU law is a hybrid, which means that it is always interpreted on the basis of the differing legal orders of the Member States and various doctrinal approaches of the representatives of national studies of law. Therefore, developing a separate theory for 28 Member States would be pointless. It is better to rely on what is common for all lawyers (even taking into

[13] E. Stein, *Lawyers, Judges, and the Making of a Transnational Constitution*, "The American Journal of International Law" no. 1/1981, vol. 75, pp. 1–27.

[14] J. Weiler, *The Community System: The Dual Character of Supranationalism*, "Yearbook of European Law" no. 1/1981, vol. 1, pp. 267–306.

[15] A. Arnull, *The Americanization of EU Law Scholarship* in: *Continuity and Change in EU Law: Essays in Honour of Sir Francis Jacobs*, A. Arnull, P. Eeckhout, T. Tridimas (eds.), Oxford 2008, pp. 415–431.

[16] See: N. Walker, *Legal Theory and the European Union: A 25th Anniversary Essay*, "Oxford Journal of Legal Studies" no. 4/2005, vol. 25, p. 581.

account the differences between the continental and common law systems), and to build theoretical deliberations on its basis. Therefore, the theoretical debate takes place within the framework of law and between lawyers, and, as indicated above, does not include many concepts developed by political scientists. Lawyers are more concerned with reducing the divergences in interpretation and creating a relatively uniform system of education in EU law across the European Union.[17]

In addition, looking at the possibility of a dialogue between lawyers and political scientists, so far we can observe a rather limited field of cooperation. The only generally common notion, which can be pointed to without a lengthy revision of literature, is Europeanisation.[18] However, the concept is flexible and vague enough for anyone to interpret it in their own way. Nevertheless, political scientists and lawyers understand it essentially in a similar way – as the transformation of national legal and political institutions as a result of the processes of European integration, and vice versa. The abovementioned shift in research methodology, initiated by American researchers, had very little impact on non-English language literature, which is still dominated by the traditional approach, based on a formal and dogmatic analysis of legislation and case-law of the Court of Justice of the European Union (CJEU), sometimes supplemented by the comparative law method.[19] For a lawyer, the CJEU is primarily a source of case-law, which can be analysed in conjunction with legislation by using the methods of interpretation of law. However, lawyers rarely ask questions about the role of EU judges, the pressures which they are subjected to, or the broader motivations of judges to maintain a specific trend in case-law. These matters are only beginning to appear in their sphere of interest, but have long been the subject of interest of political scientists.[20] As one of the leading experts in European law, A. Arnull, aptly observed that it were political scientists who had provided answers to several important questions in the study of European law, including for example the source of differences between the number of requests for a preliminary ruling by the courts of different Member States.[21] On the other hand, political scientists should recognise the significant changes to their research perspectives arising from the development of European law. Based on the impact of the *Metock judgement*, which has undermined the basis of the Danish immigration system, shaking the already shaky support for European integration among the Danish people, we can see new sources of euroscepticism, while the *Viking* and *Laval* cases, due to their controversial nature

[17] See: B. De Witte, *European Union Law: A Unified Academic Discipline?*, "EUI Working Paper", no. 34/2008, http://www.cadmus.eui.eu/handle/1814/10028 (last visited 12.02.2013).

[18] Generally see: J.P. Olsen, *The Many Faces of Europeanization*, "Journal of Common Market Studies" no. 5/2002, vol. 40, pp. 921–952.

[19] Ibidem, p. 11.

[20] A.M. Burley, W. Mattli, *Europe before the Court: A Political Theory of Legal Integration*, "International Organization" no. 1/1993, vol. 47, pp. 41–76.

[21] J. Golub, *The Politics of Judicial Discretion: Rethinking the Interaction between National Courts and the European Court of Justice*, "West European Politics" no. 2/1996, vol. 19, pp. 360–385.

as regards workers' rights, have added a new dynamic to European trade union activity, which should be more widely acknowledged by political scientists.

These discussions are, however, conducted in two different fields, and not just because the theoretical and methodological basis for a dialogue between the two disciplines is limited. While for lawyers the 1960s and the 1970s were a golden period of development of Community law and establishment of a new legal order, marked by such milestones as *Costa v ENEL* (supremacy), *Van Gend en Loos* (direct effect) or *Internationale Handelgesellschaft*, for political scientists it was a period of eurosclerosis, the empty chair crisis and a general slowdown in political integration. Starting with the 1990s, along with further institutional reforms implemented successively by adopting new treaties, the political and legal analysis have become somewhat closer, but they continue to function as two slightly different worlds, sometimes to the detriment of the integration process as such. For example, the European Convention, surrounded by great lawyers, prepared a draft Treaty establishing a Constitution for Europe, but failed to take enough heed to the studies of political scientists concerning apathy and indifference of EU citizens, who eventually thwarted the said proposal.

Economics

Just as political sciences and law, economics is well-suited to the study of European integration. The processes of European integration were motivated by a desire to avoid war by reaching for economic integration, by linking key military industries in such a way as to make any war unprofitable. The liberalisation of trade and monetary stability were widely regarded as preconditions for the success of the European integration project.[22] In other words, the instrument for reaching political goals was economic integration. Since the beginning, economists have had a range of tools and theories at hand that could help explain these processes. The basic theory of economics was fully formed already by World War II, and in fact much earlier (starting from A. Smith, to J.M. Keynes).[23] Attempts to create a free trade area had already been made (although surely not to this extent), the theory of international trade offered clear models of economic exchange, etc. So basically, there was nothing that could not be explained by economic theory, and the case of European integration provided a new research material.

Only with the deepening of economic integration and the emergence of the new unprecedented areas of integration, economists were faced with more challenging problems. The crisis of the 1970s weakened the interest in integration processes and caused a crisis of economics as a science, the task of which was, among other things, to predict such crises. A renewed interest in integration

[22] See: V. Curzon, *Essentials of Economic Integration*, London 1974.

[23] *Współczesne teorie ekonomiczne (Contemporary Economic Theories)*, M. Ratajczak (ed.), Poznań 2007.

appeared along with the plans of establishing an internal market and later of the implementation of the Economic and Monetary Union (EMU). Economists focused on analysing the euro area in terms of an optimum currency area, typical of financial analysis.[24] Most of them came to the conclusion that the euro zone was not an optimum currency area, although they differed in opinions as to whether this was important in terms of its effectiveness. Recently, the focus has been on economic coordination mechanisms, especially in response to the challenges of the global financial crisis. One of the most important issues in the context of the euro was the answer to the question why Member States had agreed to such a significant limitation of their sovereign powers by introducing a common currency and depriving themselves of influence on the monetary policy, and thus have done something completely incomprehensible in the traditional (neo)realist theory. In his highly influential article, W. Standholz pointed out that one of the key aspects was that in the late 1980s the Member States of that time were ruled by coalitions that shared a belief in the need for a macroeconomic discipline and price stability as a condition for starting any discussion on the EMU. The way to achieve this was to pass on the powers to set forth the monetary policy to a supranational structure, which excluded, to a large extent, any political fluctuations on the national political scenes, thus tying the hands of any future governments which might not be as enthusiastic towards the EMU.[25] This type of perspective, taking into account the situation on the national political and economic arena, is typical of the research associated with political economy, and in this context it would have a lot to do with political science, including the liberal intergovernmental approach, and in terms of methodology, with the domestic politics approach.[26] The main research questions would be the role of institutions in shaping economic preferences and the impact of economic integration on the Member States, their economies and societies.[27] Particularly interesting works concern the eternal dilemma between the need to ensure efficiency on the one hand, and political accountability on the other.[28] Political science itself applied scores of economic theories to explain political processes, including European integration, such as the principal-agent theory, transaction costs or bounded rationality.[29] More recently, another commonly used notion appeared, namely economic government (*gouvernement économique*), which is to jointly 'govern' the euro area. On the other hand, influ-

[24] See: S. Bukowski, *Unia monetarna: teoria i polityka (Monetary Union: Theory and Politics)*, Warszawa 2007.

[25] W. Sandholtz, *Choosing Union: Monetary Politics and Maastricht*, "International Organization" no. 1/1993, vol. 47, pp. 4–10.

[26] S. Bulmer, *Domestic Politics and European Community Policy-Making*, "Journal of Common Market Studies" no. 4/1983, vol. 21, pp. 349–363.

[27] See: N. Jabko, *Playing the Market: A Political Strategy for Uniting Europe, 1985–2005*, Ithaca 2006, pp. 26–41.

[28] G. Majone, *Dilemmas of European Integration: The Ambiguities and Pitfalls of Integration by Stealth*, Oxford 2005, pp. 36–41.

[29] M.P. Egan, *Political Economy* in: *Research Agendas in EU Studies,* op.cit., pp. 216–218.

ential economists refer in their research also to the language and concepts close to sociology, such as norms and ideas,[30] while many others (especially the representatives of the new institutional economy) criticise the dominating neo-classical economy for its detachment from the social reality.[31] Naturally, in many aspects economics is related to economic law, and here there are also many common terms and perspectives, e.g. non-tariff barriers to trade, regulatory competition, market liberalisation, principle of mutual recognition, implementation, etc.,[32] while in law there is an increasingly popular current called the economic analysis of law, which uses economic tools in the study of law. However, economists do not seem to develop their own, specific theories of European integration, but rather draw on the theoretical basis of EU studies developed by political sciences,[33] which is a paradox of sorts, if we consider the quite common practice of constructing political theories and models on the basis of the economic theory.

Sociology

For a long time, sociologists remained indifferent to the emerging scientific reflection on the processes of European integration.[34] This did not mean, however, that sociological perspectives were not present in these studies, especially in political sciences. For example, based on the sociological concept of socialisation, E. Haas and his colleagues formulated neofunctionalism, and today many researchers seek to prove the influence of socialisation on the attitudes of European officials[35] or Members of the European Parliament.[36]

Sociologists have joined the debate on European integration only in the 1990s. How can their earlier absence be explained? According to V. Guiraudon and A. Favell, for a long time they were unable to accept the fact that the process of European integration, which had not lasted that long after all, had contributed to the erosion of the nation-state, which had been forming for several centuries,

[30] D.C. North, *Institutions, Institutional Change and Economic Performance*, Cambridge 1990.

[31] M. Ratajczak, „Ekonomia jako nauka", http://www.marekratajczak.pl/Portals/12/moim_zdaniem/O_ekonomii_jako_nauce.pdf (last visited 14.09.2011).

[32] On various perspectives on the common market see: *The EU Internal Market in Comparative Perspective: Economic, Political and Legal Analyses*, J. Pelkmans, D. Hanf, M. Chang (eds.), New York 2008.

[33] A. Zielińska-Głębocka, *Studia europejskie z perspektywy nauk ekonomicznych* (*European Studies: An Economic Science Perspective*) in: *Studia europejskie: zagadnienia metodologiczne*, op.cit., p. 70.

[34] See: *Sociology of the European Union*, V. Guiraudon, A. Favell (eds.), Basingstoke 2011; S. Saurugger, F. Merand, *Does European Integration Theory Need Sociology?*, "Comparative European Politics" no. 1/2010, vol. 8, pp. 1–18.

[35] L. Hooghe, *Several Roads Lead to International Norms, but Few via International Socialization: A Case Study of the European Commission*, "International Organization" no. 4/2005, vol. 59, pp. 861–898.

[36] R. Scully, *Becoming Europeans? Attitudes, Behaviour, and Socialization in the European Parliament*, Oxford 2005.

and which was the primary point of reference in sociological analysis. In addition, they claim that so far they have been much more interested in the processes of globalisation than regional integration on a smaller, European scale.[37]

They joined the debate because of a critical perception of the achievements of EU studies. Sociologists suggest that because of the dominance of lawyers and political scientists, EU studies have been dominated by a narrow institutional approach, based on organisations in the formal sense (institutions), which are often explored from the perspective of rational choice.[38] In the introduction to one of the most important recent works, N. Fliegstein compared the studies conducted so far to the tip of an iceberg: the researchers study only what is clearly visible in the institutional and legal aspects (institutions, organisations, law), but completely ignore those aspects which are intangible: social practices, cultural patterns, cognitive scripts, etc., which must have been the basis of this legal and institutional system.[39] J. Garlicki also believes that *'sociologists try to see something more than the widely accepted and formally defined types of human action'*.[40] A similar example concerns the question of the factors explaining the voting patterns of the Members of the European Parliament. While political scientists would focus on the impact of instructions from the national parties or the influence of the leaders of political groups in the European Parliament, sociologists would ask about professional and life experience of each Member of the European Parliament, the cultural patterns and social norms for which he or she stands, the vision of political culture which he or she identifies with, etc. In other words, every action of individuals is socially and culturally motivated, thus going beyond the influence of institutions on their decisions.[41] These differences between sociology and some studies within the framework of political sciences are easy to see by looking at the three versions of the new institutionalism, in which the so-called sociological institutionalism is a vision of institution as a set of social norms, cultural patterns and cognitive scripts.[42] To put it more simply, while a lawyer or political scientist would consider a political party or the European Commission an institution, for a sociologist an institution is for instance the pattern of cultural norms of European officials. Generally speaking, the principal (though not universal) distinguishing feature of sociological approaches in the study of European integration is the rejection of the rational choice theory, which constitutes the basis of the lib-

[37] *Sociology of the European Union: An Introduction* in: *Sociology of the European Union*, op.cit., pp. 12–13.

[38] J. Jenson, F. Merand, *Sociology, Institutionalism and the European Union*, "Comparative European Politics" no. 1/2010, vol. 8, pp. 76–79.

[39] N. Fligstein, *Euroclash: The EU, European Identity and the Future of Europe*, Oxford 2008, p. 9.

[40] J. Garlicki, *Socjologiczny wymiar studiów europejskich* (*Sociological Dimension of European Studies*) in: *Studia europejskie: zagadnienia metodologiczne*, op.cit., p. 105.

[41] Not the institutions of the European Union but any type of institution or organisation.

[42] P.A. Hall, R.C.R. Taylor, *Political Science and the Three New Institutionalisms*, "Political Studies" no. 5/1996, vol. 44, pp. 936–957.

eral intergovernmental approach and many works written in the tradition of comparative politics, and a few keywords: ideas, culture, language, symbols, social power, social conflict, social awareness, etc. Research methods are also different. They use, to a much greater extent, ethnographic methods, and generally pay more attention to the direct study of empirical phenomena.[43] And finally, it is the sociologists who have introduced to the study of European integration elements inspired by Weber, Durkheim or Marx.

In other words, sociologists not only ask quite different questions, but they also have different answers to the questions asked so far. For example, they are interested in issues such as the language of European integration, European identity, the impact of transnational networks, such as employer or football unions, European citizenship and migration. Europeanisation also appears in their terminology, but in the meaning of the Europeanisation of societies, not legal or political institutions, for example by looking at the patterns of professional mobility. The key explanatory element is the nationality and the resulting attitudes towards European integration.

V. Guiradon and A. Favell quote an interesting example of how EU studies are seen by sociologists and of what sociology can contribute. According to them, owing to the studies conducted so far, we now basically know what the European Union as a structure is. Every university student can easily name all the EU institutions and their powers. We know that the EU is expanding geographically and deepening the stages of integration. The legislative process is also well known – one treaty follows another, only intermittently opposed to by the citizens of some states as expressed in a referendum. Sociology wants to depart from this perspective, which one of the researchers called 'a bird's eye view analysis', it wants to look deeper: because the EU is not only a legal and institutional structure, it wants to study the people involved in the processes of European integration, their behaviour and attitudes: both high-level politicians and ordinary people, both intellectual elites and underclass. For all these individuals shape the essence of the European Union on every-day basis.[44]

The emergence of the new research agenda proposed by sociologists further expanded the boundaries of EU studies. An open goal for sociologists is to reject all previously maintained dogmas and axioms, look again into the most obvious issues, and in addition to develop their own, previously neglected research fields. Even so, sociology of European integration would have the most in common with political studies. As indicated above, political scientists have often used sociological perspectives in their own research – and they had a solid basis for doing so. Until the 1970s, contemporary political science was closely related to sociology, both from the point of view of models and theories and research methods. For example, through the influence of T. Parsons' functionalism

[43] J. Garlicki, op.cit., pp. 106–107.

[44] *Sociology of the European Union*, op.cit., p. 19.

and K.W. Deutsch's transactionalism, a systems analysis became common to both disciplines. A partial division occurred only in the 1970s, when political science, especially in the USA, started to frequently use economic models, assuming rationality of political actors, and in the methodological area based almost exclusively on quantitative methods. Therefore, all other disciplines dealing with European integration: law, economics, sociology, will find a common language with political science in many research fields. As for the impact of sociology on political studies, what I have in mind is the impact on political studies (e.g. the influence of cultural norms on EU officials), but also on international relations, in the context of the impact of social norms on democracy or security.[45]

Conclusions

This paper has shown the great variety of approaches to the study of European integration presented by political science, law, economics and sociology. It has covered objects of study, theories and methods practised by these disciplines. While this variety could be taken for granted due to the incredibly wide scope of problems related to European integration, this paper has shown in details how dissimilar these disciplinary perspectives are. Even when these different disciplines use the same terms, such as 'Europeanization' or 'institution', they might mean something very different. On the other hand, this paper has tried to analyse areas in which the possible cooperation is most feasible. It seems that political science has the greatest unifying potential, both due to its very broad scope as a discipline, and as a result of purposive and frequent borrowing of theories and methods from economics and sociology.

This paper can be also regarded as an introduction to discussion on interdisciplinary status of EU studies. The awareness of research directions in a given research field is often a good indicator of a degree of its condition as an academic discipline. In other words, if the representatives of one single discipline are aware of the mainstream research directions within it, then it is a good sign that indeed, we have to do with an academic discipline. With regard to EU studies, one would need to take a test. While being a lawyer, political scientist, economist or sociologist, am I aware of the research directions in other disciplines interested in European integration? If not, then it is yet another proof that EU studies is a multidisciplinary rather than interdisciplinary research field, where representatives of different disciplines undertake their research separately, and integration of knowledge takes place only after the completion of research process (if ever). This is, however, a topic for another paper, but nonetheless a very important for the future of EU studies and research directions within it.

[45] B. Buzan, O. Wæver, *Regions and Powers: The Structure of International Security*, Cambridge 2003.

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Kristīne Medne

Interdisciplinarity – Dilemmas Concerning Theory, Methodology and Practice

Introduction

Interest in an interdisciplinary approach[1] emerged even before the concept of 'interdisciplinarity' was explicated in the 1920s in the USA. At that time, in Europe, this approach was promoted by the idea of 'unity of science', while in the USA by an interest to foster research 'which draws on more than one discipline'.[2]

Today, interdisciplinary studies are offered in a variety of European higher education institutions, and in internationally recognized universities worldwide. Interdisciplinary study programmes combine and integrate knowledge of different branches of social sciences and humanities as well as social and natural sciences, social and engineering sciences, etc.

In recent years, growing interest in interdisciplinarity has been displayed also by global corporations, business incubators, various foundations and industrial research centres which recognized the interdisciplinary approach as an opportunity to strengthen the ties and cooperation between research, education and business communities. It is also seen as an incentive to develop new, unique products. The interdisciplinary approach in research is widely used for the study of various complex issues that are topical for modern society.

However, in spite of the success of its practical application and its increasing popularity, the interdisciplinary approach is still confronted with the epistemological, institutional, organizational and other barriers – both in higher education institutions and research centres. The main reason are the different and sometimes

[1] Here the concept 'interdisciplinarity' is used in its widest sense, i.e. without distinguishing interdisciplinary, multidisciplinary or trans-disciplinary approaches.

[2] J.T. Klein, *A Conceptual Vocabulary of Interdisciplinary Science* in: *Practicing Interdisciplinarity*, P. Weingart, N. Stehr (eds.), Toronto 2000, pp. 19–25. J.T. Klein, US researcher of history, theory and practice of interdisciplinarity, author of a number of monographs and scientific articles on the topic.

conflicting views of its potential and importance in modern higher education and research.

The present-day complexity, volatility and diversity of the globalised world, presents changes and ever new challenges to higher education and research. In this context, V.B. Mansilla concludes that a deep understanding of the contemporary life requires an interdisciplinary approach.[3] There is a growing need for the involvement of experts of different disciplines to handle the complex issues in the contemporary society and carry out interdisciplinary research related to various topical problems, while higher education needs a new approach that can give students generic knowledge, wide outlook, professional skills and competences.

At the same time, educators and researchers agree that the debates about disciplinarity and interdisciplinarity are complex as they *'directly challenge nothing less than the way the understanding, production and dissemination of knowledge are structured within the academy'*.[4] Also, the interdisciplinary approach raises questions about how and to what extent university researchers and educators collaborate with other parties involved in the development of new knowledge (private research centres, industrial laboratories, business and commercial organizations, etc.).

The evolution of interdisciplinarity in higher education and research

The wider research community's interest in interdisciplinarity grew in the early 1970s when the OECD published its report on interdisciplinarity[5] and organized the first international conference devoted to interdisciplinarity.

With hindsight, we can say that the last forty years have been an important period for the history of evolution of interdisciplinarity. During that time, a significant number of interdisciplinary education and research projects have been implemented, and the experience and the lessons learned have been extensively described in numerous studies and publications. This obtained knowledge has contributed to better understanding of the concept of interdisciplinarity and its different forms of application. Theoretical, educational and methodological aspects of interdisciplinarity have been dealt with in a number of monographs and numerous scientific articles.

Although there are still different views on the concept of interdisciplinarity, a sound basis for further discussions and research has been created over the years.

[3] V.B. Mansilla, *Assessing Student Work at Disciplinary Crossroads*, "Change Magazine" no. 37 (1)/2005, pp.14–21.

[4] K. Shailer, *Interdisciplinarity in a Disciplinary Universe: A Review of Key Issues,* "Colle - agues Working Paper" no. 1/2005, vol. 4, http://www.cou.on.ca (last visited 23.01.2013).

[5] *Interdisciplinarity – Problems of Teaching and Research in Universities,* OECD, Paris 1972.

As mentioned above, interdisciplinarity as it is generally understood today, originated in the mid-1920s in the USA. During that time, the US Social Science Research Council in one of its programmes mentioned its desire to promote research which brings in more than one discipline.[6] History shows that the US and the British governments have played a crucial role in the development of interdisciplinarity. The first problem-oriented[7] interdisciplinary research projects were launched on their initiative and have given a strong impetus to the development of interdisciplinary research and, subsequently, education.

To tackle the unprecedented and complex challenges of that time, during World War II the US government decided to create research groups to conduct projects of multi-disciplinary nature. Scientists of the humanities, natural and social science were involved in those groups and among them, as well as experts in mathematics, physics, psychology, economics, and other disciplines. These research projects resulted in a number of new theories, including the game theory,[8] the general system theory, and cybernetics.

The first interdisciplinary study programmes were also created in the USA. This innovation in education of the late 1930s was initiated in the so-called 'area studies movement', which initially focused only on Asian regional issues. As for the post-war period, experts hold an opinion that the main driving force of the regional studies development was the limited capacity of the USA to carry out their military and diplomatic functions during World War II in strategically important countries.

Thus, in response to the scarcity of scientific expertise on countries in Asia and the Soviet Union, in the late 1950s, the US government awarded funding to the largest universities for the creation of new centres of social sciences and humanities.[9] Those centres had the specific task to focus their research on those regions. For similar reasons, in the early 1960s, the British government allocated funding for launching interdisciplinary, area studies centres, which oriented their research towards the Soviet Union, Asia and Africa. After UK's entry into the European Economic Community in the early 1970s, the British universities started to offer master and later bachelor programmes in European Studies as interdisciplinary programmes.

The establishment of regional studies programmes and centres in the USA and the UK was a novelty and a great challenge for the traditional (disciplinary) approach. Admittedly, in the history of interdisciplinarity the 1960s and 1970s were the years to be most associated with innovation and university reforms.

[6] J.T. Klein, *A Conceptual Vocabulary*..., op.cit., pp. 19–25.

[7] Among the first research fields were defence and agriculture.

[8] The application of principles of mathematics and logic to political analysis when clarifying interests of actors and their rational thinking in conflict or cooperation. It seeks to answer the question: how will decisions be made given the actors' aims and information about them?

[9] This aim was integrated in USA's *National Defence Education Act*, 1958. See for example IDA Document D-3306, 2006. See: *The National Defence Education Act of 1958: Selected Outcomes*, http://www.ida.org (last visited 28.01.2013).

During that time, interdisciplinary research and education were associated with student protests criticising the academia for its abstraction and detachment from real-life problems;[10] and the dominating view was that scientific discoveries must be practically applicable and serve the needs of the society.

New interdisciplinary study and research programmes at universities in Europe and the USA revealed a number of organizational problems. During that time, many academics questioned the feasibility, applicability, and necessity of the interdisciplinary approach and higher education and research.

However, enthusiasm for the interdisciplinary approach persists. In the decades to follow, there was an ever growing interest in interdisciplinarity and numerous interdisciplinary educational and research projects were implemented.

In the above mentioned OECD report, interdisciplinarity is described as not an isolated phenomenon, but as a well-known approach existing in both Europe and the USA.

Since 1945, a number of new multi- and interdisciplinary fields have evolved, including political science, social psychology, criminology, biotechnology, molecular biology, information science, cultural studies and urban studies.

In the 1970s, there was a great desire for 'progress' and 'growth' and interdisciplinary research was mostly perceived as a tool rather than a concept. Industrialized nations started to allocate increased financial resources for interdisciplinary research in areas of economic competitiveness, specifically engineering and manufacturing, computer science, medicine and biotechnology.[11] In the early 1990s, the interdisciplinary approach was associated most of all with strategic research.

Looking back at the evolution of interdisciplinarity from the beginning of the 20th century to the present, one can say that in the last century the interdisciplinary approach was fuelled by social sciences, expansion of problem-oriented research, as well as the need for applied knowledge. At the same time, the consistent governmental support for interdisciplinary research and education has formed a widespread view within the scientific community that the concept of interdisciplinarity is mainly promoted by policy-makers, rather than by the interest of the academic and scientific community.

The most frequently expressed descriptions of interdisciplinarity are the following: the use and combination of different knowledge and skills, the application of a number of methods in problem solving, a problem-oriented approach, etc.; and two main dimensions of interdisciplinarity can be identified: multidisciplinarity and interdisciplinarity.

[10] G. Gozzer, *Interdisciplinarity: A concept Still Unclear,* "Prospects" no. 3/1982, vol. XII, pp. 281–289. See also: P. van Baalen, L. Karsten, *Is Management Interdisciplinary?,* ERIM Research Series "Research in Management", Erasmus Universiteit Rotterdam, ERS-2007-047-LIS, 2007, http://www.repub.eur.nl/res (last visited 25.01.2013).

[11] J.T. Klein, *Interdisciplinarity and Complexity: An Evolving Relationship*, "ECO Special Double Issue" no. 1-2/2004, vol. 6, p. 4.

The multidisciplinary approach fully recognizes the existence of autonomous disciplines – it draws on the knowledge of several disciplines and each of them provides a different perspective on a problem or issue. In a multidisciplinary analysis, every discipline makes a contribution to the overall understanding of an issue, but in a primary additive fashion.

A classic multidisciplinary study programme is, for example, business and management studies (MBA). In the training, the multidisciplinary approach may also take a more simple form, for example, students specializing in accounting take a course in law or economics. One should take into consideration that the multidisciplinary approach enhances the student's knowledge and outlook, but it does not create an understanding of theories, methods, etc. of other disciplines.[12]

The interdisciplinary approach involves combination and integration of theories and methodologies of various disciplines. Its characteristic feature is the crossing and revision of borders of the disciplines. Harvard University faculty staff, for example, defines interdisciplinary understanding as *'the capacity to integrate knowledge and modes of thinking in two or more disciplines to produce a cognitive advancement – e.g., explaining a phenomenon, solving a problem, creating a product, raising a new question – in ways that would have been unlikely through single disciplinary means'*.[13]

Interdisciplinarity: a trend in modern systems of higher education and research

Modern higher education institutions function in a post-industrial environment, which is characterized by rapid changes, abundance of information, technological development, growing competition, and uncertainty.[14] Along with the changes in the global environment, in the last decades changes have also affected the system of higher education.

Observing the developments of the last twenty years, experts conclude that a new paradigm of the role and significance of higher education in society has gradually emerged. The university, which has historically been the source of knowledge and culture, has now become one of the key elements of today's economy. As already in the mid-1990s M. Castells and P. Hall suggested – *'universities for the knowledge economy are what the coal mines for the industrial economy'*.[15]

Along with the increased 'value' of knowledge, the critical function of universities has been displaced in favour of the provision of qualified manpower and the

[12] J.T. Klein, *A Platform for a Shared Discourse of Interdisciplinary Education*, "Journal of Social Science Education" no. 2/2006, vol. 5, p. 13.

[13] V.B. Mansilla, *Assessing Student Work*..., op.cit., p. 17.

[14] K. Cameron, M. Tschirhart, *Postindustrial Environments and Organizational Effectiveness in Colleges and Universities*, "Journal of Higher Education*"* no. 63(1)/1992, pp. 87–108.

[15] M. Castells, P. Hall, *Technopoles of The World: The Making of 21st Century Industrial Complexes*, London 1994, p. 231.

development of knowledge. This is rooted in the belief that higher education and research is meant to serve the needs of society. Such a perception has been formed by various factors, where one of them is the growing demand for higher education.

Looking back at the last decades, it is evident that the number of people who choose to study and pursue higher education has increased in terms of both absolute numbers and as percentage of the population; researchers call this phenomenon 'massification' of higher education.[16]

'Massification' of higher education is a tendency of a global nature observed in many countries. To strengthen the competitiveness of the EU and its Member States in this respect, the EU 2020 Strategy was launched and one of its goals is to increase the proportion of the population with higher education (in the age group 30–34 years) to at least 40 per cent by 2020.[17]

This trend can be well observed also in Latvia's higher education. The data shows that in comparison to 2000, in 2009 the proportion of people with higher education (the age group of 30–34) has increased by more than 50 per cent. In 2000 it was 18.6 per cent, while in 2009 it reached already 30.1 per cent.[18] Absolute figures show that in 1998 there were 70,200 students in Latvia's universities, while in 2008 their number had already reached 127,800. Furthermore, according to the national statistics, the largest increase in the number of students was experienced by the study programmes in the social sciences and humanities. If the point of reference were the data of the early 1990s, the comparison with the figures of 2010 would reveal even more impressive increases.[19]

With the growing demand for knowledge, market principles were introduced in the relations between universities and the public, changes took also place in the university–government contracts (resulting in smaller state grants), as well as the university's organizational structure and curriculum offers.[20]

Universities also began to face increasing public pressure to respond to the changing environment and to make the relevant adjustments in the study programmes accordingly. Gradually, greater focus in study programmes was put on

[16] According to M. Trow's opinion on systems of higher education, higher education is considered 'mass' education when the age participation index exceeds 15 per cent. See: M. Trow, *Trust, Markets and Accountability in Higher Education: A Comparative Perspective*, "Higher Education Policy" no. 4/1996, vol. 9, pp. 309–324.

[17] On March 25–26 2010 in European Council, leaders of 27 Member States and governments endorsed the development strategy for the next ten-year period EU Strategy 2020. See: European Council conclusions, 25–26 March 2010, http://www.ec.europa.eu/research/era/docs/en/era-partnership-council-of-the-eu-03-2010.pdf (last visited 22.01.2013).

[18] Eurostat, http://www.epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home (last visited 28.01.2013).

[19] Latvijas Statistika (Latvia Statistics), http://www.csb.gov.lv (last visited 22.01.2013).

[20] M. Gibbons, *Higher Education Relevance in the 21st Century*, Secretary General Association of Commonwealth Universities and World Bank, 1998, p. 13, http://www.ec.europa.eu/education/external-relation-programmes/doc/confbalkans/material/21stcentury_en.pdf (last visited 22.01.2013). See also: T. Becher, P.R. Trowler, *Academic Tribes and Territories: Intellectual Enquiry and the Culture of Disciplines*, Buckingham 2001, p. 256.

applied knowledge, the development of students' skills, as well as the introduction of new study courses and teaching methods.

Quantitative and qualitative changes in study programmes were caused by the evolution of subject knowledge areas. As it is widely recognized, it has probably been a major driving force for the change in higher education and research in the 20th century. Over the past decades, numerous new disciplines and sub-disciplines, theories and methodologies emerged which, among other things, expanded the notions of subjects and teaching methods considered to be appropriate and applicable for university curricula.

The experience of the recent years illustrates, for example, an increase in the involvement of experts and professionals from the 'non-academic' environment in the educational and training processes. Some experts believe that in future this approach could become a kind of good practice of how to transfer and disseminate applied knowledge to students.

Similarly, in the last decades educators have developed and implemented various new training courses and study programmes, including professional and interdisciplinary study programmes. In the 1970s and 1980s, many universities introduced such study programmes as development studies, education studies, regional studies, etc.

Today, several decades later, experts agree that modern higher education is dominated by professional education; a strong emphasis on the 'professional' dimension of the higher education is also observed in the rhetoric of the government and in the national education policies. At the same time changes in the global environment and the increasing specialization and fragmentation of knowledge have created the need and demand for new approaches to higher education and research. In this context, social scientists focus on multiple levels of reality, where 'reality' is a nexus of interrelated phenomena that cannot be reduced to a single dimension.[21] Complexity is one of the features of modern society, which is characterized by ample diversity of processes, their interaction, interdependency and unpredictability.

Thus, studies conducted already in 90s came to conclusion that (in the present-day society) scientists are confronted with complex problems which can be solved by the collaboration of experts from various professions, the integration of knowledge and disciplines.[22] Frequently cited examples of interdisciplinary areas

[21] J.T. Klein, *Interdisciplinarity and Complexity*..., op.cit., pp. 2–10. See also: J.C. Caetano, H. Curado, M. Jacquinet, *On Transdisciplinarity in Organizations, Innovation and Law* in: *Transdiciplinarity: Joint Problem-Solving Among Science, Technology and Society*, R. Häberli, R.W. Scholz, A. Billi, M. Welti (eds.), Workbook I: Dialogue Sessions and Idea Market, vol.1, Zürich 2000, pp. 528–533.

[22] See e.g.: J. Ziman, *Disciplinarity and Interdisciplinarity in Research* in *Interdisciplinarity and the Organisation of Knowledge in Europe*, R. Cunningham (ed.), Luxembourg 1999, pp. 71–82; M. Robson, *Interdisciplinary Efforts are Needed as Researchers Battle Environmental Threats*, "The Scientist" no. 5(4)/1993, pp. 12–16.

of study are climate change and the environment, public health, welfare and demographic issues, globalization, regional and spatial planning, etc. According to the conclusions of experts, researchers and policy makers, the nature of contemporary social issues becomes increasingly interdisciplinary, which generates a growing demand for interdisciplinary studies and research.[23] In this context, Harvard University Professor H. Gardner pointed out that *'whatever the power – even the necessity – of the disciplines, in the end, questions never stop at the boundary of a discipline. Efforts to develop decisive and personal ideas of the true, the beautiful, and the good necessarily take us beyond specific disciplines and invite syntheses'*.[24]

In their studies, some researchers tend to refer to the diminishing role of a 'profession' in the modern society. Instead, they point out a new trend: an increasing demand for specialized knowledge, broad outlook and high-level skills. This trend is also reflected in the demand for higher education – in the recent years, universities are facing growing demand for specialization and, at the same time, the need for a 'new' approach to provide graduates with broader knowledge and the skills necessary for the professional life. As it is commonly assumed, *'individuals are no longer seen as specialists with narrowly defined responsibilities, but generalists with a particular area of expertise'*.[25]

'Complexity' and 'volatility' of the global environment have created the conviction in many educators that the professional activities in a number of areas – but especially in social sciences – require specific skills and abilities to look 'across disciplinary boundaries'.

The interdisciplinary approach in education, as well as research, entails an opportunity to examine an issue or a subject from the perspective of different disciplines and thus create a comprehensive and in-depth understanding of the subject addressed. As concluded in several studies, extensive development of skills is one of the major advantages of interdisciplinary education. The interdisciplinary approach fosters the development of critical thinking, analytical skills, the ability to work with complex issues and a multitude of sources of information, teach collaboration and teamwork as well as the creative approach to different life situations. In other words, interdisciplinarity encourages multilogical thinking – the ability to think accurately and fair-mindedly within the opposing point of view

[23] See e.g.: Council Resolution of 23 November 2007 on modernising universities for Europe's competitiveness in a global knowledge economy (2007/C 12/2007), http://www.register.consilium.europa.eu/pdf/en/07/st16/st16096-re01.en07.pdf (last visited 24.01.2013); Communication from European Commission to the Council and the European Parliament Delivering on the Modernisation Agenda for Universities: Education, Research and Innovation, COM (2006) 208 final, http://www.ec.europa.eu/euraxess/pdf/COM(2006)_208.pdf (last visited 24.01.2013).

[24] H. Gardner, *The Disciplined Mind: What All Students Should Understand*, New York 1999, p. 147, 284 passim.

[25] M. Breitenberg, *Education by Design: Interdisciplinary Innovation*, International Council of Sciences of Industrial Design, Canada, 2006, http://www.icsid.org/education/educa tion/articles185.htm (last visited 29.01.2013).

and contradictory frames of reference. It is exactly these high level analytical skills that employers are often looking for rather than discipline-specific expertise.[26] A. Chettiparambil points out that in 2006, graduates from the United Kingdom, regardless of the discipline, were eligible for 40 per cent of the jobs offered to university graduates.[27] In this regard, another researcher – M. Gibbons – outlines that companies are searching for problem identifiers, problem solvers, and problem brokers. This applies also to the public institutions and policy-making sector, in particularly. Since usually there are wide variations in the preferences and values of decision-makers, the interdisciplinary approach is a vital tool to integrate disciplinary knowledge in order to formulate and evaluate public policy options.

Interdisciplinary studies facilitate the development of skills and abilities through the large amount of information and its diversity, as well as through the cognitive conflicts that arise when working with alternative perspectives. Recently, scientists found out that disciplines have a direct impact on the way how an individual will assess different situations of professional life and beyond it, since individuals tend to associate themselves with the learned disciplines and view, assess and analyse situations and problems through the narrow prism of the particular discipline.[28] It is obvious that not all individuals will need interdisciplinary skills in their professional work. Dearing Report (1997) notes that different students will want different depth and breadth of knowledge, but goes on to recommend that *'introducing breadth more extensively would assist students to respond to social, economic and cultural changes* (...) *to think divergently and to integrate information and knowledge* (...)*'*.[29] Although interdisciplinarity in higher education is seen as an innovative or modern approach, the idea of using the interdisciplinary approach in the training process is not new. Already at the beginning of the 20th century R. Pound wrote: *'The modern teacher of law should be a student of sociology, economics and politics as well. He should know not only what the courts decide and the [legal] principles by which they decide, but quite as much the circumstances and conditions, social and economic, to which these principles are to be applied.* (...) *It is, therefore, the duty of American teachers of law to* (...) *give to their teaching the colour which will fit new generations of lawyers'*.[30] There has been a considerable growth of interest in the interdisciplinary approach in higher education over the last

[26] J. Dalrymple, W. Miller, *Interdisciplinarity: A Key for Real-world Learning*, „Planet" no. 17/2006, p. 31.

[27] A. Chettiparambil, *Interdisciplinarity: A Literature Review*, Report for the Higher Education Academy Interdisciplinary Teaching and Learning Group, 2006, http://www.hca.ltsn.ac.uk (last visited 14.01.2011).

[28] J. Dalrymple, W. Miller, op.cit., pp. 29–30.

[29] *Higher Education in the Learning Society: Report of the National Committee*, UK The National Committe of Inquire into Higher Eduction (the Dearing Committee), London 1997, http://www.leeds.ac.uk/educol/ncihe (last visited 28.01.2013).

[30] R. Pound, *The Need for a Sociological Jurisprudence,* 31 ABA Reports 911, 1907, pp. 917–921, 925–926.

5–10 years. During this time, many new study programmes of interdisciplinary nature have been created, some of which make an attempt at opening a new chapter in the field of education and knowledge. Some of the examples are:

- Master degree study programme in 'Materials, economics and management' (Oxford University), the programme combines the knowledge of materials technologies, IT and management;
- Master degree study programme 'Leaders for production' (Massachusetts Institute of Technology), the programme combines the fields of economics, management and engineering);
- Master degree study programme in bioscience (London School of Economics), the programme focuses on biomedical and biotechnology impact on the social science field.

By their nature, a large proportion of professional programmes are multidisciplinary (for example, programmes of business and management, international relations, communications studies) or re interdisciplinary (e.g. the environmental studies programme). A number of interdisciplinary study programmes arose due to the necessity to satisfy the needs of the modern society, public institutions and international business corporations and to equip young professionals with both wide-range and in-depth understanding of a certain area or topic. These types of studies are offered by the world's leading universities, such as Harvard, Stanford, Oxford, London School of Economics, and countless US and Canadian higher education institutions.

Promotion of the interdisciplinary approach and its implementation are emphasized in higher education policy documents of the EU Member States and various international organizations. It should be noted that much attention was given to interdisciplinarity and its inclusion in the EU and national policy-planning documents during the Bologna process[31]. Already in 2006, the European Commission called on the EU Member States to carry out restructuring and modernization of universities and implement the measures that would ensure modern and high-quality higher education and research, including the following measures:

- to develop and implement appropriate study programmes that meet the needs of today's labour market;
- to promote and practise interdisciplinary and multidisciplinary higher education and research.

Another reason why it is now necessary to reconsider the role of interdisciplinarity in higher education and research is that interest in it is expressed not only by individual higher education and research institutions, but also by representatives of business and commercial sectors. The authors of, for example, the Danish Business Research Academy and the Danish Forum for Business Education

[31] The European Higher Education Area, Joint Declaration of the European Ministers of Education Convened in Bologna, June 1999, http://www.ec.europa.eu/education/policies/educ/bologna/bologna.pdf (last visited 29.01.2013).

study wrote: *'Interdisciplinarity can become a new parameter of competition for Denmark, if we resolutely provide support for it. Through increased interdisciplinarity, we can get more out of the investments in knowledge and education that we are currently pursuing, among others as a part of globalization strategy. We can strengthen the interaction between research, education and business, so that firms can develop unique products which combine the most advanced knowledge within the humanities disciplines, social sciences, technology, health sciences and the natural sciences'*.[32]

The experience of different higher education institutions and research centres shows that interdisciplinarity is a great challenge for interdisciplinary projects developers as well as for the institutions. However, experience also proves that interdisciplinarity opens up opportunities to create new expertise, knowledge and understanding of many complex and important issues for the modern society.

Practising the interdisciplinary approach in European education and research

In 2005 the University of Göteborg, in collaboration with other European universities, conducted a study to identify the obstacles for interdisciplinarity in social sciences and humanities.[33] By studying the practice of eight European countries[34] on the implementation of the interdisciplinary approach, the authors conclude that an interdisciplinary approach is not foreign to any of these countries. Interdisciplinarity and crossing of boundaries between disciplines as an aim have been defined in education and research policy planning documents of several European countries. At the same time, one has to admit that in the USA, an interdisciplinary approach is applied more widely than in Europe, and that the practice and range of the implementation of the interdisciplinary approach in European countries are significantly different.

An analysis of the national policies of various European countries reveals that interdisciplinarity is applied more often at the master and doctoral level studies, as well as in research, while interdisciplinarity at the undergraduate level is severely limited. At the undergraduate level, the European countries consistently

[32] *Thinking across Disciplines – Interdisciplinarity in Research and Education*, Danish Business Research Academy and Danish Forum for Business Education, Copenhagen 2008, pp. 5–6, 116 passim, http://www.fuhu.dk/filer/DEA/Publikationer/08_aug_thinking_across_disciplines.pdf (last visited 29.01.2013).

[33] U.M. Holm, M. Liinason, *Disciplinary Boundaries between the Social Sciences and Humanities*, Comparative Report on Interdisciplinarity, European Commission's project "Changing Knowledge and Disciplinary Boundaries Through Integrative Research Methods in the Social Sciences and Humanities", The University of Göteborg, 2005, 35 passim, http://www.york.ac.uk/res/researchintegration/ComparativeReports/Com parative_Report_Interdisciplinarity.pdf (last visited 24.01.2013).

[34] Finland, France, Germany, Hungary, Norway, Spain, Sweden, the United Kingdom.

follow the disciplinary approach. The dominated opinion is that education at the undergraduate level should focus on disciplinary study programmes, while interdisciplinary and multidisciplinary approaches are more suitable for graduate and doctoral studies (Table 1).

Many educators are convinced that because the interdisciplinary research and studies makes use of the acquired knowledge in particular disciplines it may involve only doctoral students or even specialists with a doctoral degree who possess an understanding of the relationship between the particular area of studies and other disciplines. However, this view is rejected by those educators who think that interdisciplinary work may also be less ambitious and may not require good theoretical knowledge in a particular discipline.

This can be illustrated by the examples of the Swedish and Finnish education systems, which offer to students, already at the undergraduate level, access to multidisciplinary and interdisciplinary study courses and programmes, as well as by the examples of Norway and the UK, where the reforms in education have resulted in the introduction of interdisciplinary study programmes at the undergraduate level. In many European higher education institutions interdisciplinarity, for example, is implemented by the so-called 'modules', i.e., students can choose to study some of the courses of interdisciplinary nature. However, one can conclude that the practice of interdisciplinarity at the undergraduate level is mainly a result of the enthusiasm of individual academics, rather than the targeted policy of education.

Table 1. Interdisciplinarity at different levels of education and research

	Undergraduate studies	Graduate studies	Doctoral studies	Research
Finland	yes	yes	yes	yes
France	no	yes	yes	yes
Germany	yes	yes	yes	yes
Hungary	no	yes	yes	yes
Norway	yes	yes	yes	yes
Spain	no	no	yes	yes
Sweden	yes	yes	yes	yes
United Kingdom	In individual programmes	yes	yes	yes

Source: U.M. Holm, M. Liinason, *Disciplinary Boundaries between the Social Sciences and Humanities*, op.cit.

According to M.U. Holm and M. Liinason, a serious barrier to the implementation of interdisciplinary study programmes at the graduate and doctoral levels is a strong emphasis on specialisation in undergraduate studies and lack of interdisciplinary courses and study programmes at the first level.[35] Greater opportunities for interdisciplinary studies are at the graduate level, which consequently creates a good basis for further high-quality interdisciplinary doctoral studies or involvement in interdisciplinary projects. However, if the theme of the doctoral thesis or research project must comply with one of the academic disciplines, it becomes a serious obstacle for interdisciplinary research projects in doctoral studies as well. The disciplinary approach dominant at higher educational institutions and the existing rigid general structure of higher education are fundamental obstacles to practice an interdisciplinary research and implement interdisciplinary study programmes and courses. Many educators argue that the coexistence of disciplinary and interdisciplinary approaches in higher education is a challenging practice. It becomes particularly problematic when interdisciplinarity is carried out more widely than in the scope of separate projects.

The main institutional barrier to the implementation of the interdisciplinary approach was formulated already in the OECD report, *'Communities have problems, universities have departments'*.[36]

Caution concerning new teaching methods and study programmes is understandable since on the one hand, the increase in the number of disciplines also increase potential 'market attractiveness' of the university, but, on the other hand, it involves certain risks – increased costs, changes in the structures of power, influence and resource allocation.

Another commonly mentioned barrier is the lack of a common definition of interdisciplinarity. No definition of interdisciplinarity is founded in any European policy-planning document. Therefore, it is not surprising that some forms of interdisciplinarity are supported by universities while others are ignored. The non-existence of such a definition creates the situation where interdisciplinarity can be interpreted according to individual understanding and needs.

In Germany, for example, public funding supports mostly problem-oriented research. In Finland and Sweden – interdisciplinarity research is implemented in higher education institutions in collaboration with the social partners (trade unions and industry representatives). In European universities in general, interdisciplinarity in undergraduate education is often viewed as a way for higher education institutions to adjust their training programmes to the current demands of the labour market. The public debates surrounding interdisciplinarity in higher education often refer to the creation of new vocational degrees.[37] In research

[35] U.M. Holm, M. Liinason, op.cit., pp. 21–29.

[36] *The University and the Community: The Problems of Changing Relations*, Centre for Educational Research and Innovation, Paris 1982.

[37] U.M. Holm, M. Liinason, op.cit., pp.1–35.

organizations, the interdisciplinary approach is a more common and widespread practice than in European higher education institutions. However, the leaders in this area are private and state-supported research institutions and not research centres at the European universities. Currently, a considerable amount of research and new knowledge are generated outside the universities. One of the explanations of such a situation is the fact that since World War II, universities have sought to establish themselves as the prime institutions for carrying out fundamental research, while applied research was left to state or industrial laboratories.

However, there are other, not less decisive factors. Research centres outside the universities are more flexible and can easier adapt to new and complex requirements, their activity is 'problem-oriented' and they do not have rigid administrative structures. Another crucial factor is also the opportunity to attract the necessary financial and human resources. Naturally, interdisciplinary research is more expensive, time-consuming and also contains certain risks. Therefore, according to the experts, additional encouragements for research institutes and groups are necessary to increase their initiative in conducing interdisciplinary research.

Regarding the expertise required for interdisciplinary work, it is believed that experts and professionals in the field have a better understanding of currently topical issues than the isolated or too narrowly specialized researchers. Therefore, an increasing role in identifying interdisciplinary problems and the implementation of such research projects belongs to the professionals and experts who work outside the academia.

Many educators, scientists and practitioners have turned to interdisciplinary work in order to accomplish a range of objectives:[38]

- to find answers to complex issues;
- to analyze and understand the broad issues;
- to develop links between theory and practice (cooperation between scientists and experts, research institutions and the private sector, research institutions and the government, etc.);
- to solve problems that are beyond the scope of any one discipline;
- to achieve unity of knowledge, whether on a limited or grand scale.

The evaluation of the Göteborg study concludes that there are apparent inconsistencies between the support for interdisciplinary education and research as expressed in the documents issued by European countries and the actual measures undertaken to encourage the implementation of the interdisciplinary approach in education and research.[39]

Ministerial policies in all countries are more or less positively disposed to interdisciplinarity and overcoming of disciplinary barriers. However, this is seldom followed by changes in the systems of higher education. This positive

[38] J.T. Klein, *Interdisciplinarity: History, Theory, and Practice*, Detroit 1990, 331 passim.
[39] U.M. Holm, M. Liinason, op.cit., pp. 1–35.

ministerial attitude is therefore viewed as 'lip service' and empty rhetoric. In many national contexts funding procedures and assessment exercises are still carried out according to disciplines – a fact that creates major difficulties for the establishment of interdisciplinarity.[40]

Disciplinarity *vs* interdisciplinarity: conflicts, dilemmas and opportunities

Over the past hundred years, a certain order has been established in higher education and research – it has relied on academic disciplines and clearly defined boundaries of knowledge to generate new knowledge and provide a process by which it becomes accepted. At the level of study programmes and research projects, this means working within the boundaries of the given discipline, respecting these boundaries, and specialization, which is the cornerstone of the disciplinary approach. Specialization has promoted the development of disciplines, refined the theories, methods, technologies, and contributed to the discovery of new knowledge.[41]

Interdisciplinary studies is not a discipline but a topic or area that shall be explored by using and integrating knowledge, concepts and methods of several academic disciplines. Thus, it is evident that in the debates on interdisciplinary, higher education and research cross two different frames of reference. For some experts, the interdisciplinary approach opens a pathway to 'work across the disciplinary boundaries', to examining complex issues and synthesising new knowledge. While others hold the view that familiarity with the main principles, concepts, theories and debates of a discipline is the best way to produce graduates with adequate knowledge and to care for the quality of research.

One of the consequences of the gap between the different views of interdisciplinarity – and the assumed consequences for the students – can be illustrated by two conflicting views of interdisciplinarity within education. The supporters of interdisciplinary education suggest that it develops the students' critical consciousness and flexibility in applying different methodologies of knowledge; its opponents, however, are concerned that interdisciplinarity, especially at the undergraduate level, can give students superficial competence or ever worse – dilettantism. Some educators believe that interdisciplinarity is primarily a concept, while others argue that the best interdisciplinary work lies outside the university – in government, industry and research centres, but not in the university academic departments and research institutes. The latter view is usually expressed by conservative (disciplinary) minded educators and policy-makers, who treat interdisciplinarity as a tool only for the so-called 'problem-oriented' research.

[40] Ibidem, p. 14.

[41] J.T. Klein, *Interdisciplinarity*..., op.cit., pp. 1–40.

It is thus understood that interdisciplinarity:

- focuses on using knowledge for the research of practical issues (as opposed to the scientific approach which directs its resources to theoretical explorations);
- is less interested in new scientific discoveries;
- moreover, its starting point is the area (and not the discipline or its element, as it used to be in scientific work).

The view that interdisciplinarity is mainly a method for studying complex issues is quite popular (the so-called 'instrumental interdisciplinarity'). It acknowledges the potential of the interdisciplinary approach to tackle topical issues; however it does not recognize it as a 'scientific' approach. Educators admit that the strong emphasis on instrumental interdisciplinarity is one of the key factors that make it difficult to introduce 'interdisciplinarity' in higher education as a critical and scientifically proven method with high demands regarding the theoretical and methodological knowledge.

Ever since the 1970s, the coexistence of disciplinary and interdisciplinary approaches in higher education institutions has been a sensitive issue. Many experts, educators and researchers hold the view that interdisciplinarity may threaten the role and significance of the disciplinary approach in higher education and research. However, those who practice the interdisciplinary approach note that this view is misleading. Interdisciplinary and disciplinary approaches do not compete; instead, they are rather complementary.

Academic practice proves that disciplinary academic structures are a precondition for the creation of new interdisciplinary studies (the so-called disciplinary paradox[42]) and high-quality interdisciplinary research is also not possible without excellent disciplinary knowledge. In interdisciplinary studies each student should be given depth, expertise, and specific knowledge. For this to happen, the study programme must first provide good disciplinary knowledge, and only then interdisciplinary practice. Educators reveal – the more outstanding the knowledge of the disciplines, the better the interdisciplinary experience and results.

The dialectic or interactions of these two approaches, as well as the interrelation and further development have been frequently stressed in various studies. Experts argue that the interdisciplinary research is important not only to overcome the limits of disciplinary divisions but also enhance the disciplinary development. At its best and most creative, interdisciplinary produces insights that were previously not perceived by individual disciplines working alone.[43]

[42] The disciplinary paradox suggests that interdisciplinary activities (interdisciplinarity) is more prominent in the areas where disciplinary structures prevail.

[43] E. Shove, P. Wouters, *Interactive Agenda Setting in the Social Sciences – Interdisciplinarity*, "Discussion Paper" 2004, pp. 2–5, http://www.lancs.ac.uk/fass/projects/iass/files/iass_workshop3_Interdisciplinarity_Discussion_PAPER.pdf (last visited 22.01.2013).

Another reason for the criticism of interdisciplinarity is its excessive focus on the needs of the labour market and insufficient attention to academic knowledge. At the same time, researchers predict that with the increasing socio-economic complexity, many individuals in their professional activities will need higher-level skills and an ability to adapt to a changing environment. This particularly concerns professionals who will be employed in the field of innovation and deal with new and unpredictable phenomena, or those making judgements with respect to complex relationships or large amounts of varied information.[44]

The dilemma of higher education was well characterized already by M. Gibbons. He stated that education in advanced industrial societies has *'the paradoxical task of preparing people to perform difficult jobs, while bringing them to accept that they will have to change their jobs and skills quickly and often'*.[45]

The different understanding and conflicting views on the credibility of the interdisciplinarity, its application and the expected results, are also serious obstacles to the implementation of the interdisciplinary approach. The lack of common understanding limits the opportunities for educators and researchers to carry out projects of interdisciplinary nature, to explore the potential of the interdisciplinary approach and to develop good practices.

During the last decade, there have been numerous events dedicated to interdisciplinarity where scientists, researchers, educators, policy makers and representatives of international organizations have exchanged experiences and insights of different issues related to interdisciplinarity. At the same time, these debates seem to have been fragmentary. J.T. Klein stressed in his aforementioned studies that only a relatively narrow circle of educators is interested in and uses an interdisciplinary approach, which is still the predominant trend in higher education.

A frequently pointed out obstacle to the interdisciplinary approach is the lack of a unified theoretical framework, different practices and experience associated with this approach. Since the 1970s, there have been many publications and studies concerning interdisciplinarity, however reliable sources on interdisciplinary education and research appeared only quite recently. Educators admit that drawing up and implementing an interdisciplinary curriculum is a difficult task, since as a rule, the implementation process is even more complex then the curriculum design.

Academic practice shows that the design of interdisciplinary study programmes or courses calls for a revision of the former practice and introduce changes throughout the entire study process – from the design of courses and study programmes, through their organization, teaching, the work with students and evaluation of knowledge, to financial and organizational issues (e.g. planning the load of the teaching staff). It is also necessary to evaluate and reorganize the

[44] G.M. Hodgson, *The Growth of Complexity and the Knowledge Economy*, University of Hertfordshire, 2001, p. 4.

[45] M. Gibbons, op.cit., p. 12.

content of various disciplines, including an assessment of the acquired knowledge in the individual areas of study, the identification of strengths and weaknesses, as well as an evaluation of the importance of a given discipline in the context of a specific topic or question. According to educators and researchers, interdisciplinary work often requires integration of different methods and modes of thinking. This can be considered an advantage, but it is also the greatest challenge of interdisciplinary work.

Although today there is still no common theoretical basis and principles on which interdisciplinary study programmes should be constructed, in recent years, a sufficiently large amount of relevant literature has become available, which can provide a clear understanding of the theoretical, methodological, etc. aspects of such studies. Guidelines for the development of interdisciplinary studies are given also in J.T. Klein's studies and on the website of the Association for Integrative Study.[46]

In the recent years, various parties involved in higher education and research have also criticised the disciplinary approach. Basically, their concerns relate to education being 'detached' from real life, since in disciplinary studies problems and issues are addressed from the perspective of one discipline or sub-discipline. Also, the disciplinary approach is frequently criticized for insufficient attention to the development of skills, competences and the strengthening of 'inflexible' thinking and too much focus on knowledge. In research, in turn, increasing specialization is no longer able to provide the understanding of many issues that are topical for the modern society.

In 1980, the American philosopher C.O.Schrag analyzed the sources of the criticism in modern research which hinders comprehensive development. In his studies, he indicates that one of the sources is the increased specialization and differentiation of knowledge, without orientation towards the totality of knowledge and connection to the totality of an individual's experience.[47]

Different and mutually conflicting views on both the disciplinary and interdisciplinary education and research show that the discussion of interdisciplinarity is not just a debate on a 'different' or 'new' approach to higher education and research; it is part of a wider debate on what constitutes competitive and high quality education and what is the role of higher education and research in modern society?

Describing the challenges that the higher education institutions will face in the future, M. Gibbons argued that in the 21st century higher education will not only have to become relevant, but also that this relevance will be judged primarily in terms of outputs, the contribution that higher education makes to the national economic performance and through that, to the enhancement of the qual-

[46] http://www.units.muohio.edu/aisorg (last visited 12.042013).

[47] C.O. Schrag, *Radical Reflection and the Origin of the Human Sciences*, West Lafayette 1980, pp. 1–29.

ity of life. The capacity of universities to implement this task is intended to have a direct impact on the behaviour and the functioning of higher education institutions. Such pragmatic view will most likely trigger criticism and arguments to disprove this approach. However, M. Gibbons deems that no other rationale or justification for higher education institutions will carry equivalent weight: *'If the universities do not adapt, they will be by-passed'*.[48]

At the same time, it is clear that universities still continue to have a substantial influence and choice to decide on their range of studies, their content and methodological framework.

Clearly some adaptation is going to be necessary to accommodate the new paradigm,. However, because national economic development is a complex and multifaceted phenomenon,[49] the range of adaptations may be expected to vary widely across countries and over time.[50]

The practice of higher education institutions and research centres of European countries, as well as of the USA and Canada, clearly shows that modern higher education can accommodate interdisciplinary study programmes even if they encompass the changes of the usual practice and in the institutional and organizational procedures. In the above example of the Danish Business Research Academy and Danish Business Education Forum the authors stated that: *'If we do not concentrate on thinking across disciplinary boundaries, we risk losing new knowledge and skilled workforce. Thus, interdisciplinarity in research and education is not a goal in itself but an instrument for creating new knowledge and competences'*.[51]

Once we recognise the potential importance of the interdisciplinary approach in modern higher education and research, the following question arises: is the comparison or complete separation of the disciplinary and interdisciplinary approaches the most beneficial and effective way to contribute to the quality of modern education and research?

Conclusions

In spite of the several decades-long debate and support by policy-makers, educators and researchers, interdisciplinarity has not yet become a recognized and widely used practice in European higher education and its potential in research institutions has not been fully exploited. Many educators still treat the interdisciplinary approach in higher education and research with caution.

[48] M. Gibbons, op.cit., pp. 2, 57–62.

[49] Dependent among other things upon history (e.g. previous economic performance) as well as current socio-political factors (e.g. demography, infrastructure, etc.).

[50] M. Gibbons, op.cit., pp. 2, 10–28.

[51] Danish Business Research Academy and Danish Forum for Business Education, Copenhagen, op.cit., pp. 5–6; 82–86.

The view that higher education and research must serve the needs of the society causes scepticism among many educators and researchers. And they believe that the focus of higher education on professional study programmes is a kind of short-term solution and an excessive concession to the current demands of the labour market.

Nevertheless, most experts agree that the changes that are taking place are not notional.[52] In this context, in the early 1980s the French philosopher J.F. Lyotard wrote that knowledge is and will be created to be sold, the research results are and will be purchased to convert them into new products; in both cases the aim is a barter transaction.[53]

The interaction of higher education with the changing global environment and the orientation towards the needs of modern society, business community and labour market should not be seen as a threat to higher education. Rather, it should be viewed as an opportunity to diversify study programmes and create a comprehensive understanding of the current developments in modern society.

Perhaps one of the critical factors why a still relatively small number of educators display an interest in the interdisciplinary approach is the lack of information and knowledge. Another element, as mentioned earlier, is the different and frequently conflicting opinions on the application and integration of the interdisciplinary approach in higher education and research. This seriously impedes the practice of interdisciplinarity and consequently restricts the development of the potential of higher education and research, using the interdisciplinary approach.

In order to remove the barriers to interdisciplinary study programmes and research projects, it is necessary:

1) to develop a deeper understanding of the theoretical framework for interdisciplinary educational and training methods and expected results as well as its potential for application; this could reduce the gap between the conflicting views and create a more uniform opinion on the importance, potential and use of the interdisciplinary approach in modern higher education and research;
2) to share experience on and best practices of implementation of interdisciplinary study programmes and research projects;
3) to reduce the hindering factors, by providing greater flexibility and access to the administrative, financial and human resources necessary for the implementation of interdisciplinarity in higher education and research institutions;

[52] See e.g.: M. Gibbons, op.cit., pp. 1–3, 57–62. See also: T. Becher, P.R. Trowler, *Academic Tribes and Territories: Intellectual Enquiry and the Culture of Disciplines*, Buckingham 2001, pp. 1–22.

[53] J.F. Lyotard, *The Postmodern Condition: A Report on Knowledge (Theory & History of Literature)*, Manchester 1984, p. 4.

4) to gain political support and that of policy-makers in order to agree on measures for the enhancement of the interdisciplinary approach in national higher education institutions and research centres.

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Part II

History of European Integration

Dariusz Milczarek

Genesis of the United Europe – From the Roman Empire to the European Union

Introduction

The processes of European integration have not been taking place in a historical void. The European Union of today, being the main executor of these processes, is the effect of a long-lasting evolution of political, economic, social and cultural systems governing the life of our continent. This evolution cannot be solely perceived in the context of the last half century (when the processes of integration took a more developed form), but from a much broader, centuries-long perspective. Metaphorically speaking, the European Union's roots reach deep into the history of the Old Continent.

This also means that, without knowing the genesis, course and evolution of the processes of integration it is impossible to analyse the factors which have substantially influenced the present shape of the EU and which will determine its future development. Contrary to the opinions of short-sighted ignorants, this confirms the need for learning and studying history, treated not only as an archive of dry facts, but first of all as the art of learning the interrelations, and a well of experience for today and tomorrow. The Roman motto '*historia vitae magistra est*', which calls history the teacher of life, should be treated with all seriousness as a guideline, also in analysing the processes of European integration – including the latest ones, which cannot be analysed without the knowledge of various historical circumstances. (As an example, we could quote the policy of France – a country which has played a huge role in the post-war processes of integration, and whose position on certain undertakings cannot be understood without taking into account its traditions and past experience). For we should bear in mind that historical heritage does not boil down to exhibits in museums.

When talking about the need for learning the historical circumstances of the European integration, we first of all refer to the need for identifying its substantive and ideological basis. Further deliberations on this subject will show that implementation of specific integration ideas and undertakings depended on

the shaping of the 'idea of Europe', an idea formed on the basis of common identity, i.e. on a common system of values and on the feeling of separateness from other cultural circles.

In order for these elements to exist and work, Europe needed a solid foundation, common for all Europeans – regardless of the moment in history in which they existed, their place of residence, nationality, social origin, wealth, education or the baggage of personal and group experience. This foundation has been the rich, multifaceted heritage of the European civilisation, which has been built for centuries. Thanks to this heritage, each inhabitant of Europe can feel a member of a great community (and in fact is one), in which the uniting elements overweight the diversity. This heritage has been shaped by efforts of generations, sharing common history. Born in this way, the heritage has become a very important bond for the Europeans, thus creating the basis of European unity and, consequently, the basis for European integration.

The concept of integration

We should start the deliberations on the history of European integration by defining some basic terms, in particular the integration as such. The word comes from the Latin verb *integratio*, which means to merge, to unite, to make a whole out of parts.

Integration is an ambiguous concept and is interpreted in different ways. It is the subject of study of many different disciplines, such as economy, law, sociology and political science. As a result of this, there is no single commonly used definition of integration. What makes it even harder is that integration can be defined both as the process of uniting and as a certain state achieved in this process (for example the European Union today).

The processes and phenomena of integration are extremely important in the modern world and play an increasingly important part in it, as pro-integration trends create favourable conditions for strengthening various bonds, relations and interdependencies between all the participants in international relations. This is manifested, among other things, by an increasing role of international organisations, in particular the establishment of a growing number of integration groupings (mainly economic in nature) of varying scope and scale of internal links. These take various forms, ranging from very loose structures, through groups having closer ties (e.g. free trade areas), to a political entity with integration processes as far advanced and comprehensive as the European Union.

These groupings are formed mainly by states, which still play a very important role in international relations, but are no longer dominant, as some non-state participants (including such as the European Union) are gaining importance. All in all, a system is formed in which the most important decisions are more and more frequently made not by nation-states individually, but collectively, by many participants in international relations on the subregional, regional or global level.

The objectives and activities of European integration, which resulted in the emergence of the European Union, perfectly fit in this kind of trends. Not only was it formed as a result of the integration processes (which are the most important factor determining its establishment and development), but it also still creates these processes and even sets the highest standards for them by bringing its own unification process to a level not yet achieved by any other group in the world.

History of European integration

From the historical perspective, in short, the European integration can be presented as a process of formulating and implementing ideas of a united Europe. In this sense, the European integration, defined as striving for the unification of the Old Continent, has a long history. The idea was defined and realised in many different ways: it was understood as unification based on the noble principles of humanism and calling for the 'fraternity of the peoples', but also as concrete political, economic and socio-cultural projects; apart from peaceful integration projects, there were also attempts to unite the continent by domination or conquest. This means that the commonly used concept of 'European integration' does not refer exclusively to contemporary times.

Before we present the genesis and the process of integration in Europe, we should first introduce definitions of the relevant concepts and terms, for it is necessary to understand the difference between the 'idea of Europe', based on the concept of unity of the whole continent, and the 'integration of Europe', i.e. concrete ideas and integration projects. Even though for the purpose of popularization and publishing they may be treated as synonyms, these two concepts do not convey identical meaning.

In order to put the concept of European integration into practice, i.e. in order to make attempts of actual unification of the continent, the process of crystallization of the idea of European unity had to be initiated and carried out first. In other words, before integrating, Europe had to be 'born' as a separate entity, 'the idea of Europe' had to develop. It was a long process, lasting for many centuries, and it required very particular circumstances.

At this point, it should be stressed that it is very difficult to introduce clear and transparent criteria for an unambiguous division into the sphere of the development of the 'idea of Europe' and of the real, practical integration. Throughout the centuries, it often happened that both these spheres overlapped or just the opposite – functioned independently from each other. On the one hand, we could mention certain actions towards unification, such as the functioning of the ancient Roman Empire, which objectively laid foundations for the processes of integration on our continent, but at the same time never referred to the 'idea of Europe' for the simple reason that it had not yet fully crystallized yet. On the other hand, we could name examples of slogans, especially originating in the Enlightenment period, which called for the fraternity of the European peoples, but which did not mention any specific integration structures.

There is no doubt, however, that the general rule was: first the need for the 'idea of Europe' had to develop, and then, based on it, the possibilities of taking concrete actions towards unification.

European identity

The fundamental factor which conditioned the birth of the 'idea of Europe' was the shaping of the European identity. It is a very broad and complex subject, therefore we can mention only the most important of the many factors constituting this identity. They include:

1. a common system of values,
2. a sense of separateness from 'the others'.

Re 1. Adopted and accepted by most inhabitants of the continent, the common system of values, shaped by the community of historical events, was based on the comprehensive achievements of the European civilisation. It is sufficient to note here that the historical eras: the Antiquity, the Middle Ages, the Renaissance, the Enlightenment and beyond, until the present day, gradually contributed their share to the development of Europe in economic, political and legal, social, philosophical and religious, cultural, as well as scientific and technical terms. These achievements were the cement that bound Europeans together and formed the basis of Pan-European unity.

The factors uniting the socio-political life of European societies also had a positive effect on this. These factors included: the influence of the achievements of ancient civilisations (e.g. Roman law, still used today), the universal nature of the rules of Christianity and the use of common language, at least by the elites (starting with Greek and Latin). Mutual diffusion of patterns of culture in the broad sense contributed to the formation of a specific ideological, religious and also political community, regardless of all the conflicts, frictions and decentralist tendencies.

Re 2. The key factor in the development of the European identity was the crystallization of the sense of separateness, mostly in relation to the neighbouring territories, civilisations and societies, based on different, non-European systems of values. It should be explained here that this sense of separateness – especially in the long-term historical perspective – did not necessarily have to lead to negation, rejection, or even eradication of those who were 'different', or 'the others'; one of the characteristics of the European civilisation was the ability to benefit from the achievements of other cultures, and immigrants were generally treated as a desirable and useful element. The development of European identity was, therefore, more a process of becoming aware of the differences between 'us' and 'them' – differences, which did not always do credit to Europeans.

This notion is particularly important, not only from the point of view of history, but also taking into account the difficult problems of today, such as the controversy around the legitimacy of accepting such countries as Turkey and Ukraine to the European Union. Since the logical, essential question following the issue

of European identity is where exactly the borders of Europe, which separate it from 'the others', lay.

What makes it even more complex is that there can be many different types of borders. For instance, from the geographical point of view, Europe is not a separate continent, only a subcontinent, or rather a relatively small peninsula, of the huge Eurasian continent. What is more, this 'small cape of Asia', as it is sometimes called, does not have all of its natural borders clearly defined. While they are quite obvious on the seas in the North, West and South,[1] they are not at all obvious in the East and where Europe meets Central Asia and the Middle East. The eastern borders of Europe were delimited arbitrarily as late as the 18th century, along the Ural Mountains and the Caucasus, and the south-eastern limits of the continent on the Bosphorus are also only conventional. So where does Europe end in geographical terms?

It is also hard to define its political and cultural borders. What makes it even more complicated is that throughout the centuries, Europe, seen as a certain political and cultural entity, evidently shifted towards the North. In reference to the Antiquity, we could say, very generally, that it covered the area of influence of the Greek and Roman civilisations, located mostly at the Mediterranean Sea. For the ancient Greeks 'Europe' was, at first, part of Greece, and then Greece as a whole. Only later it started to refer to other, more distant areas. While the main point of reference for the Romans were the borders (*limes*) of their huge empire, which did not cover the whole Europe in its modern meaning. Beyond the Roman *limes*, mainly in the Centre and East of the continent, there lay the lands of the barbarians (*barbaricum*).[2]

The fall of the Roman Empire caused, among other things, by the raids of the 'europeanising' Barbarians, as well as such events as the invasions of the Muslims from the South, led to the shift of the territory of Europe, still being in the state of formation, from the Mediterranean towards the present centre of the continent, and later also towards Scandinavia and Eastern and Central Europe. This had to do with the fact that in the Middle Ages the European borders were defined by the range of Christianity. As a result, for pagan peoples in the North and East – such as Poland in the times of the early Piast dynasty – the only way to enter civilised Europe was christening, followed by active involvement in the European concert of nation-states.

This way the present area of Europe gradually formed, or rather the area of influence of the European civilisation, most frequently equated with its West European, Christian and Latin aspects (it is no coincidence that many scholars believed that the range of European culture in the East coincides with the range

[1] Still, even here there is the question of where Greenland and Iceland, as well as a number of other Atlantic islands, should belong to.

[2] The name comes from the Greek word *barbaros*. It was derived from the onomatopoeic imitation of unarticulated gibbering: bar-bar-bar, as the Greeks perceived the foreign speech that they did not understand.

of the Baroque style in church architecture, which, as it is commonly known, was not present in the art of the Eastern Orthodox Church.)[3] In present times, the most important factor defining the shape of Europe is – in line with the central theme of this publication – the functioning of the integration structures, in particular of the European Union. Although belonging to the EU does not precondition being 'European' – neither for states nor for individuals, there is no doubt that the European Union is usually equated with Europe as such by the outside world.

This does not change the fact that the political and cultural borders of contemporary Europe are still not clearly defined, as proved, for example, by the controversy around the potential accession of Ukraine and Turkey to the European Union. Leaving aside the material arguments of both supporters and opponents of their accession, we can clearly see that neither the EU nor the candidates have a resolute position on this subject. The reason for this is that neither the policy-makers and the citizens of the EU, nor the Ukrainians and the Turks know exactly how to define their identities and cultural and political affiliations in the context of their relation to being 'European'. This problem concerns also some other nations, especially the Russians and, to a large extent, the British – the nations who, for centuries, have been torn between the feeling of belonging to the European culture (to which they greatly contributed) and the tendencies towards orthodox preservation of their own, Slavic or Anglo-Saxon identity.

It seems, therefore, that because of the lack of explicit criteria for defining Europe as a separate entity cultural aspects should be the first to be taken into account. The Old Continent has developed a unique civilisation, emanating to other regions. Broadly understood culture has always been the basic factor distinguishing Europe from other civilisations: first the barbarian, eastern, Asian, middle-eastern, and later those from even more distant parts of the world.

Therefore, the European identity, treated as a necessary condition for the birth of the 'idea of Europe', is based, on the one hand, on the common system of values, a canon of ideas and views shared by the Europeans; a canon based on the rich achievements of the European culture and reflected in ideological, religious, cultural and political concepts developed over centuries. On the other hand, the identity was shaped in opposition to the external world, based on the sense of separateness from 'the others' and belonging to a certain community, built on the basis of jointly experienced historical events.

The evolution of the 'idea of Europe'

As mentioned before, the 'idea of Europe' could be born as a result of the development of a common identity, and only then any specific integration actions could be taken. There is, however, one more essential thing to be considered: How

[3] This range coincides with the cultural influence of the Polish-Lithuanian Commonwealth in the East.

and in what time period has this idea crystallized? Only after examining this issue, may we try to answer the essential question about the time of the birth of Europe as a separate civilisation. The above question is clearly justified, because only after identifying the relevant turning point can we start discussing the real beginnings of the European processes of integration.

The turning point would naturally be very approximate, conventional, or even symbolic. In the case of a subject which covers a huge historical heritage, which is interpreted so differently and which is quite debatable, if not controversial, it simply cannot be otherwise. The multitude of views on this matter makes such an analysis very difficult, although not impossible.

To begin with, we should present the genesis of the name 'Europe' (while pointing out that, over centuries, the name was very rarely used in everyday life; it was rather used in cartography, which confirms the cultural origin of the 'idea of Europe'). The fact that it originated from Greek mythology[4] proves that it has its roots in the Antiquity and that it has geographical and cultural origins.

According to some scholars, the concept of Europe as a separate cultural and political entity was born in Greece already in the period between the Persian Wars and the times of Alexander the Great. It resulted partly from the clash of two different civilisations based on opposite values: the Hellenic freedom and the Eastern despotism. This deep disparity made the Greeks realise that they are different and led to the establishment of the division: Hellenic Europe versus despotic Asia. (In this context, we could say that the Greco-Persian Wars were the first clash of the European civilisation with a foreign one, in this case an Asian civilisation).

As mentioned before, what Greeks perceived as Europe was only their own motherland and the areas under its direct influence. The expansion of the area of Europe – treated as a certain entity, or rather as a cultural idea – was gradual, starting with the expansion of the Hellenist civilisation by Alexander the Great, the achievements of which became a permanent element of European identity. Naturally, this does not mean that all territories conquered by Alexander (stretching from the present area of Greece and Turkey, through the Middle East, to northern India) can be regarded as parts of Europe, but it showed the growing attractiveness and strong influence of the civilisation which now more and more legitimately can be called European, or perhaps still rather 'pre-European'.

This refers to even greater extent to the situation in the age of ancient Rome. Geographically, politically and culturally, the vast Roman empire was not the same as the concept of Europe, no matter how we define it. With its distant *limes* (on the Rhine and on the Danube, on the Asian Euphrates and on the African Sahara) and with its society consisting of many different cultures, it was much

[4] According to the myth, Europa was the name of the daughter of Agenor, the ruler of the Phoenician city of Tyre. She was considered the most beautiful woman of her times and she eventually caught the eye of Zeus, who appeared before her as a white bull at the seaside and kidnapped her with the help of Poseidon and Aphrodite, taking her to Crete.

more universal in nature. Its inhabitants did not feel they were Europeans, but much rather the citizens or subjects of the Roman Empire. Their common identity was shaped both by the multifaceted achievements of the Roman civilisation and by a specific sense of separateness. The Greek division: Hellenic Europe versus despotic Asia was replaced by a new one: the civilised Roman world versus the barbarian world (*barbaricum*).

All this does not change the fact that from the long-term historical perspective, these multifaceted achievements of the Romans, based to a large extent on those of the ancient Greeks, laid foundations for the future European civilisation. Thus, they constituted a key element in the development of the European identity, proud of the achievements of the Antiquity and feeling increasingly aware of the common history and of the difference from others. It objectively helped in the gradual crystallization of the 'idea of Europe' – regardless of how rarely this concept was applied in the ancient world.

What is more, the Roman experience in creating a very effective, centrally governed state combining such large and diverse areas became a point of reference for the future visions of European integration. Within several centuries after the fall of the Roman Empire, when the processes of disintegration of the continent escalated, the example of Rome as the uniting factor was becoming an inspiration for many ideas for integration; this will be discussed later in this text. Their creators referred to the heritage of the 'Golden Age' of *Pax Romana*, not only in terms of peace and prosperity, but also of unity.

Of course, the disintegration tendencies did not create favourable conditions for the development of the 'idea of Europe'. Nevertheless, even in the times of chaos, recurring barbarian invasions and general regress, some spiritual and material values were created, which contributed to the European cultural heritage, especially when it comes to the direct successor of the Roman Empire – the Byzantine Empire. Byzantium, which existed for over one thousand years (until the Turkish conquest in the 15th century), not only kept much of the heritage of the Antiquity, but also enriched its own culture, as well as the Western European culture, with the heritage of the Orient. For centuries, Byzantine culture, or more broadly – the Byzantine civilisation – dominated the socio-political life, especially that of Eastern Europe, eventually becoming one of the sources of the European identity.

Moreover, the history of the Empire shows the importance of a new factor, which had a great or even decisive influence on the future shape and fate of Europe – namely Christianity. Its importance should not be underestimated, for it played the crucial role of the cement which, for the first time in the history of the continent:

1. strengthened the 'idea of Europe' in its various aspects;
2. initiated and helped implement certain strictly European concepts and projects of integration.

Re 1. The role of Christianity in the context of the 'idea of Europe' consisted in strengthening European identity – and maybe even in giving it its final shape.

According to the classification outlined earlier, it was, on the one hand, the creation of a new, universally applicable system of values, and on the other hand, the reinforcement of the sense of religious and cultural separateness, leading (together with this new canon of values) to the formation of Europe as a specific community.

As regards the system of values, apart from contributing to the development of modern philosophy (especially to deliberations on the phenomenon of human existence), Christianity created its own canon of principles of faith, different from pagan beliefs, as well as a complex system of behaviours required from all believers. The Church put an emphasis on external aspects of religious practices and spread the same rituals and liturgy, as well as a similar rhythm of life and lifestyle (e.g. fasting on Friday or prohibition of working on Sundays and holidays). All this was essentially a process of unification of many aspects of social life across the continent, which facilitated the development of a sense of belonging to a community.

This, in turn, accelerated the formation of a sense of separateness. An important factor here was the threat from 'the others' – since the aggressive barbarians from the times of the Roman Empire became civilised and settled down in Europe, now the main threat was the militant Islamic peoples, who started invading the Iberian Peninsula and the Balkans towards the end of the first millennium CE. In this case, however, the threat of physical aggression was accompanied by religious, political and cultural aspects – the enemies were additionally followers of an alien religion, pagans fighting with Christianity. This was essential for the formation of the 'idea of Europe', as it led to the development of yet another division in the history of the continent: Christian versus pagan.

As back then, the range of Christianity roughly coincided with the area of Europe, this helped develop a new European identity, based on a common religion. Consequently, this meant that a certain cluster of ideas and thoughts was formed: a Christian is an inhabitant of Europe (whatever this term meant at that point), and the other way round – a European is a Christian. There are still traces of such thinking referring to the latter concept today.

These concepts were additionally justified by the fact that the role of the Christian religion in the history of Europe went much beyond simple participation in building the identity of its inhabitants. In the Middle Ages, the Church made a great – maybe even decisive – contribution to the general civilisational development of our continent.

On the one hand, this contribution consisted in supporting science, culture, education and economy. This was done by many centres of clerical power and Church dignitaries, including popes, as well as by most religious orders, who created a modern socio-economic and cultural infrastructure through a network of monasteries, which led to the spreading of settlement. On the other hand, the organisational structure of the Church, with its system of hierarchy and power, was the germ and the foundation for the development of the European states'

administration. It was formed on the basis of Church territorial units, i.e. parishes and dioceses, which exist until today. Furthermore, due to their education and skills, it was the clergy who provided the best people for the developing structures of power in young European states.

This way, mediaeval Europe developed a system of two overlapping communities: the Christian and the political. While within a longer period this led to conflicts between the Church and the secular power, between *sacrum* and *profanum*, it also allowed Christianity to play an important role in another sphere of our interest.

Re 2. From the early Middle Ages, the Church and the Christian religion belonged to the most essential factors initiating and implementing concrete concepts and projects of integration of the whole continent. The ideological basis for this was the notion of Christian universalism. It did not constitute a manifestation of the striving to build a single European state, but rather to unify Europe under a common religious and ideological order, which – as desired by many popes and secular rulers – aimed at the establishment of a Christian empire, referred to as, e.g.: *imperium christianum, christianitas,* or *respublica christiana*.

This combination of religious and political aspects resulted in the fact that participation in the civilised world, understood as the area of the developing Europe, required the participation in the Christian community. Therefore, between the 5th and the 10th century, almost all European peoples, from Western Europe to the central and eastern frontiers, underwent the process of Christianisation.[5] One of the main motives behind Christianisation were political calculations – many feudal rulers of some, often very weak, states were not able to safeguard their interests on their own, and therefore it was natural for them to accept the supremacy of the Pope and the Emperor. There is no doubt, however, that the attractiveness of the gradually developing pan-European culture, based on Christian models, was also an essential factor. Belonging to this pan-European culture ensured political protection and largely contributed to the acceleration of the general development of civilisation in the given state. Thus, a new division was formed: the civilised world of Christian Europe versus the primitive world of barbarian pagans. As we will see, this division was not entirely justified in the light of the level of development of the 'barbarian' civilisation.

The development of a specific social class, namely the mediaeval knighthood, in all parts of Europe was also very important. The universal and pan-European ethos of this class, deeply pervaded with Christian ideals, was a significant factor for standardising the system of values and behavioural patterns of elites throughout the continent. The knights engaged in various projects, which were justified by religion, but in fact were political in nature – a classic example of such a project are

[5] The periods of developing European statehoods are essentially consistent with the dates of christening of their rulers: in the West the King of Franks, Clovis, was baptised as early as 496 CE, while in the Central and Eastern Europe the process started five hundred years later – with the christening of the rulers of Poland and of Hungary in the years 966–972.

the crusades, which were undertaken not only to liberate the Holy Land, but also to conquer pagan lands in Eastern Europe (e.g. the activities of the Teutonic Order).

All this constituted a basis for formulating visions of unification, and, above all, for undertaking concrete actions towards integration, based on Christian ideals. An example of such an action is the attempt to reactivate the Roman Empire within new, exclusively European borders, initiated by Charlemagne, or the realisation of the idea of the Holy Roman Empire of the German Nation. These plans and actions had various motivational backgrounds, including personal and dynastic interests, both of the clerical authorities (in particular of the popes), and of secular authorities (especially of the emperors). As mentioned before, this led to a series of clashes of the two centres of power, which lasted, with shifting fortunes, for several centuries. Despite the successes of popes (symbolised by the infamous humiliation of the Emperor in Canossa), the final victory belonged to the secular power. However, for our purposes, the most important fact is that both sides, regardless of their political and doctrinal differences, based their actions on the principles of Christian universalism.

The birth of Europe

Having in mind the role and achievements of the Christian mediaeval period and the heritage of the Antiquity, we could try to answer the initial question about the symbolic date of the birth of Europe. Taking into account various possible interpretations, it seems justified to distinguish between the subjective and objective dimensions of this problem.

In the subjective dimension, both with regard to Antiquity and the early Middle Ages, we can hardly speak of fulfilling the basic conditions for the emergence and establishment of the 'idea of Europe', understood as the development of a clearly defined, mature European identity. As mentioned before, neither the inhabitants of the Roman Empire, nor the subjects of the early mediaeval feudal states considered themselves Europeans; some of them identified themselves with *Pax Romana*, others with Christian ideals. (The Greeks were probably the closest to the 'idea of Europe', as they were its 'inventors', but from their point of view it was limited geographically, culturally and politically and referred mainly to the area of influence of the Hellenic civilisation, which was different from the world of eastern despotisms). Hence, the process of crystallization of the European identity was very long and had various intensity over time, depending on the general course of historical processes throughout the continent.

However, what was decisive was that the 'idea of Europe' was being born in the objective dimension. This was possible due to a number of factors, the most important of them being the gradual accumulation of the multidimensional, impressively rich general civilisational achievements made throughout several eras by the states and the peoples living in the developing Europe. As it was mentioned earlier, these achievements constituted a foundation for the European culture, but

also created the roots of European unity, and consequently of the processes of integration. They served as a basis for the gradual crystallization of a separate, pan-European identity, additionally drawing on the elements mentioned above, such as the common system of values and the sense of separateness, based on perception of a common external threat and on experiencing similar history.

This is how the 'idea of Europe' was forming, allowing the development of an objectively functioning community of the inhabitants of the whole continent – regardless of their ideologies and religions and of whether or not they were subjectively aware of this fact. In other words, in the following centuries, like it or not, the inhabitants of Europe were becoming Europeans.

At one point in history, the two dimensions – the subjective and the objective – became much closer to each other, if not fully joint. According to many historians, this happened more or less at the turn of the first and the second millennium CE. In the 10th and 11th century CE, not only the European elites, but also the societies became aware and felt the real existence of a common pan-European social, cultural and even political space.

Contrary to the popular, unjustified opinions, the Middle Ages were not only a period of regional fragmentation and civilisational backwardness. On the contrary – as a matter of fact, mediaeval Europe achieved, in a certain sense, a state of unity, which we are trying so hard to achieve in the 21st century. The political, clerical and intellectual elites from different countries of that time formed a relatively homogenous society, which used a common language (i.e. Latin, which was universally used, just as French several centuries later and as English nowadays) and witnessed an intensive exchange of thoughts between its members – as shown, for instance, by the activity of Erasmus of Rotterdam. Thus, a specific community of intellectuals was formed, later also referred to as the 'Republic of the Enlightened', which laid foundations for both theoretical and practical concepts of European unity.

The intellectual unity of the continent was accompanied by, as we would call it today, 'freedom of movement of goods, persons and services' – a solution that was formally introduced by the European Community only in the second half of the 20th century. It was manifested, among other things, by the possibility of free movement of people (hence the blooming settlement of people from Western Europe, mostly Germany, in Eastern European agricultural regions and cities) and the development of pan-European trade. This was further facilitated by the lack of formal restrictions and barriers in crossing borders, which were often only conventional, as well as the fact that the still not fully formed concept of nationality (the sense of belonging to a community or adherence to a particular ruler) did not give rise to any serious ethnic tensions.[6] Mediaeval merchants, settlers, artists, scientists had no problems with

[6] It is widely known that European nation-states started to form quite late, from the 18th–19th century onwards. Only then did they start to control the movement of people across their borders, which had earlier encountered practically no barriers, even during armed conflicts.

free movement, with formal crossing of borders and with finding jobs or studying at the best European universities. In practice, this meant that, for instance, a Spanish artist could create in France, a German artisan could work in Krakow, a Lithuanian nobleman could study at Italian universities, and a merchant from the Hanseatic League could perform free trade with Mediterranean port cities.

All in all, the above arguments lead to a quite obvious thesis that the birth of Europe was not a one-time event, which could be precisely located in time, but a complex, long-lasting process unfolding for almost two millennia. Speaking only in very general terms, around the 10th–11th century, in the early High Middle Ages, the process gained a new quality, due to which, from that time on, we can speak of Europe as a relatively uniform cultural and religious community and a separate ideological and political entity.

As stated in the thesis at the beginning of this chapter, the fact that the 'idea of Europe' was crystallized enabled the emergence of concrete ideas and projects of integration in the strictly European – which should be strongly emphasized – dimension (for even though in earlier times there also existed some practical integration actions, such as the Roman Empire, these had no reference to the 'idea of Europe', which simply had not yet emerged).

This transition from idea to practice was, however, not an automatic sequence of events. On the contrary – as a kind of dialectic feedback. Ideas and projects of integration appeared on a broad scale only when some intensive processes of decentralisation in politics were taking place in mediaeval Europe – which was already a relatively consistent cultural community at that time – e.g. in the form of regional disintegration of many countries. The signs and effects of these processes caused a counteraction around the 14th century, initiated by European intellectual and political elites, the aim of which was to mitigate these disintegrationist tendencies by creating new integration structures. Without doubt, this was a true paradox: in order to start integrating, the Europeans first had to become politically divided.

A symbolic sign of these changes was a renaissance of the name 'Europe' itself, which started to be used more and more often, not only by just geographers and cartographers, and in a much broader sense, as a cultural or political concept, e.g. in names of several integration projects, including the first use of the name 'the European Union' (sic!). Throughout the next several centuries, the integration projects and ideas were becoming an increasingly important part of European reality, and finally led to the present-day processes of integration.

The European integration today

The processes of integration which were taking place on the European continent at the turn of the 20th and 21st centuries are certainly amongst the most important features characterising the present-day international relations. They are that significant not only because they determine the shape and fate of Europe, but also because they are one of the essential factors influencing the economic, political,

social and cultural situation on a global scale. Moreover, for the people living today, the European processes of integration are amongst the most obvious processes in international relations, and it is difficult to imagine the world in its present shape without them.

The main actors in the processes of integration – first the European Communities, and now the European Union, which is their continuation – still play an essential role. Despite the fact that these processes are, naturally, much broader and involve much more participants in international relations in the political, economic or military areas than merely the EU Member States (to name only the most important organisations: the Council of Europe, NATO, or the Organisation for Security and Co-operation in Europe), there is no doubt that the integration in the form of the EC/EU played the most essential part in these processes and that it constitutes the foundation for the whole edifice of European unity.

Present-day European integration has certain specific features. The most important of them are the exceptionally unique and greatly complex nature of the European Union phenomenon. Using the original heritage of the European culture, which emanates throughout the world, the EU is the only instance in human history of a so deeply integrated international group, based on its own specific ideological and political assumptions, more generally referred to as the European values (these values are based, generally speaking, on the principles of democracy and human rights). The European Union is characterized by features which are not all unique or special, but which occur simultaneously and jointly, and thus create (by way of a specific synergy) new quality and make the Union a unique entity.

The uniqueness of the Union lies primarily in the depth and scale of integration. It should be emphasized that no other group in the world has developed the integration processes taking place within it to such an extent. This applies both to the depth of the adopted solutions (as evidenced by exclusive Union competence in certain areas) and the scale of integration activities. Expanding gradually, they have covered virtually all spheres of life (though with varying intensity): economy, politics, social and cultural issues, research, defence, etc. The same applies to the organisational shape and the adopted institutional and legislative solutions – none of the other integration groupings has reached such a level of consistency and, at the same time, efficiency of operations of their institutions.

A manifestation of the effectiveness of the European integration process is the fact that the European Union obtained a powerful potential, defined by fundamental geo-political determinants, such as human resources, area, as well as economic, social, cultural, scientific and military capabilities. It is the leading potential in the world, especially when it comes to its economic dimension. This is demonstrated by the achievements of the EU economy, which combines – owing to the single market mechanisms and the economic and monetary union – the economic efforts of the Member States and takes top places in the world, while taking active part in the processes of globalization. As shown by the basic macro-

economic indicators, the EU Member States have a higher total GDP than the United States, occupy a prominent place in world trade, etc. These successes are possible owing to the specific phenomenon of synergy mentioned before, whereby the overall position of the EU is much better than it would seem just from mechanically adding the individual potentials of EU states.

Moreover, having such a significant potential, the European Union is able to play a number of important international roles. In accordance with its values, the EU is a promoter of democracy, the rule of law, human rights, an advocate of peaceful resolution of international problems and the world's largest provider of development aid.

Another characteristic, which makes it even more difficult to study the EU and which has implications in the sphere of political practice, is the vagueness of the EU phenomenon. As a structure still in the nascent state, it is constantly evolving and is, if one can say so, an ongoing process rather than an achieved status. For this reason, even if only with great difficulty, it can be subjected to all evaluations, analyses, and especially categorisations. From a cognitive standpoint, the European Union is a kind of 'intellectual puzzle,' while in political terms, as the former President of the Commission Jacques Delors put it aptly in his famous saying, *'the Union is a politically unidentified object'*.

A further complication is that the European Union is a very heterogeneous structure – institutionally, legally and functionally – which is to be regarded as a kind of cumulative category. It covers not only the actual structure of the Union, i.e. the Union as such, but until recently also the European Communities. In addition, we should take into account the Member States, which still retain most of their sovereign powers and are full members of the international community. The entire structure of the integration is based on the concept of two basic models: federalism (also known as the community method) and confederalism (intergovernmental method).[7]

Conclusions

In making overall evaluations of the European integration, it should be noted that regardless of any controversy concerning the various aspects involved, it is characterised by one major advantage, which cannot be negated by anyone – the integration processes, lasting for more than half a century, ensured an unprecedentedly long period of peace in Europe, coupled with sustained political

[7] This is certainly not the only possible division, as there may be some other approaches. In simple terms, we can say that federalism treats the processes of European integration as transnational processes (assuming the formation of institutions with governing powers over states), while confederalism is basically limited to the integration of the intergovernmental cooperation of countries who retain their sovereign powers. Although these concepts seem to have contradictory aims and objectives, they are complementary, and create an original 'blend' which has been reflected in the practical functioning of the European Communities, and now of the European Union.

stability and dynamic economic development leading to prosperity. This has been achieved by creating (with support from the United States) appropriate security structures, as well as political, economic and military cooperation. On the one hand, these have created conditions that have prevented the occurrence of conflicts between the Member States of the EC/EU, on the other – they have deterred potential outside adversaries.

This alone is enough for this venture, which is unique in the world, to be considered to be a huge success of Europeans. Such assessment is not affected even by the fact that, for objective historical reasons, this success bore fruits mainly in the Western part of the continent – although all its inhabitants enjoyed the period of peace, and now also the countries of Central and Eastern Europe are experiencing the benefits of integration. Generally, the positive picture is also not obscured by the fact that while there were no wars on a continental scale, this unfortunately did not mean that there were no bloody armed conflicts occurring in different periods on a local scale (such as the Soviet interventions in Hungary and Czechoslovakia and the clashes in Ulster and in the Basque country, or the civil war in the former Yugoslavia), of which, however, only a portion could possibly have been solved by integration structures of the West.

A characteristic feature of the post-war integration processes was also their universal character, manifesting itself in the fact that the processes encompassed a wide range of almost all spheres of the political, economic, social and cultural life of Western European countries. Therefore, the idea of unity of the continent has not been 'appropriated' by any single political orientation or world view, and remained a concept with diverse and yet very general assumptions, acceptable to almost every European citizen.

Taking into account the elements of the above characteristics, we could try to present the definition of the European Union as the most important organisational structure of the modern integration processes taking place on our continent.

Thus, we can say that the European Union:

- is an independent entity or political, organisational and legal structure, an association (community, collectivity) of sovereign states, forming a regional grouping with the most advanced integration processes in the world (in terms of depth and scale);
- carries out a variety of economic, political, military, socio-cultural and other goals jointly set by its members, through its specific mechanisms, which include both the creation of supranational structures of decision-making and authority (in accordance with the federal/community model), and intergovernmental cooperation (in accordance with the confederal/intergovernmental model), using the jointly defined and accepted ways and methods of operation.

To sum up, we could say that the European integration of today is a continuation of the processes and phenomena reaching very deep, to the very beginnings of civilisation on the Old Continent. In this sense, the European Union is the main

heir and continuator of the centuries-long heritage of European civilisation; on this basis it developed its own, unique and specific processes of integration, based on original principles.

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Olga Barburska

European Integration in Motion: 60 Years of Successes and Failures

Introduction

As it has been indicated in the previous chapter, even though the processes of European integration reach back far into the history of Europe, they were actually fully realised in the period after World War II. This implementation of the grand 'European Project' was a very complex and difficult process. From the point of view of history, it was a huge achievement of many generations of Europeans. We should also remember that there have been many serious difficulties in the creation of this work and the history of building a united Europe is full of both successes and failures.

Over the last 60 years, the European integration process has undergone various stages, which are classified in various ways. For the purpose of this study, let us adopt a division into the following stages of integration processes and phenomena which were taking place in Europe after World War II:

- stage one (1945–1957), which initiated the effective implementation of the idea of integration and marked the victory of the concept of the European Communities;
- stage two (1958–1969), which was the period of building the foundations for economic integration;
- stage three (1970–1991), which resulted in the processes of extending and strengthening the integration bonds between the Member States and preparations for the establishment of the European Union;
- stage four (1992–2004), which was the period of gradual implementation of the European Union, initiated by signing the Maastricht Treaty and continued by the Treaty of Amsterdam and the Treaty of Nice;
- stage five (after 2004), initiated by the greatest enlargement to the East in the history of European integration, and also including the signing of the Constitutional Treaty and the adoption of the Lisbon Treaty.

Stage one: 1945–1957

In the period immediately after the war, the idea of European integration quickly found a number of influential supporters among the 'Fathers of Europe', which included such politicians as: J. Monnet and R. Schuman in France, K. Adenauer in Germany and W. Churchill in the United Kingdom.

The latter promoted the idea of so called Pan-Europe, proposing in 1946 the establishment of the United States of Europe, based on the principles of federalism. The first step in this direction would be to create a special international body. This postulate was supported at the Congress of Europe in the Hague, in May 1948. A year later, on 5 May 1949, several European countries founded the Council of Europe – an organization with almost universal competence.[1]

At the same time, the first projects initiating the political and military co-operation in Western Europe were launched. On 17 March 1948, France, the United Kingdom, Belgium, the Netherlands and Luxembourg signed the Brussels Treaty and a half year later the Western Union was formed, aiming to implement a common security policy. The decisive element in this field, however, was the conclusion of the Treaty of Washington on 4 April 1949, which provided for the establishment of the North Atlantic Treaty Organization (NATO), a structure which has played an important role in the history of Europe. It initially consisted of ten European countries, the USA and Canada.[2]

Historically, however, the most important role was played by projects of economic integration, which have been the foundation of European unity.

This process has been initiated, among others, by the customs union called the Benelux, established by Belgium, the Netherlands and Luxembourg on 14 March 1947. The economic aid given by the United States to its European allies in the form of the Marshall Plan, announced in 1947, proved to be a strong stimulus for further moves of this kind. This aid has played a major role in the reconstruction and rapid economic development of Western Europe. In order to ensure effective management of this aid, on 16 April 1948, 16 Western European countries established the Organisation for European Economic Cooperation (OEEC).[3]

During this period, the main initiator of integration processes was France, who wished to make Europe the 'third power' alongside the United States and the Soviet Union. The French also feared the possibility of rebuilding the economic and military power of Germany, which the USA wanted to make a member of the

[1] With the exception of strictly political and military matters.

[2] The NATO founding states were: France, the United Kingdom, Italy, Belgium, the Netherlands, Luxembourg, Norway, Denmark, Iceland, Portugal. Later they were joined by Greece and Turkey (1952), West Germany (1955) and Spain (1982). In 1999, the NATO gained new members: Poland, the Czech Republic and Hungary, and in 2004 and 2009 nine Central and Eastern European countries.

[3] Later, it was transformed into another very important entity, the worldwide Organisation for Economic Cooperation and Development (OECD).

NATO as soon as possible. Finally, France has taken another initiative, which was meant mostly to protect its national interests, but which eventually laid the foundations for the whole edifice of European integration.

On 9 May 1950, the French Minister of Foreign Affairs, R. Schuman, using the concept of his adviser, J. Monnet, presented the proposal to create a coal and steel community ('the Schuman Declaration'). Its main objective was to ensure equal economic rights for West Germany, but also – through the inclusion of German heavy industry in the broader international structure – to maintain control over it. The proposal was accepted; on 18 April 1951, in Paris, Germany, France, Italy and the Benelux countries signed the Treaty establishing the European Coal and Steel Community (ECSC), one of the three Communities which were to unite Western Europe.

At the same time, there were still some concepts of extending the integration to cover the political and military sphere. In 1950, a proposal appeared to create European armed forces by establishing the European Defence Community (EDC). This was done in 1952, by the members of the European Coal and Steel Community. Another project of that time was that of the European Political Community (EPC), which would combine the activities of the EDC and the ECSC. However, all these plans failed – in 1954, the French parliament rejected the treaty establishing the EDC; further work on the establishment of the European Political Community was also ceased. In exchange, another organization was established to deal with military issues, but as a strictly intergovernmental entity – in 1954, the ECSC countries and the United Kingdom signed a treaty establishing the Western European Union (WEU), replacing the Western Union and not associated with the Community system until 1992.

As a result of the successful functioning of the ECSC and the increasingly evident need for uniting economic efforts in Western Europe, the proposals to extend the scope of economic integration through the establishment of new Communities fell on fertile ground. After a series of intense negotiations, on 27 March 1957, in Rome, six ECSC states signed the Rome Treaties establishing the European Economic Community (EEC) and the European Atomic Energy Community (Euratom).

The main objective of the EEC was to achieve close co-operation, progress and continuous improvement of living and working conditions, reduce disparities between regions and ensure overall development of the economies of Member States. This was to be achieved by first establishing a customs union (the area where the customs duties would be abolished, and common tariffs in trade with third countries would be applied), then a common market (based on the so-called four freedoms: free movement of persons, goods, services and capital), and ultimately an economic and monetary union.

The measures to implement these tasks were, among others, common policies (agricultural, trade and transport), specific policies (e.g. regional development), harmonisation of legislation, ensuring the rules of competition, economic and

social cohesion, consumer protection, development of research, etc. Most of these were achieved, which made the EEC a very important element of the whole process of European integration.

Euratom, in turn, was to ensure the development of the nuclear industry in Western Europe and restrict its use exclusively to peaceful purposes, e.g. through the establishment of joint research centres, funding, and safety control system.

All this led to the formation of the structures of three European Communities constituting the organizational and legal basis for all further processes of integration. The treaties under which they were established are now called the founding treaties.

The Treaties of Rome were supplemented by the provisions of the Convention on certain institutions common to the European Communities, signed around the same time. Structural differences, however, were so large that the Communities succeeded in creating only two joint bodies: the Parliamentary Assembly and the European Court of Justice.

Stage two: 1958–1969

The processes of integration also covered those Western European countries which – as the United Kingdom – were distrustful towards the concept of creating a supranational decision-making authority (although in this period, even the integration within the Communities was based mainly on intergovernmental co-operation). In 1960, in Stockholm, the United Kingdom, Austria, Portugal, Switzerland, Sweden, Denmark and Norway signed a treaty establishing an organisation with fairly limited powers and importance: the European Free Trade Association (EFTA), joined by Iceland in 1970.

Rapid economic success achieved by the newly formed EEC encouraged its Member States to extend the integration processes to include the sphere of political co-operation. In 1961, France introduced the 'Fouchet Plan', which provided for the establishment of the Political Union, with fairly broad powers, but of a clearly intergovernmental nature, and thus being a kind of counterweight for Community institutions. The presentation of the project initiated a wide debate, which resulted in a series of proposals, but all these initiatives failed because of too much divergence between the approaches to the issue of national sovereignty, especially emphasized by General Charles de Gaulle. An important event, however, was the signing of the Franco-German friendship agreement (the Elysée Treaty) on 20 January 1963, which was a significant contribution to overcoming the effects of the past and to strengthening security and peace in Europe.

An agreement of major importance in the field of institutional integration was the Merger Treaty of 8 April 1965, which completed the process of joining together the three Communities and setting up common institutions, by establishing a single Council and Commission (at that time called respectively the Council of Ministers and the Commission of the European Communities), which

were added to the Court of Justice and the European Parliamentary Assembly (since 1962 called the European Parliament). Other bodies established by the Treaty were the Economic and Social Committee, the advisory body of the Communities, and the Committee of Permanent Representatives (COREPER), which also played an important role.

The most successful part of Community activity was the establishment of the common market, including in particular the customs union, which was introduced in 1968, and the Common Commercial Policy. There was some progress also in increasing the freedom of entrepreneurship and movement of workers, and in competition law. In some other areas, however, such as the Common Transport Policy and, above all, Common Agricultural Policy, there emerged some difficulties and conflicts of interests. Although the basic principles of the Common Agricultural Policy were set already in 1962, their implementation started only five years later.

Again, the country which most forcibly articulated its reservations was France. From mid-1965, it applied the 'empty chair' policy, i.e. it blocked the operation of EC bodies by withdrawing its representatives. The conflict was resolved through the 'Luxembourg compromise' reached on 29 January 1966. It was essentially a revision of the Treaty of Rome, by which France forced its partners to acknowledge a rule, according to which in matters most important to national interests each Member State should have a practical power of veto in regard to the decisions of the Council.

At that time, engaged in their internal issues, the European Communities did not focus on geographical enlargement. Their actions in this field were limited to signing Association Agreements: in 1961 with Greece, in 1963 with Turkey, and in the same year in Yaoundé, the Convention of Association with 18 African countries. The United Kingdom tried to join the EEC twice – in 1961 and in 1967 – and twice it failed because of strong opposition of France, distrustful towards the pro-American course of British foreign policy and fearing for its own economic interests, especially in the field of agriculture.

Stage three: 1970–1991

At the beginning of the 1970s, the Communities entered a period of prominent institutional and territorial development. At the Hague summit in December 1969, relevant decisions were made, regarding, among others, the admission of new members (the latter was made possible by the resignation from office by Charles de Gaulle). As a result, on 22 January 1972, the EC Member States signed the Accession Treaties with the United Kingdom, Ireland, Denmark and Norway. Except for Norway, where the treaty was rejected by referendum, these countries became full members of the Communities on 1 January 1973.

As regards political integration, at the Luxembourg summit on 27 October 1971, the Member States of the Communities established a structure to coordinate

and harmonize their foreign policies – the European Political Cooperation (EPC). It was operating beyond the Community system and without any treaty basis, but it still played an important role in the Communities as a forum for the exchange and coordination of views on foreign policy, and to a certain extent, on defence policy.

At the Paris summit in December 1974, a new (although already formally existing) body was constituted – the European Council, composed of the Heads of States and Governments of the EC Member States. Although it has never been a Community body, it has since been of great importance, as its main function is to consult, coordinate and take decisions on major issues relating to the Communities.

One of the more important moves of the European Council was the decision to introduce general elections to the European Parliament. After the first elections, set for mid-1979, the Parliament was transformed from an inter-parliamentary institution into a supranational body (initially with fairly limited powers).

In this time of institutional development of the Communities, ideas for a far more advanced integration in the form of the European Union were gaining importance. For example, the Belgian Prime Minister issued the 'Tindemans report', which proposed deep integration, not only economic, but also political, including in foreign policy.

In this period, we can observe an ever clearer domination of the three main members within the EC: France, West Germany and the United Kingdom. In many cases they were the only ones to decide on certain matters, which, naturally, largely suppressed collective problem-solving. At the same time, co-operation in justice and home affairs was gradually developing, as shown for instance by the establishment of the Trevi Group in 1975, aiming to coordinate the fight against international crime and terrorism.

The Community institutions were dynamically developing in the field of economic integration, which resulted in the establishment of the Court of Auditors in 1975, whose main task was to control the budget of the Communities. The common market was made more effective, and the introduction of the 'currency snake' in 1972, restricting excessive fluctuations of exchange rates, was a major step in monetary policy. 1978 saw the creation of the European Monetary System and the innovative step of introducing the European Currency Unit (ecu).

In 1970, another set of principles of funding the Common Agricultural Policy was agreed on; successes were also recorded in the field of Common Commercial Policy, as shown by further Association Agreements – with Malta in 1970 and with Cyprus in 1972. In the years 1969–1984, the EC Member States also signed preferential agreements with a group of African, Caribbean, and Pacific (ACP) countries (Yaoundé II, Lomé I, Lomé II, Lomé III), and in 1976–1977, with some countries of the Maghreb and of the Middle East.

In the second half of the 1970s, however, a number of difficulties occurred, resulting both from the growing economic crisis in the West (caused by the

embargo on oil supplies introduced after the 1973 Arab-Israeli War) and from the structural and institutional crisis within the EC. This was manifested in, among other things, severe budgetary difficulties, the crisis of the Common Agricultural Policy and the inefficiency of Community institutions (a problem referred to as 'Eurosclerosis'). The integration formula existing so far seemed to have exhausted its possibilities of development, but this stimulated reform efforts. At the beginning of the 1980s, a number of proposals appeared referring to the earlier idea of creating a European Union, including in the form of the resolution of the European Parliament of 1984 on a draft Treaty establishing the European Union, which was a kind of constitution for the united Europe and contained far-reaching federalist solutions.

The Schengen Agreement signed on 14 June 1985 (referred to as Schengen I), which regulated such issues as free movement of persons by abolishing internal border controls and allowing them only at the external borders of the Community and by adopting a common extradition procedure and visa policy, was an important development.[4] The Agreement was later supplemented by a series of other acts, such as the Dublin Convention of 1990.

The first half of the 1980s also brought the completion of the process of admitting to the EEC some countries which had long been aspiring for membership: Greece (the Accession Treaty signed on 28 May 1979), as well as Spain and Portugal (the Accession Treaties signed on 12 June 1985). These events not only caused a shift of emphasis in the Community towards the Mediterranean, but also highlighted the need for structural changes in the EEC, now consisting of states with more diverse economic potentials and different political and cultural traditions.

Negotiations led to an agreement on the key provisions of the future treaty which would modify the Treaties of Rome. They eventually took the form of the Single European Act (SEA), signed by all EC Member States on 17 February 1986, in Luxembourg and on 28 February 1986, in the Hague.

The Act was of major importance; it crowned 40 years of efforts in the field of European integration and laid the foundations for a qualitatively new structure, the future European Union. The SEA introduced a number of institutional and legal changes, e.g. by modifying decision-making procedures for Community bodies, increasing the powers of the European Parliament and creating a better legal basis for the functioning of the European Council and the European Political Cooperation (to which it provided a legal basis). The most important proposal in the field of economy was the internal market, which was to be created by 1992 (in place of the common market) and the Economic and Monetary Union, also to be created by 1992. The modifications made to the EEC Treaty by the Single Act

[4] The Schengen Agreement was initially signed by France, Germany and the Benelux states, and later other EC countries followed (as well as Norway and Iceland). The United Kingdom and Ireland, who want to keep their border controls, have still not signed the Agreement.

consisted also in including new areas, such as social policy, scientific research and environment protection into the Treaty.

The SEA provided a new impulse to the processes of integration aiming at the creation of the European Union. Following a series of initiatives in this area, the Madrid summit in June 1989 approved the 'Delors package', prepared by Jacques Delors, who was at that time the President of the Commission. The package envisaged gradual implementation of the Economic and Monetary Union; the first phase of implementation began on 1 July 1990. One of the key institutional elements of the Union would be the establishment of the European System of Central Banks, as a first step towards the creation of the future common European Central Bank.

In the political sphere, the ideas of a political union were still present, which resulted, among others, from Western Europe's need to face new challenges in the international arena and from the shortcomings of political solutions in the Single Act. An additional issue was the need to extend the Community competence in the field of social policy. Consequently, at the Strasbourg summit in December 1989, the heads of the Member States adopted the Community Charter of the Fundamental Social Rights of Workers (the Charter was not adopted by the United Kingdom).

The co-operation in the field of internal affairs continued, especially in the fields of immigration policy and fight against drug trafficking (the European Committee to Combat Drugs, CELAD, was established in 1989). Activities aimed at solving social problems and at environmental protection were also being further developed.

The Common Commercial Policy, or, more generally, the external policy of the EC was also actively pursued. In the years 1986–1988, the process of establishing closer co-operation with the EFTA countries was initiated and the membership applications submitted in 1990 by Cyprus and Malta were accepted.

At the turn of the 1980s and 1990s, the European Communities also needed to develop a policy towards the 'Autumn of Nations' in Central and Eastern Europe, which was disturbing the traditional balance of power on our continent. The collapse of the communist system had great significance not only for the countries of the region, but also for the whole of Europe. The Communities developed treaty bonds with the new democracies relatively quickly, by signing agreements on trade and economic co-operation (the 'first generation' agreements).[5]

On 16 December 1991, Poland, Hungary and Czechoslovakia signed the Europe Association Agreements (also referred to as Europe Agreements or 'second generation' agreements). In this regard, accession of the former German Democratic Republic to the EC was a special case. As of 3 October 1990, it

[5] Signed with Hungary (26 September 1988), Poland (19 September 1989), Russia (18 December 1989), Czechoslovakia (7 May 1990), Bulgaria (8 May 1990), Romania (22 October 1990), Albania (26 October 1992).

became an integral part of the Federal Republic of Germany, the Dublin summit in April 1990 decided that formal accession requires only the use of simplified adaptation procedures.

In December 1989, at the meeting in Strasbourg, the European Council made the important decision to continue further reforms, bearing in mind the strategic objective, which would be the creation of the European Union. There were, however, some essential differences of opinion between the UK, playing the role of the main opponent to the expansion of supranational powers of the future Union, and Germany and France, acting in solidarity, supported by the majority of other Member States. Eventually, the process of negotiations which was to lead to a common position was successfully completed.

Stage four: 1992–2004

On 7 February 1992, in the Dutch town of Maastricht, twelve Member States signed the Treaty on European Union (Treaty of Maastricht). Its provisions were certainly of historical significance and defined the shape and direction of integration processes throughout the continent until the twenty-first century.

The Treaty of Maastricht, providing for the creation of the European Union, did not replace the founding treaties, nor did it liquidate the existing Communities – they still remained subjects of international law. From a formal point of view, the European Union was not a new international organization and had no international legal subjectivity. The Treaty had a characteristic structure, consisting of three 'pillars'.

The first pillar regulated fundamental issues concerning mainly economic integration, in which the main role was to be played by the reformed EEC, under the name European Community. It was equipped with extensive powers, including – in addition to common policies and specific policies – a power to take actions leading to the establishment of the Single Market and the Economic and Monetary Union. This task was divided into several stages, and one of them was the introduction of the euro on 1 January 1999, which required the operation of harmonized economic and monetary policies of the Member States.

The second pillar covered the Common Foreign and Security Policy (which replaced the European Political Cooperation), conducted at the intergovernmental level and not at Community level. Its main objectives included the strengthening of international peace and security of the Union and its Member States. This should be achieved by developing common positions and actions on issues of foreign and defence policy. One of the intended steps was to incorporate the Western European Union into the European Union, while maintaining close co-operation with the NATO in the field of defence.

The third pillar covered intergovernmental co-operation in justice and home affairs. It included issues such as immigration and asylum policy, border control, combating international crime and terrorism, co-operation between judiciary

systems (in civil and criminal matters), as well as customs and police services (e.g. through the establishment of the European Police Office: Europol).

The provisions of the Maastricht Treaty addressed a comprehensive combination of economic issues and social problems, accompanied by political issues. An example of such a holistic view was the establishment of the 'European citizenship' (which did not replace the citizenship of the Member States, but for example, provided joint diplomatic and consular protection to EU citizens in third countries). The European Union was to be based on the principles of subsidiarity,[6] while maintaining the *acquis communautaire*, i.e. the existing legal and institutional achievements of the Communities.

The main institutions of the European Union (formally the European Communities) were still: the European Commission, the Council of the European Union, the European Parliament, the Court of Justice (including the Court of First Instance) and the Court of Auditors, while advisory bodies were the Economic and Social Committee and the newly formed Committee of the Regions. Formally, the European Council was not a Community body, but in practice it still played a great political role. It made important decisions at its meetings held every six months in the country which currently presided over both the Council of the European Union and the European Council (an institution called the Presidency).

The Treaty also established a pan-European institution of the Ombudsman, who receives complaints from citizens on the activities of Community institutions. It also formed the European Monetary Institute, the germ of the present European Central Bank, which supervises the Union's financial policy.

The Treaty encountered some difficulties along the process of its ratification. Nationwide referendums were held in some countries (France, Ireland, Denmark); the French expressed their approval by a minimum majority, while the outcome of the first vote in Denmark was negative. As a result, it was necessary to renegotiate Denmark's obligations, and in consequence the Treat entered into force almost a year later than expected, on 1 November 1993.

The Maastricht Treaty was an important stage in European integration, after which numerous further obstacles emerged. For example, the partial collapse of the European Monetary System in mid-1993 was a great blow to the concept of Economic and Monetary Union. However, there were also some successes in solving such problems as regulation of the European Community budget financing (the 'Delors II package'), and the implementation, by 1 January 1993, of a set of projects for the functioning of the Single Market.

Intensive efforts have also been made to implement the next stage of the monetary union. This required Member States to comply with the convergence crite-

[6] Generally speaking, in this case, the principle of subsidiarity means that the European Union's bodies should restrain from taking decisions on any issues in which decisions taken at lower levels (national, regional or local) would be more effective. Decisions should be made at the European level only in the cases when they exceed the capabilities of states or local authorities.

ria (conditions set out in Maastricht concerning, inter alia, the government deficit and inflation rate). By meeting these criteria, 11 Member States[7] were able to adopt the common currency, the euro, on 1 January 1999 (it was consistent with the concept of 'enhanced co-operation', which meant that specific integration actions could be taken by a group of interested countries instead of all Member States). As part of the implementation of the monetary union, the European Central Bank was also established.

The Treaty of Maastricht included a declaration on the need for further reforms and provided for the next Intergovernmental Conference to be convened for this purpose. The Conference started in 1996 in Turin and ended a year later in Amsterdam. Its work was devoted to solving the existing problems, as well as the emerging ones, especially in the functioning of the institutions of the expanding Communities. This was of particular importance for Poland and for other associated countries, since the start of accession negotiations depended, among others, on the adoption of a program of institutional reforms in the Union). A catalogue of these problems and the proposed solutions were the subject of the report drawn up by the Reflection Group, acting under the direction of the Spanish diplomat C. Westendorp.

Finally, the Treaty of Amsterdam was signed on 2 October 1997 in Amsterdam, and entered into force on 1 May 1999. Its provisions touched upon several key areas, including the creation of 'the Area of Freedom, Security and Justice'. In this field, emphasis was placed on civil and human rights guarantees; some important decisions were also made to provide for the gradual incorporation of the Schengen Agreement to the *acquis communautaire* (which, by then, had expanded to include several new states),[8] which also meant that Community competence would from then on cover a substantial part of matters governed by this agreement. In the field of relations between the EU and its citizens, the Treaty stressed the importance of social issues, introducing chapters on such issues as employment[9] or health and consumer protection. Moreover, it highlighted the need to apply the principles of subsidiarity and proportionality.

Relatively little progress was achieved in the field of institutional reforms. The Treaty increased the powers of the European Parliament, simplified the co-decision procedure, extended the range of decisions which could be made by Community institutions by a qualified majority of votes, defined the competence of the Court of Justice within the third pillar. Finally, it provided for a broader application of 'enhanced co-operation', but on the condition that the consistency and the legal basis of the EU would not be infringed.

[7] The UK, Denmark and Sweden did not want to join the eurozone, while Greece initially did not meet the Maastricht criteria and was allowed to join the eurozone only on 1 January 2001.

[8] Poland signed an agreement with the Schengen Group in 1991, which made it possible to mutually abolish entry visas and eventually also border controls.

[9] It was made possible by UK's accession to the Community Charter of the Fundamental Social Rights of Workers annexed to the Treaty.

The provisions of the Amsterdam Treaty were also devoted to the effectiveness and consistency of EU external policy. The most important provisions in this regard concerned the possibility of transferring the Common Foreign and Security Policy into the sphere of EU competence, while retaining a number of safeguards to protect the sovereignty of the Member States. It also created the institution of the High Representative for CFSP.

A new approach to security and defence was also shown by intensive activity in this area in the 1990s. The European Union engaged, for instance, in the implementation of the 'Petersberg Missions' formulated by the WEU in 1992,[10] set up a Common European Security and Defence Policy (ESDP), which complemented the Common Foreign and Security Policy, and also determined the establishment of its own rapid reaction force.

One of the key issues the European Union had to deal with in the 1990s was its territorial expansion. In the debates on this subject the Member States sought to determine whether they should first deepen the existing integration bonds or expand the area of the EU (according to the formula: deepening or widening). As a result, pragmatic considerations prevailed, combining both approaches, since it is clear that these issues were dialectically linked with each other – in a sense, the enlargement forced institutional reforms, without which it would be impossible itself.

The process of establishing closer co-operation with EFTA countries, which had already been initiated, was concluded by signing the agreement on the European Economic Area (EEA) on 2 May 1992, binding this group of countries with the EU (except Switzerland). The real significance of this agreement was relatively small, since most of the EFTA countries had already submitted applications to join the European Union. This was true of Austria, Sweden and Finland, who signed their accession treaties on 1 February 1994. Norway, on the other hand, for the second time in history, rejected membership in the EU by way of a referendum (the first time was in 1972).

The essential thing, however, was to continue the process of enlargement of European integration structures to include the countries of Central and Eastern Europe. Further association agreements ('second generation' agreements) were concluded with Romania (1 February 1993) and Bulgaria (8 March 1993). Agreements on trade and economic co-operation were concluded over the years 1993–1995 with Slovenia and the Baltic states. In 1994 the EC also signed special agreements with Russia and Ukraine. Most of these countries were accepted as members of the Council of Europe.

The Visegrad Group (Poland, Hungary, the Czech Republic and Slovakia) stood the greatest chance of a relatively quick accession to the European Union.

[10] The Missions specify new tasks resulting from the changes in the understanding of European security in the 1990s. They include humanitarian and rescue actions and peace actions in the form of peace missions or military and political control over crises and armed conflicts.

These countries had also undertaken other types of integration efforts, e.g. working together within the Central European Free Trade Agreement (CEFTA), which had existed from 1 January 1993 (since 1998, Slovenia, Romania and Bulgaria have also been members of the CEFTA).

The concept of expansion to the East was not generally and unreservedly accepted in the EU. While Germany was a staunch supporter of this concept, France and the other Mediterranean Member States, having more precise and vital interests in this part of the continent, referred to it less favourably. What added to this was the fear of being too hasty in the geographical expansion of European integration while the necessary process of internal reforms within the EU was not yet completed.

However, the fundamental political decision concerning the accession of Central and Eastern European countries into the EU was taken at the Copenhagen summit in June 1993, at which the Member States formulated the 'Co - penhagen criteria' specifying the political (democratic functioning of the rule of law and protecting human rights) and economic conditions for the Candidate Countries, in particular all the requirements of a free market economy. After a positive assessment of the candidate's efforts in a special document 'Agenda 2000' in 1997, the Union invited Poland and the other Candidate Countries from the so-called 'Luxembourg group'[11] to launch accession negotiations on 31 March 1998.

As for NATO membership, at the Madrid summit in July 1997, the NATO countries decided to initiate negotiations with Poland, the Czech Republic and Hungary. On 16 December of the same year, a relevant protocol to the Washington Treaty was signed, and on 12 March 1999, the three countries officially became members of the NATO.

Difficult negotiations at the next Intergovernmental Conference led to the signing of the Treaty of Nice on 26 February 2001 (it came into force on 1 February 2003). It was an important event in the development of the European Union, also in the context of its enlargement. Its main task was to introduce solutions to complete the institutional reform, without which the effective functioning of the Union was threatened, especially in view of the significant increase in the number of Member States in the near future.

The main changes concerned the organizational shape, the activities and decision-making procedures of the main EU bodies. This applied mainly to the European Commission and the Council of the European Union (modification of the distribution of votes favourable to countries such as Spain, and Poland in the future) as well as other organs (e.g. the future composition of the European Parliament). The Treaty also provided for important reforms in the area of extending the possibility of voting by qualified majority (i.e. limiting the unanimity rule), and efforts were made to bring the Union closer to its citizens, thus reducing

[11] The other countries were: Cyprus, the Czech Republic, Estonia, Slovenia and Hungary.

the 'democratic deficit', among others by starting work on the EU Charter of Fundamental Rights.

The Charter of Fundamental Rights of the European Union was solemnly proclaimed on 7 December 2000 at the Nice summit. The drafting of the Charter was entrusted to a special Convention composed of representatives of the Member States and Community bodies. The Convention was chaired by the former German President Roman Herzog.

Generally, we can distinguish two groups of rights in the provisions of the Charter. The first group is derived from the idea of inalienable human rights pertaining to every human individual, such as dignity, freedom, etc. The second group are the rights pertaining to individuals under EU citizenship, and thus not universal. The most important of them include the right to elect the members of the European Parliament or the right of complaint to the European Ombudsman. The Charter of Fundamental Rights was not, however, a Community law (i.e. its provisions were not binding for the Member States), but rather a political declaration containing a catalogue of values which should underpin the European integration processes.

With regard to the process of enlargement to the East, in December 1999, the EU decided to invite another group of Central and Eastern European countries to accession negotiations (the 'Helsinki Group').[12] This way, the process gained an unprecedented nature, while finally marking the end of the Yalta order in Europe and covering most of the countries of the continent with integration processes.

Negotiations with most of the candidates were completed on 13 December 2002, during the Copenhagen summit.[13] As a result of the final decisions, on 16 April 2003, on the Acropolis in Athens, ten candidate countries and fifteen European Union Member States formally signed the Accession Treaty. The process of its ratification required conducting referendums in most of the Candidate Countries and was successful in all of them (in Poland the referendum was held on 7–8 June 2003).

In addition to the enlargement to the East, the processes of European integration since the end of the 1990s have also been shaped by the successful completion of the Economic and Monetary Union and the introduction of a common European currency. The year 1999 saw the beginning of the third and final phase of EMU – the launch of the European Central Bank and the European System of Central Banks, and of the single currency euro, which was introduced in non-cash transactions. After three years of successful operation, on 1 January 2002, euro was introduced into cash transactions and the process of withdrawing the existing national currencies began (only three EU Member States of that time: the UK, Denmark and Sweden, decided to keep their national currencies).

[12] These were: Bulgaria, Lithuania, Latvia, Romania, Slovakia and Malta.

[13] Only negotiations with Bulgaria and Romania lasted longer.

Another factor influencing the future of European integration processes were the events of 11 September 2001. The terrorist attack on the United States provoked a sharp reaction from the Americans, which initially met with full support from the European Union. However, the form and scope of the war on terrorism waged by the USA led to increasing protests from the majority of EU countries. It did not stop the Washington administration from starting a military operation against Iraq in 2003 without the appropriate resolution of the UN Security Council. The most severe critics of this policy were France and Germany, which led to a clear political conflict between them and the United States.

The case of Iraq proved to be a double defeat for the European Union. On the one hand, it showed the weakness of integration in the Common Foreign and Security Policy, thus making it evident that the EU was not able to exercise influence on the conduct of important international events. On the other hand, it highlighted the rifts between the Member States and the Candidate Countries. The latter largely supported the United States, and Poland even took direct part in military operations and in the administration of the territory of Iraq.

The challenges faced by the European Union at the turn of the millennium became the background for a wider debate on the institutional reform started in Nice. The Treaty of Nice came into force in 2003, with a delay caused by the negative result of the Irish ratification referendum (in the second referendum, the Irish voted in favour of ratification, which in practice allowed the enlargement of the EU). The provisions of the Treaty contained a number of institutional changes indeed, but it was also obvious that the Nice solutions were only temporary. In December 2001, at the meeting in Laeken, the European Council decided to call for a special Convention, which would debate on the future shape of the Union and which was to prepare draft amendments.

The European Convention, chaired by the former French President Valery Giscard d'Estaing, began its work in February 2002. It was composed of representatives of the Member States, the European institutions and the Candidate Countries.

In addition to the preparation of the draft EU Constitution, the Convention also undertook the task to outline a long-term vision for the further development of European integration. The key agenda included the issues of the division of powers between the Union and the Member States and between EU institutions, the effectiveness of EU external policy and the elimination of the 'democratic deficit' in its functioning. The final outcome of the Convention was agreed by way of consensus, and then served as the basis for the work of the next Intergovernmental Conference.

The draft Constitutional Treaty provided for, among others, extending the list of issues resolved by the Council of the European Union by a majority vote. The most controversial issue was the departure from the voting system established in the Treaty of Nice in favour of the 'double majority rule' (decisions would be taken by a majority of the Member States inhabited by a majority of EU

citizens). Furthermore, the draft Treaty proposed the establishment of a permanent head of the European Council in place of the six-month rotational Presidency. In the area of foreign relations, the draft called for the appointment of an EU Minister of Foreign Affairs, combining the existing functions of the Commissioner for External Relations and the High Representative for CFSP. It also proposed the strengthening of the role of national parliaments. Thus, the draft Constitutional Treaty contained a number of proposals for major changes, and also included – as its integral part – the text of the Charter of Fundamental Rights, so that it would become binding.

In late 2003, the Intergovernmental Conference was supposed to finally complete and adopt the text of the Constitutional Treaty. There were, however, some fundamental differences of opinion, particularly with regard to decision making in the Council of the EU. Departing from the Nice voting rules in favour of the double majority procedure aroused strong opposition of Poland and Spain, who regarded this change as detrimental to their vital national interests, while Germany and France strongly supported the idea. Both sides have shown a lack of flexibility: Poles rashly adopted the demagogic slogan 'Nice or death', while Germany and France have shown no willingness to compromise. As a result, this led to the failure of the Brussels summit in December, where, contrary to expectations, the heads of the Member States failed to sign the Constitutional Treaty.

Stage five: (after 2004)

Spring of 2004 saw the emergence of some signs indicating the possibility of breaking the deadlock and reaching an agreement. They were associated primarily with the historical event which was the formal accession to the European Union of ten new members, including Poland, on 1 May 2004 (the other new members being: Hungary, the Czech Republic, Slovakia, Slovenia, Lithuania, Latvia, Estonia, Cyprus and Malta). The practical functioning of the New and Old Member States within the same integration structures started to contribute to constructive resolution of disputes, especially that Poland found the first years of membership very beneficial in economic terms. Polish economy experienced, among others, growing exports to EU countries, the introduction of direct payments to farmers and significant support from the Structural Funds.

The tendency to compromise in the new, enlarged European Union also stemmed from fears of the danger of a deepening political crisis within the EU, as well as the changed positions of most of the partners, in particular the reorientation of the pro-American foreign policy of Spain, caused mainly by the aftermath of the terrorist attacks in Madrid on 11 March, as well as the more flexible positions of Poland, Germany and France. As a result, the Brussels summit in June agreed on the content of the new treaty, and on 29 October 2004, 25 Member States

signed the Treaty establishing a Constitution for Europe. Its text was based extensively on the recommendations of the European Convention.

The procedure of its ratification, however, proved to be fraught with difficulties – although half of the Member States ratified it, France and the Netherlands rejected the Treaty (guided primarily by their inner political reasons) in referendums held in May and June 2005. In this situation, some of the other Member States suspended their ratification procedures, thus placing the fate of the Constitutional Treaty under a question mark.

In the same period, one could see some attempts to mitigate the controversy between Europe and the United States as regards the conflict in Iraq, raised for instance within the NATO. These attempts were shown by some specific joint undertakings, of which the most clear example was the decision of all NATO member countries to take part in the military stabilization mission in Afghanistan. The mission has been officially conducted under the auspices of the NATO, but the actual leadership belongs, naturally, to the United States. The involvement of the EU Member States in the operation in Afghanistan was significant, as it essentially differed little in political and military terms from the intervention in Iraq, while being a very costly undertaking in every respect. All this means that in the case of the intervention in Afghanistan, the Europeans stood – unlike in the case of Iraq – unanimously and decisively by the side of the USA.

The long-planned process of NATO enlargement has also continued – in 2004, seven post-communist countries of Central and Eastern Europe officially joined the NATO: Lithuania, Latvia, Estonia, Slovakia, Romania, Bulgaria, Slovenia, and in 2009: Albania and Croatia.

The European integration processes already covered the vast majority of our continent, which was shown mainly by the accession of Romania and Bulgaria to the European Union on 1 January 2007.

The difficulties with the ratification of the Constitutional Treaty did not mark the end of the very idea of reforms to improve the functioning of the EU. Intensive work on a new treaty was launched in early 2006. France made a significant contribution to this, by proposing to remove the most controversial provisions from the text of the Constitutional Treaty. This made it possible to convene another Intergovernmental Conference in mid-2007, whose work resulted in the adoption of the new EU Reform Treaty. As a result, on 13 December 2007, in the capital of Portugal, the 27 Member States signed the Lisbon Treaty.

As agreed, the new treaty no longer included the controversial – though sometimes only symbolic – provisions concerning the EU anthem and flag or references to the Christian heritage in the preamble. In fact, however, the essential achievements developed in the Constitutional Treaty were maintained, including in particular the new decision-making system in the EU Council, based on double-majority voting – a decision should be supported by 55 per cent of Member States, representing 65 per cent of EU citizens. The new system was not to be introduced until 2014. Other important provisions worth mentioning include the

reduction of the number of commissioners in the European Commission to 18 (starting from 2014). This means that although each country still has the right to appoint one commissioner, they would hold the office rotationally. Moreover, the Treaty established a permanent office of the President of the European Council, while retaining the rotational Presidency in a modified form. Furthermore, it increased the powers of the European Parliament and introduced the right of citizens' initiative, allowing the start of the legislative process at the request of at least one million EU citizens.

The Lisbon Treaty is not any new 'constitution', but is based on two existing instruments: the Treaty on European Union and the Treaty establishing the European Community (now referred to as the Treaty on the Functioning of the European Union). It abolishes the division into the EU and the EC, making the European Union the only legal entity. Other important changes include providing the EU with international legal subjectivity and, in general, strengthening its capacity to act in the international arena, by, among others, creating the actual office of the EU minister of foreign affairs, having his own diplomatic service – as proposed in the Constitutional Treaty (as a sign of departure from controversial provisions, this position is now called the High Representative for Foreign Affairs and Security Policy).

It was expected that the ratification procedure would be closed early enough for the Treaty to come into force in early 2009. However, problems appeared, as in June 2008 the Irish said 'no' in their referendum, which placed other partners in a difficult situation. Eventually, another referendum was held in Ireland in October the following year, and the result was positive this time. Thus, the last obstacles to the ratification procedure disappeared, and the procedure was completed by all other Member States. As a result, the Lisbon Treaty entered into force on 1 December 2009.

The situation in the European Union has been greatly complicated by the global financial and economic crisis which began in autumn 2008. Its effects were particularly severe for the euro area, primarily for its weakest member: Greece, but also for countries who could not maintain sustainable development: Portugal, Ireland, Spain and Italy. The tensions caused by the crisis could threaten the cohesion of the entire European integration project, especially in the situation when Greece has *de facto* become a bankrupt and the government of Germany was reluctant to embrace the ideas of extending the financial assistance provided to the crisis-ridden states of Southern Europe.

The European Union undertakes efforts to control the crisis, for instance by 'pumping' significant financial assistance into the economies of the Member States and by creating new institutions and methods, such as the European Stabilization Mechanism or Fiscal Pact. At present, it is still hard to assess the results of these actions, but it seems that the EU, and particularly the euro area, faces the need to make a historic choice: either the processes of economic and political integration will be intensified, or the whole European project will become paral-

ysed and perhaps even collapse. For it is clear that the present model of integration, not supported by strong supranational institutions, has exhausted its development possibilities.

One of the most important challenge to the future of the European Union is further enlargement. In this respect, there are still significant divergences in opinions – most Member States of the 'old' Union display rather far-reaching restraint or even aversion towards this issue, while the new Member States (including Poland, in particular) strive towards the continuation of the enlargement processes to the east. To this end, they try using the new instruments: the European Neighbourhood Policy adopted in 2003 – having a broader scope, as it includes other regions as well, such as the Mediterranean Basin or the Balkans, but *de facto* pertaining mainly to Eastern Europe – as well as the Eastern Partnership, established in 2008 on Poland's initiative. Their chief goal is to support political stabilisation and social and economic development in the areas bordering on the enlarged European Union.

Although these instruments do not directly offer a membership in the EU, such prospect is taken into consideration in relation to some of the partners, including Ukraine, which is of great geopolitical importance. Practically from the moment it gained independence in 1991, this country has displayed pro-European orientation, supported by its western neighbours, especially Poland. However, its complicated and unstable political, social and economic situation results in the fact that the ambitions of the majority of Ukraine's authorities and society to join the European Union stumble across serious problems and barriers.

These result not only from internal difficulties (manifested in, among others, a lack of consistency in the pro-European policy) or the policies of Russia, supporting the strong group of anti-European opponents in Ukraine and wanting to keep this country in its direct sphere of influence. Their reasons include also the ambivalent position of the European Union, which has not worked out any consistent position in this regard. Bearing in mind the hesitation of Ukrainians and wanting to avoid potential conflicts with Russia, some Member States do not support any quick actions aimed at Ukraine's membership in the EU, although they do not rule it out as a future event. At the same time, most of the new Member States from Central Europe, especially Poland and the Baltic states, insist on a course leading to Ukraine joining the EU as soon as possible.

Another controversial issue is the possible membership of Turkey in the EU. While this country has had an Association Agreement with the European Communities for more than 40 years and launched official association negotiations in 2005, its candidacy gives rises to serious doubts and significant disagreements between various Member States, mainly related to the huge, historically conditioned differences between Turkey and its European partners in terms of, for instance, religion, culture, politics, economy, etc. However, as its proponents keep stressing, the accession of Turkey would also bring significant benefits, such as the strengthening of the stability and development zone in the closest neighbour-

hood of the European Union and proving that the EU is able to open up to other regions and cultures. But there would be serious risks too, e.g. due to the fact that the European integration structures would reach right into the neighbourhood of the conflict areas in the Middle East. The need to make a decision in this matter, sooner or later, will constitute one of the major challenges to the whole Union.

In the Balkan region, Croatia has already made it into the EU. After 6 years of negotiations, in December 2011 it signed the Accession Treaty and after its ratification it became a full member on 1 July 2013. Other candidates, such as Macedonia and Montenegro, are not nearly that close. Because of the EU's internal problems, it seems that another enlargement will not happen anytime soon.

Although only the future will show how the integration processes in Europe will further develop, it can already be said that there are no significant political and economic alternatives to these processes, and even though there are some inevitable obstacles or difficulties, the future of our continent will be defined by the notion of European unity, which has long been a part of its history.

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Part III

Law and Institutions of the European Union

Władysław Czapliński

Fundamental Problems of the EU Legal System

Introduction

The entry into force of the Treaty of Lisbon has considerably simplified the definition of the European Union's legal nature. Under the previous treaties, the structure of the EU and the Communities and their legal personality remained unclear and disputable. The structure was composed of: the European Union, functioning under the Treaty of Maastricht (1992), and three entities established earlier, i.e. the European Coal and Steel Community (1951), the European Economic Community, later named the European Community (1957), and the European Atomic Energy Community (Euratom, 1957). While the founding treaties clearly stated that the Communities have legal personality – they were qualified as international organisations – the Treaty of Maastricht did not contain any provisions on this matter, which made it difficult to qualify the European Union as an international organisation.[1] The EU itself was most often presented as a kind of 'roof' covering the three Communities.

1. Legal nature and legal personality of the European Union

The legal personality of the European Union has two aspects: one based on international law and the other resulting from national laws of the Member States. Article 47 TEU stipulates that the European Union has legal personality without specifying what kind of legal personality it is. It is generally accepted, however, that this provision concerns international subjectivity. It is formulated in an identical way as former TEC provisions regulating this particular issue.

[1] However, in the legal doctrine it was stressed that the EU might have had an assumed legal personality, in particular taking into account the fact that under the Treaty of Maastricht it had a power to conclude international agreements in the field of foreign and security policy as well as cooperation in justice and home affairs.

Article 335 TFEU, in turn, provides the EU with legal personality in the legal systems of the Member States. This legal personality should mean the most extensive legal capacity accorded to legal persons under the laws of the Member States, and in particular, the right to acquire or dispose of movable and immovable property, to conclude employment contracts and to be a party to legal proceedings. This solution is quite obvious, if the EU is to fulfil its tasks. Although it has been suggested in the writing that the scope of legal personality of the EU in the national laws is unlimited, it is determined by the competences vested in the EU by the treaty.

The scope of application of the Treaties

According to the classic model, the scope of application of EU law should be limited to legal relations and to situations containing a cross-border element. As a rule, it excludes the possibility of applying EU law in purely internal relations. In practice, it could theoretically lead to a situation when uniform legal relations under national laws of the Member States would be regulated by diverse legal norms: those applied to national entities and those applied to foreign (Community) entities. This would constitute 'reverse discrimination', i.e. different (worse) treatment of national entities than other Community entities, or applying unequal, usually more restrictive standards (e.g. as regards product safety or environment protection). The latter is admissible even in relations to issues subject to harmonisation – under the condition that the Member State notifies its standards to the European Commission and the Commission agrees that they can be maintained.

The personal scope of EU law in relation to natural persons is defined by EU citizenship.[2] It is constructed in a different way than citizenship of a state. The condition for having EU citizenship is to be a national of any EU Member State, and no one can directly become an EU citizen. In relation to legal persons, i.e. entrepreneurs, EU law applies to those of them who are nationals of a Member State under national law.[3] Initially, the rights arising from European citizenship covered the right to free movement within the territory of the European Union, the right to participate in elections to the European Parliament and in local elections in the country of residence (which is not the country of origin), the right to submit complaints to the Ombudsman and petitions to the European Parliament, as well as the right to consular protection by diplomatic posts of another Member State. The catalogue of rights of EU citizens has been significantly extended by the European Court of Justice (ECJ), which has linked to each other some specific rights, in particular derived from the freedom of movement. For example, in

[2] The EU citizenship was introduced by the Treaty of Maastricht. Before that, Community law had referred to the citizenship of the Member States, which had been giving rise to some doubts as to the Federal Republic of Germany (before the unification of Germany) and the United Kingdom (due to its colonial past).

[3] The laws of states usually define the nationality of legal persons by referring to the criterion of registration or official seat of the enterprise.

the *Grzelczyk* case,[4] the ECJ pointed out that EU citizenship should fundamentally define the legal situation of the citizens of the Member States.

However, the group of entities subject to EU law is actually broader, as it may cover (to various extents) citizens of third countries – whether pursuing activities which are a subject of interest of EU (substantive) law, or just staying within the territory of the EU (in this case, it is within EU competence to lay down the rules of migration, visa and asylum policy).

As regards the time scope, the ECSC Treaty was concluded for 50 years and expired in 2002. Under a Council decision, the rules concerning trade in coal and steel were included in Community law. The other founding treaties were concluded for an indefinite period; this formula – although untypical for international agreements – was to suggest that integration is irreversible. It was also used in the currently binding TEU. It complements the concept of 'an ever closer union' between the Member States contained in the Preamble of the TEU. The Treaty of Lisbon (TL) has slightly decreased the importance of these provisions, as it is the first treaty to give the Member States a possibility of withdrawing from the European Union and specify a relevant procedure for this.

Under the rules of international law, an international organisation has no territorial sovereignty – it is the domain of its member states; they can confer some powers applicable within their territories to the organisation without violating national sovereignty. EU law is applicable within the territories of the Member States, with the reservation that some parts of these territories may be excluded. This concerns, for example, Greenland (it is the only territory so far to have left the Community, under an unilateral declaration by Denmark), the Faroe Islands, the Isle of Man, the British Channel Islands, Gibraltar, the Spanish colonies of Ceuta and Melilla.

In its case-law, the ECJ has also adopted the principle of passive jurisdiction, known in international law, according to which the law established by a state (in this case by an international organisation, under the competences conferred upon it by the Member States) may be applicable to situations occurring outside the territory of the state in question in so far as it has influence in this territory. This practice was employed several times against violations of competition law by non-EU companies.

Treaty revision procedures

The revision procedures of the founding treaties are governed by Article 48 TEU. It distinguishes an ordinary revision procedure [Article 48(2)–(5)] and two simplified revision procedures [Article 48(6)–(7)].

In the ordinary revision procedure, a revision proposal is submitted by a Member State, the European Parliament or the European Commission. The

[4] Case C-184/99 *R. Grzelczyk* [2001] ECR I-6193. *Cf. judgements Zhu and Chen, Martinez Sala and Garcia Avello*.

proposals are submitted to the European Council by the Council of the EU and the national Parliaments. The European Council, after consultations, adopts a decision on further action: on summoning a Convention (a special body composed of representatives of the national Parliaments, of the Heads of State or Government of the Member States, of the European Parliament and of the Commission) and then on convening a revision conference or organising an intergovernmental conference. The Convention has to be convened only in the case of considerable changes to the treaties. The amendments agreed upon by the conference enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

The TEU provides for two simplified procedures. The first one is applied to revisions of the internal market rules. The decision is made by the European Council after consulting the European Parliament and the Commission. This requires unanimous consent of all the Member States. The second procedure, referred to as the 'passerelle clause', is initiated on a proposal from the European Council. The proposal is notified to national Parliaments. If national Parliaments do not oppose it, the European Council, after obtaining the consent of the European Parliament, may adopt the decision by acting unanimously; the decision does not require any further confirmation by the organs of the Member States.

Special character of the EU – the significance of the Community method

The broad scope of competence was not a sufficient justification for the special position of the Community among the other subjects of international law. In a classic international organisation, the competence to make law is usually restricted to the intra-organisational law and to the relations between the organisation and its members. Naturally, the European Union also takes actions of this kind; what is important, however, is the difference between these traditional organisations and the EU. Since the Treaty of Maastricht, there have been two coexisting methods of law-making in the EU: the classic intergovernmental method, based on international law, and the Community method. Under the latter, both the founding treaties and the secondary law adopted by the EU can create rights and obligations directly binding individuals. Thus, the case law and the legal doctrine developed the term 'supranational organisation'. In order to explain it well, we should briefly discuss two judgements, both from the first period of functioning of the EEC: *Van Gend en Loos*[5] and *F. Costa v ENEL*.[6] The former one concerned the actions of the Dutch authorities, who had changed the customs classification of some products imported from the Federal Republic of Germany to the Netherlands. At the moment when the judgement was passed, customs barriers between the Member States still existed; they were only suspended (the practice is known

[5] Case 26/62 *Van Gend en Loos* [1963] ECR 1.
[6] Case 6/64 *Flaminio Costa v ENEL* [1964] ECR 585.

as the 'stand still clause'). The distribution company Van Gend en Loos treated the change of the customs tariff as a hidden rise of customs duty, which was at variance with the Treaty of Rome, and filed a lawsuit against the customs authorities. In preliminary proceedings, the Dutch government raised the argument that even if the Treaty really provided for a suspension of customs duties, an economic entity still could not invoke its provisions. For under international law, an international agreement is binding only to its parties and does not create any rights for individuals. The Court did not agree with this interpretation and held that the intention of the parties was to establish a new type of international organisation, the law of which is binding to the Member States, to the Community institutions and to individuals alike. Different entities can acquire rights under Community law, and national courts must ensure the protection of these rights.

The Court went even further in the second of the two abovementioned judgements – *F.Costa v ENEL*. It concerned the compliance of the Italian law nationalising the company ENEL with several provisions of the Treaty of Rome. The Italian court examining the complaint of one of ENEL's shareholders referred a question for a preliminary ruling to the ECJ. The ECJ used a frequently applied technique – invoking fragments of its earlier judgements and only adding some new elements. In this case, the Court repeated that the Member States' intention had been to create a new international organisation. The new thought in the Court's ruling was the statement that the new character of the Community as an international organisation stems from the fact that the Member States had transferred part of their sovereign competences to the Community. Thereafter the ECJ returned to the *Van Gend en Loos* ruling and stressed that the Community has competence to make law. The law is binding for the Community institutions, the Member States and individual business entities, and cases concerning its observance can be brought before national courts.

Today, when we reflect on those judgements, we cannot help but notice that they are absolutely incorrect in the context of international law. National sovereignty is indivisible and does not pertain to international organisations, only to states. Therefore we cannot speak of transferring a part of this sovereignty to the Community, only of transferring the execution of some competences of national authorities, just as stipulated in Article 90 of the Constitution of the Republic of Poland of 1997. We are not able to determine which competences make up the concept of sovereignty, and in particular whether there is a group of competences which the state can never be deprived of, as by being deprived of them it would loose its international subjectivity. The concept of sovereignty is constantly evolving. We should also add that each state has a different extent of sovereignty, as this term means that states are only subjects to international law, not to any other state. Each state makes its international commitments for itself. Joining the European Union cannot involve a restriction of national sovereignty (besides, there is no such thing as limited sovereignty – a state is either sovereign or it is no longer a state), but quite the opposite – it is a manifestation of this sovereignty.

The EU as a supranational organisation

The EU as an international organisation (as opposed to the classic intergovernmental cooperation subject to international law in foreign, security and defence policy, and under the former provisions also in the field of justice and home affairs) has three main characteristics: the legislative power, judicial autonomy and financial autonomy.

Traditional international organisations have very limited legislative powers, while the Community has been given the law-making powers by the Treaties. However, as the ECJ stressed in the judgements quoted above, these laws are binding to Community institutions, to the Member States and to economic entities (individuals) alike. In relation to some categories of legal acts, this effect stems directly from the founding treaties (in particular Article 288 TFEU), while in relations to others – from ECJ case law, as described in more detail below.

Under the principle of judicial autonomy, all disputes relating to the application of Community law can be settled only by special Community courts: the Court of Justice (formerly called the European Court of Justice) and the General Court (formerly called the Court of First Instance). Article 344 TFEU stipulates clearly that Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein. The fact that the major part of EU law is applied by national courts, and thus every national judge is treated in certain circumstances as a Community judge, does not change it. Final decisions on the interpretation of these laws or on the binding force of Community legal acts are taken by the Community courts mentioned above. Consequently, it is not possible to subject this kind of courts to the jurisdiction of other international courts, in particular the International Court of Justice. This principle has been interpreted by the ECJ extensively, as shown for example by the Mox Plant judgement.[7] In this case, the ECJ decided that Ireland violated EU law by subjecting a dispute with the United Kingdom concerning the construction of installations for the production of nuclear energy at the Irish Sea to the jurisdiction of the International Tribunal for the Law of the Sea (one of disputable elements was the interpretation of EU directives).

Moreover, we have to keep in mind that the jurisdiction of all other international courts depends on the consent of the states concerned, while the ECJ's jurisdiction is independent from the consent of states; it is competent not only as regards the current state of Community law, but also all future laws. As a rule, it is not possible – except for special cases[8] – to exclude or restrict the competence of the Court. This solution is similar to the ones adopted in internal legal systems of states.

Financial autonomy means that the EU is financed not only from the contributions of the Member States (according to the model of traditional international

[7] Case C-459/03 *Commission v Ireland* [2006] ECR 4635.

[8] The old Member States achieved this to some extent with regard to the new areas of Community law; however, this does not seem possible in the case of the new states.

organisations), but has its own source of income as well. At the beginning, the Community, just as other international organisations, was financed from contributions of the Member States according to the rules stipulated by the Treaties. As these requirements did not guarantee a sufficient level of financing, under the power derived from Article 311 TFEU the Community proposed the introduction of the Community's own resources (own income) mechanism. However, it was introduced only by the Council Decision of 21 February 1970.[9] This income comprises: customs duties imposed under the Common external customs tariff on products specified in the founding treaties,[10] charges related to the Common Agricultural Policy (ordinary countervailing charges on imports of certain agricultural products from third counties, aimed at levelling prices between the markets of these countries and the Community), and lastly, a share of the value added tax collected by the Member States. In principle, this share should not exceed 1 per cent of income, payable in 12 monthly instalments. This ceiling was then raised to 1.4 per cent, and later gradually lowered. The setting of the Community's own resources is a two-stage procedure. The Council makes the relevant decision on the motion from the Commission and after consulting the European Parliament. The decision must then be accepted by the relevant bodies of the Member States, in accordance with their national laws. Since 1988, the Community has been additionally financed from a third source, namely the contributions of the Member States set on the basis of their GDPs. The payments may not exceed 1.24 per cent of a country's GDP.[11] Apart from that, the EU has additional sources of financing, e.g. by sanctions and financial penalties, taxes paid by the officials and other charges (they may account for up to 5 per cent of the total income). The decision on own resources must be made unanimously by the Council, which ensures full control of the budget by the Member States. The decision must then be accepted by the Member States in accordance with their constitutional provisions (which is to guarantee the influence of national parliaments on this procedure). The decision on own resources is part of primary law and cannot be challenged before the ECJ.

The principle of conferral

In international public law, legal personality of international organisations differs from the legal personally of states. The latter is unlimited (inherent), and stems from the principle of national sovereignty, under which states can take any action in international relations in so far as it is in conformity with their international commitments. Whereas international organisations have only such powers to act in international relations (both in relations with their member states and in relations with third countries and other international organisations) as stipulated

[9] The current basis for own resources is the decision of 7 June 2007.

[10] As the global tendency for reducing customs duties between WTO members increases, the share of customs duties in the Community's income is decreasing.

[11] The proper functioning of this system required a harmonisation of the methods of calculating the GDP, which was achieved by means of Directive 89/130/EEC of 13 February 1989.

in their statutes (in other words: which have been conferred upon the organisation by its member states). Under the Treaty of Lisbon, this principle is confirmed in Article 5(1) TEU, and further specified in Article 2(1–2 and 5) TFEU.

Let us examine the scope of functional competences of the European Community. In all international organisations, it is defined in initial provisions of their statues (founding treaties). As regards the EU, these rules are set forth in Articles 3 and 5 TEU, although they are formulated in such a way that they cannot constitute the sole basis for the activity of the EU. Article 3 stipulates that the EU's aim is to ensure peace and international security, offer its citizens an area of freedom, security and justice in which the free movement of persons is ensured, establish an internal market, combat social exclusion and discrimination, promote economic, social and territorial cohesion, and solidarity among Member States, establish an economic and monetary union whose currency is the euro and uphold and promote its values and interests and contribute to the protection of its citizens in its relations with the wider world. The Union pursues all above mentioned objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties. Article 5 introduces three crucial principles of the EU law: the principle of conferral, the principle of subsidiarity and the principle of proportionality. According to the TEU, principle of conferral governs the limits of competences of the Union, which acts only within the limits of the competences conferred upon it by the Member States to attain its objectives. It should be noted, that competences not conferred upon the Union in the Treaties remain with the Member States.

The Treaty of Lisbon has additionally defined (by introducing the provisions of Articles 3, 4 and 6 TFEU) the principle of conferral by taking account of the division of competences, which had so far been regulated by practice, in particular by ECJ case-law. The competences enumerated in the founding treaties are divided into: exclusive competences of the EU, shared competences and competences to carry out supporting action (supporting competences). Apart from this, the Treaty also enumerates the areas, in which the Member States still have exclusive powers, including taxes (with some exceptions), defence and national security. The EU's exclusive competences comprise: the customs union, the competition law regarding the internal market, the monetary policy of the euro area, the Common Commercial Policy towards third countries, and the policy of preserving marine biological resources as part of the Common Fisheries Policy (which is a part of the Common Agricultural Policy).[12] In these policy areas, the Member States may take action only if expressly empowered to do so by the EU. Shared competence means that

[12] Actions taken by the Commission throughput the whole period of functioning of the Communities and aimed at extending the exclusive competence, e.g. to include internal market law, were rejected by the ECJ, which seems to interpret the competences only restrictively (cf. Case 25/94 *Commission v Council* (concerning the FAO fishery agreement) [1996] ECR I-1469; and Opinion 1/94 [1996] ECR I-5267 (concerning the Community's competence to conclude agreements within the World Trade Organisation). In particular in Opinion 1/94 the Court dealt with the Community's power to conclude the GATS and TRIPS agreements (concerning respectively

both the European Union and the Member States may act in the given areas. However, the states' actual freedom to act is limited where the EU has already adopted some legal acts ('the principle of pre-emption'). Shared competences comprise all issues except for the Union's exclusive competence areas and supporting competences; for instance: cooperation in the area of freedom, security and justice, agriculture, transport, energy supply and consumer protection. Treaties can indicate additional areas, in which 'pre-emption' does not apply (e.g. scientific research). And finally, as regards supporting competences, the Union should adopt the most flexible measures possible to support the actions of states. This category comprises: tourism, healthcare, culture, education and vocational training, and other areas.

The competence to lay down in detail the scope of the EU's activities is often subject to doctrinal disputes. On the one hand, it is stressed (especially in the German doctrine) – in accordance with the wording of the founding treaties – that the Member States are the 'masters of the Treaties' (*Herren der Verträge*) and that they are the ones who define the conferred powers. As we shall see, it is in this direction that the case-law of national constitutional courts goes. On the other hand, we have to remember that the Treaty gives the exclusive (in the last instance) right to precise the competence of the EU by means of interpretation of primary and secondary legislation to the Court of Justice, which indicates that it is this body that determines the scope of the EU's activity by settling conflicts of competence.

The provisions specifying the EU's powers are especially important for establishing the power to issue secondary law-making power. This topic will be discussed in detail in the other chapter about EU law; at this point we shall only mention that specific competences enumerated in the TFEU may be additionally extended on the basis of: the principle of ensuring full effectiveness of EU law (which comes down to teleological interpretation and is referred to as *effet utile*), rules concerning the harmonisation of laws (Articles 114–115 TFEU) and so called implied powers (Article 352 TFEU).

2. The basic principles of the EU legal system

In striving to fulfil all these objectives and tasks, the EU must observe certain principles, partially formulated in the founding treaties, and partially stemming from the ECJ case-law. The principles laid down in the Treaties are: subsidiarity and proportionality, solidarity (loyalty towards the Community) and non-discrimination. Among the principles stemming from the case-law, the most

the trade in services and some aspects of intellectual property under the WTO). In its previous judgements, the ECJ interpreted the notion of trade agreements extensively. In this case, however, it reached a conclusion that these agreements required joint action by the Community and its Member States (a 'mixed agreement'), as trade in services is connected with the movement of persons – an issue in which the Member States have the regulatory competence. Competence disputes were finally settled by the Treaty of Lisbon.

important ones are the principle of institutional balance and the principles of the rule of law: non-retroactivity of Community law, confidence, the obligation of hearing out a party before issuing a decision concerning it, etc. When interpreting the Treaty of Rome, it is also important to take into account the principles arising from European Union law, in particular the principle of democracy and rule of law and the protection of human rights. Article 2 TEU refers to the fundamental values of the union between European nations.

The principle of democracy has been invoked in many cases before the ECJ, in particular in the context of institutional balance, rule of law and the obligation of abiding by the procedures provided for in the founding treaties.

The principle of subsidiarity

The principle of subsidiarity as a legal norm has been introduced to the TEC by the Treaty of Maastricht and is currently enshrined in Article 5(3) TEU; the requirements for its application are laid down in Protocol No. 2 to the Treaty of Lisbon.[13] It is the implementation of the idea that all decisions should be taken on a level as close to the citizen as possible.[14] But it can be also invoked in the context of other treaty regulations, such as the required respect for the Member States, their structure and competences, dividing powers between the EU and its Member States and executing these powers. In practice, it means that the first entity to make decisions should be a commune, then a district, region, state, and finally the Community, and even this only if the objectives cannot be more fully realised by acting on a lower level, if the EU's action would be more effective than actions of the Member States, if the issue has transnational aspects or if the EU institutions are required by the treaties to take certain actions. However, we should also remember that the TEU expressly stipulates that subsidiarity concerns only the areas which are not covered by the Community's exclusive competence, as confirmed also by the ECJ case-law; the ECJ explicitly subjected EU legislation based on harmonisation rules to check of conformity with the principle of subsidiarity.[15]

The actual wording of the principle of subsidiarity is somewhat unclear and very controversial. The European Council has been aware of that since the beginning. At the meeting in Edinburgh in December 1992, it adopted guidelines to the interpretation of this principle, which were later repeated in the Protocols mentioned above. The most important statement is that subsidiarity is a dynamic concept and should be interpreted in the light of the Community's objectives. Moreover, the Community and national legislators should consider each time whether the subject of the law in question is really supranational and cannot be satisfactorily regulated by action on the national level, whether action by

[13] The Protocol has replaced the previous additional protocol to the Amsterdam Treaty on the application of the principles of subsidiarity and proportionality; it seems, however, that the guidelines laid down in the previous document still remain valid.

[14] Cf. Article 1 paragraph 2 TEU.

[15] Cf. Case C-377/98 *Netherlands v Parliament and Council* [2001] ECR 7079.

a Member State would conflict with the competition rules or whether it would constitute a barrier to the functioning of the internal market, and whether Community action would produce clear benefits. All these elements should be examined separately. When adopting a draft legislative act, the EU institutions have to take into account an analysis of compliance of the proposed measure with the principle of subsidiarity, assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation in order to implement it.

It is also unclear whether the principle of subsidiarity can be directly effective and whether it can be interpreted by the ECJ. As regards the first question, the European Council has rejected it (it has decided that the principle of subsidiarity is addressed to institutions of the EU), but it is not unlikely that the practice of the Court will go in this direction (although it has not happened so far). The Court seems to be very cautious in its approach to the principle of subsidiarity and to the assessment of its application by the EU institutions and the Member States. Especially the judges of the ECJ are willing to recognise competences of the Community in the areas in which the Treaty leaves a broad margin of freedom (it is possible, however, that in this situation it would be possible to accuse the Court of issuing a manifestly incorrect judgement). The application of the principle of subsidiarity must respect the objectives of the Community laid down by the founding states and the need to maintain in full the *acquis communautaire*. Initially, the ECJ tried to avoid getting involved in this matter, which it considered political rather than legal. It presented a view that the question is most of all procedural and could be realised for instance by observing the requirement for a sufficient substantiation of a legal act, which would allow for an assessment of compliance with the principle of subsidiarity. Gradually, the ECJ case-law evolved in the direction of analysis of compliance with the material conditions for the principle of subsidiarity laid down in the founding treaties.[16]

The Constitutional Treaty and the Treaty of Lisbon introduced new mechanisms of observing the principle of subsidiarity, by involving national parliaments in the control of compliance. All draft legislative acts should now be notified to national parliaments. They may then take a stand on the draft legislative act, for example oppose it by sending a reasoned opinion to the Commission (this procedure is sometimes referred to as the 'yellow card'). The Commission must consider these opinions, and then maintain its former position or depart from it by presenting its own duly justified position. In practice, such reasoned opinions have been presented in approx. 10 per cent of legislative proceedings.

[16] For example, the analysis of compliance of the Directive on biotechnological inventions (Case C-377/98 *Netherlands v Parliament and Council* [2001] ECR 7079); the Second Directive on packaging and labelling of tobacco products (Case C-491/01 *ex parte American Tobacco* [2002] ECR I-11453; or the Roaming Regulation (Case C-58/08 *Vodafone* [2010] ECR I-04999).

Proportionality

The principle of subsidiarity is directly related to the principle of proportionality, laid down in the same article (Article 5(4) TEU). It was initially applied in order to check whether or not the measures applied by the Community extend too much into the domain of rights of individuals, and whether or not the Member States abuse protectionist measures introduced in accordance with the Treaties. It was first mentioned by the ECJ in the *Internationale Handelsgesellschaft* case,[17] in which an administrative sanction imposed on an individual was questioned; the Court deemed the sanction too severe, and thus disproportionate. Today, the principle of proportionality is regulated in Protocol No. 2 to the Treaty of Lisbon (together with the principle of subsidiarity). It means that the actions taken in order to reach a certain goal must be adequate (it is about maintaining the right relation between the adopted legal measure and the intended aim of Member State's action), sufficient and necessary (the 'less restrictive alternative' test). Consequently, in line with the position stipulated in Protocol No. 12 to the Treaty of Amsterdam, when there is a choice, the less restrictive measure should always be applied, i.e. framework laws should be preferred to specific ones, directives to regulations, self-regulatory codes of good practice to legislative intervention, etc. The burden of proof in this respect lies with the acting institution, which requires some flexibility in acting. The principle of proportionality has been invoked many times before the Court of Justice, and often successfully. However, the Court refused to apply it when the EU law-making body had a broad freedom of action and the economic, political or social effects of the measures taken were hard to predict.

The principle of proportionality can be understood in two ways. First, it is a systemic principle of the EU, oriented at the evaluation of the actions of its institutions. Both normative acts[18] and individual decisions[19] should be subject to scrutiny. In this context, the ECJ evaluates these actions quite liberally by verifying the 'manifest' nature of the infringement (error, abuse of power, imposed charges or incurred expenses). The principle of proportionality also helps restricting the freedom of action of the institutions by defining the limits of this freedom. Furthermore, it is

[17] Case 11/70 [1970] ECR 1125.

[18] For example, the test conducted by the ECJ in relation to Regulation 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding, cancellation or long delay of flights has clearly shown that the measures introduced by the regulation are not an excessive burden for airline operators and that they protect the rights of passengers in a correct way – cf. Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, points 80–91.

[19] Cf., for instance, the judgement of the Court of First Instance in Case T-201/04 *Microsoft v Commission* [2007] ECR, II-3601, points 1223-1227. The Court ruled that the penalty was adequate for solving the problems related to the violation of competition law by Microsoft, that the company had retained some exclusive powers, and that the agreement concluded between the company and the US bodies competent for the protection of competition was insufficient to protect the competition in the EU market.

a general principle binding for the Member States. In this context, it is applied very broadly: to evaluate the laws of the Member States introducing (admissible) derogations from Community freedoms on the grounds of a justified public interest (usually the so called mandatory requirements), to assess the legality of actions of Member States in the context of applying EU law, and in many other situations. The principle is definitely more frequently invoked by parties in administrative proceedings, less often in proceedings before general courts of law (both in criminal proceedings – for example, in order to assess the extent of the punishment[20] – and in civil proceedings – in relation to damages[21]). An interesting fact is that EU courts usually evaluate the actions of Member States much more strictly than the actions of EU institutions; they deem the former disproportionate much more often, especially as regards rigid regulations. As a rule, however, the test of proportionality is not conducted in the context of laws existing and actions undertaken in other Member States, but rather takes into consideration the local specificity of a given state, or even region.[22]

Institutional balance

In EU law, institutional balance has replaced the separation of powers, i.e. the division into the legislative, executive (administrative) and judiciary power, characteristic of democratic regimes. If we consider the structure of EU bodies (formerly EC bodies), we will immediately see that the institution authorised to make law in the European Union only has indirect democratic legitimacy and is composed of competent ministers of the Member States, while the institution appointed in direct elections and thus representing the population of these states has only limited legislative powers. The European Commission, which is the main law enforcement agency, also has no democratic basis, and instead is nominated by the Council of the EU (governments of the Member States). And finally, the ECJ is not elected directly by the citizens or by the Parliament – as required by the traditional separation of powers – but is again appointed by an executive body, the Council of the EU.

[20] Imposed either under national measures or under EU law, enforced by the Member States in accordance with their relevant competences.

[21] An interesting example is the judgement in Case C-112/00 *Schmidberger v Austria* [2003] ECR I-5659, concerning a road block on a motorway though the Brenner pass between Austria and Italy by environmental protesters, in which the ECJ pointed out that the road block was limited, previously announced, and the police took actions to mitigate its effects; moreover, the prohibition of restrictions to trade between the Member States must be assessed in the context of the right of the demonstrators to freedom of expression which is one of the fundamental rights guaranteed by the Union.

[22] In the Sunday trading cases (e.g. cases: 145/88 *Torfaen Borough County v B&Q plc* [1989] ECR 3851; C-332/89 *Conforama* [1991] ECR I-997 and several others), the ECJ left the assessment of conformity of Sunday trading with law to local courts, which are more familiar with local conditions, and ordered them to take into account the principle of proportionality in evaluating the prohibitions.

The Court has proposed introducing the principle of institutional balance.[23] The ECJ case-law is reflected in the current version of the TEU, under which the Union is an entity based on the rule of law. This has several significant and specific consequences. First, as confirmed by Article 13(2) TEU, each institution acts within the limits of the powers conferred on it in the founding treaties. Secondly, no institution can replace or restrict other bodies in the exercise of their competences.[24] Thirdly, all institutions must absolutely observe the procedures prescribed by law (cf. Article 13(2) TEU). Fourthly, each institution sets out its own Rules of Procedure and no other body or Member State can influence these rules.[25] As these situations might lead to obstructions in – or even a paralysis of – legislative procedures, the ECJ imposed on every institution the obligation of cooperation in the achievement of objectives laid down in the founding treaties. The Treaties and practice have also established[26] some solutions involving mutual dependence of the institutions, corresponding to the 'checks and balances' in the US Constitution. In addition, certain guidelines concerning the cooperation between the institutions have been developed in practice. They can take the form of informal actions, in particular the exchange of letters and verbal notes or common set practices (e.g. informal admitting of the European Parliament to proceedings concerning the conclusion of international agreements under the Framework Agreement between the Parliament and the Commission of 26 May 2005). It is also possible to conclude interinstitutional agreements, in particular as a result of the decisions taken jointly by the Council, the Commission and the Parliament at the interinstitutional conference on 20 December 1994. Examples of such agreements include: the agreement on an Accelerated working method for official codification of legislative texts (8 November 1995), on legal bases and implementation of the budget (13 October 1998), on the rules under which the Court of Auditors is to carry out its audits (19 March 1999), on the Charter of

[23] A debate on this subject was initiated soon after the establishment of the Communities by the ECJ judgement in Case 9/56 *Meroni v High Authority* [1958] ECR 11. The ECJ pointed out that it is unacceptable for the Commission to delegate some powers to other bodies, as this would violate the structure of the 'balance of power' established by the ESCC Treaty.

[24] In Case 25/70 *Einfuhr- und Vorratsstelle für Getreide und Futtermittel v Köster* [1970] ECR 1161, the ECJ took a position on comitology, i.e. the right of the Member States to create bodies supervising the activities of the European Commission, and pointed out that their powers to act should take account of the principle of institutional balance. Similarly, in Case 149/85 *Wybot* [1986] ECR 2391, the ECJ stressed that the Parliament cannot deprive other institutions of competences conferred on them by the Treaty.

[25] In Case 208/80 *Rt. Hon. Lord Bruce of Donington v Eric Gordon Aspden* [1981] ECR 2206, the ECJ stressed that the rules of paying allowances to the Members of the European Parliament are an exclusive competence of the Parliament and no other body can change the amount or nature of these payments.

[26] Despite the lack of any relevant treaty provisions, the ECJ, invoking the said principle of institutional balance, granted to the European Parliament an active *locus standi* to challenge the acts of other institutions which infringe upon its competences – cf. Case 70/88 *Parliament v Council* [1990] ECR I-2041.

Fundamental Rights (7 December 2000). Today the basis for institutional agreements is Article 295 TFEU, which excludes the possibility of granting a binding power to them. What is interesting, although in its previous case-law the ECJ signalled that the aim of institutional balance is also to protect the rights of individuals, at the beginning of the 1990s it departed from this interpretation of the said principle. In our opinion this was unjustified, as the Court indicated in its case-law, for instance, that although observing procedures was an element of institutional balance, individuals could also invoke it using procedural infringements to undermine specific acts which were disadvantageous to them[27] (even if it is not the main aim of this principle, only its side effect).

The principle of loyal cooperation

The third principle laid down in the founding treaties is the principle of sincere cooperation (also called solidarity or loyalty principle), regulated by Article 4(3) TEU. In the context of international law, this is nothing new, for the law of international agreements has known since times immemorial the *pacta sunt servanda* principle, under which both parties have to take all possible actions in order to fulfil their contractual commitments in good will. However, the doctrine indicates some differences between the two abovementioned provisions, in particular that ordinary international agreements refer to the principle of reciprocity as the basis for rights and obligations arising from the UN Charter, while the commitments derived from the EU founding treaties are absolute in the sense that they are not linked with the rights and obligations of other parties to the agreement. Hence the thesis that the meaning of Article 4(3) TEU definitely extends beyond the principle of respecting treaty commitments and cooperation known from international law.

Article 4(3) TEU indicates two aspects of loyal cooperation. The positive one is that the Member States are required to make all possible efforts to ensure the effectiveness of Community law in the domestic legal space. The negative aspect is that the Member States must refrain from any actions which could hinder the application of Community law in their domestic legal systems. This provision of the Treaty indicates that it is the Member States who have the main responsibility for the application of Union law. They must also act when Union action is required but not possible for various reasons. However, the ECJ case-law also holds that loyal cooperation also concerns the relations between the Union institutions and the Member States (in particular the respect for institutional structures of the states and informing them well in advance about the intended actions). Whereas the principle of loyal cooperation has never been deemed directly effective, the ECJ (which has referred to this principle in several hundred judgements)

[27] Cf. Joint cases 138-139/79 *Roquette frères and Maïzena* [1980] ECR 3333, in which one party submitted an application for a declaration that the Regulation laying down common provisions for isoglucose was void in so far as it violated a procedure by failing to consult the European Parliament in adopting this act.

has been willing to recognise the possibility of direct application in connection with other provisions of the TFEU. Furthermore, the ECJ has extended the application of the principle of sincere cooperation also to the measures introduced by the Member States in the implementation of laws and in taking actions in the field of judicial and police cooperation in criminal matters (as part of the Area of Freedom, Security and Justice).[28]

Apart from the fact that the principle of loyal cooperation should be treated as a foundation of the functions and tasks exercised by the European Union, it also requires the Member States, in a way, to implement the Community law in their municipal – when necessary – by legislative, executive and judiciary means. It is also the sole treaty basis for the application of EU law in national law, in particular in order to ensure the primacy of Community law over national law, and to conduct a pro-European interpretation of national law. Therefore, it is not surprising that the doctrine of EU law treats it as a cornerstone of the whole European project.

The principle of loyal cooperation is addressed to the Member States. From the perspective of international law (and thus, naturally, also Community law) it must concern all state authorities, both in the horizontal view (legislative, executive and judicial) and in the vertical view (at different levels of the state organization – including also local or regional governments). The said provision is addressed to all state authorities (in Community law the notion of state and state authorities is interpreted extensively, it covers all bodies established under statutory provisions, executing the tasks of the state, if their relations with individuals go beyond those which result from the normal rules applicable in relations between individuals),[29] including in particular government administration. As mentioned before, Article 4(3) does not itself grant rights to individuals. The loyal cooperation clause imposes a set of obligations on the Member States as regards making and applying law, such as, for instance, the obligation of ensuring full effectiveness of Community law, of ensuring a sufficient level of protection of the rights granted to individuals under Community law, of interpreting national law in line with EU law, of ensuring judicial control over administrative decisions, of appointing competent national institutions (bodies) to the execution of relevant objectives of the Community and cooperation with the institutions of the EU, and other obligations. From the principle of sincere cooperation, the Court has also derived the obligation of ensuring effective court protection of the rights of individuals – in particular proper procedures which allow for correct application of all requirements introduced by Community law. We have to keep in mind that claims arising from Community law are pursued in accordance with national procedures, applicable in pursuing similar claims under national law. It should also be ensured that pursuing Community claims is not excessively formalised, difficult or prolonged.

[28] Case C-105/03 *Criminal proceedings against M.Pupino* [2005] ECR I-5285.
[29] See: Case C-188/89 *Foster et al. v British Gas plc* [1990] ECR 3313.

The Court has also held that the state must bear responsibility for violations of EU law. For the first time the ECJ underlined this obligation in its judgement in the case *Francovich*.[30] It concerned Italy's failure to fulfil the obligation arising from Directive 80/987 of establishing a guarantee fund for employees of insolvent employers. The breach of this law was confirmed by the ECJ; the Court then pointed out that a state can be held liable for damages in such a case. The judges stressed that *'the full effectiveness of Community rules would be impaired and the protection of the rights which they grant would be weakened if individuals were unable to obtain compensation when their rights are infringed by a breach of Community law for which a Member State can be held responsible'*. The conditions for the state's responsibility are: that Community law grants a certain right to individuals, that it is possible to define the substance of this right and there exist a causal relation between violation and damage. The Court has derived the principle of the state's liability for damages not only from general rules of law, but also from Article 4(3); it pointed out that apart from an obligation to take all steps necessary for ensuring the application of Community law, this article also gives rise to the obligation of eliminating the illegal effects of violation of Community law. By using this reasoning ever more frequently and commonly in its judgements, the ECJ has practically granted the principle of sincere cooperation the rank of constitutional principle. The conditions for the liability of a Member State for breaches of Community law were confirmed in subsequent ECJ judgements, in particular in the judgement *Brasserie du Pêcheur/Factortame*.[31] The criteria of the state's liability were modified to include not only the condition of a precisely defined right arising from Community law, but also a serious nature of the violation. Claims are pursued in accordance with the provisions applicable in the Member States in relation to claims for damages under their national laws; the rules of settling and recognising claims for damages must not be less advantageous for individuals than analogous rules applied to claims under national law.

The principle of non-discrimination

Article 18 TFEU contains a prohibition of discrimination on grounds of nationality (and in the case of free movement of services – the place of residence). This principle has played an extremely important role in situations when economic activity – apart from the areas in which laws had been harmonised – was pursued in accordance with the national provisions of a Member State. It is commonly known that the freedom of establishment (pursuing economic activity) was one of the fundamental factors determining the success of the European Union's economic

[30] Joint cases C-6/90 and C-9/90 *A Francovich and D.Bonifaci et al. v Italy* [1991] ECR I-5357.

[31] Joint cases C-46/93 and C-48/93 *Brasserie du Pêcheur v Germany* and *The Queen v Secretary of State for Transport ex parte Factortame* [1996] ECR I-1029.

integration. Each entity pursuing economic activity in another Member State should be treated by this state in the same way as it treats its nationals (in international law this is called 'national treatment'). If a state still discriminates the citizens of another state, they can invoke the principle of non-discrimination and this way try to ensure that the disadvantageous national provisions are not applied. It is obvious that the principle of non-discrimination concerns all actions and legal acts adopted by Community institutions. We should also keep in mind that Community law should each time be applied only in situations where there is a Community (transnational cross-border) aspect; whereas Community law does not apply in purely domestic situations, subject to national law. Thus, the principle of non-discrimination is taken into account only in situations subject to Community law. The best illustration for this is the ECJ judgement in the case of *I.W. Cowan*,[32] a British citizen who was attacked and beaten in the Paris underground. After leaving the hospital he claimed damages from a special fund from the French treasury. He was refused, as only French citizens were eligible for such compensations. In its response to the question referred for a preliminary ruling the ECJ stressed that Cowan, as a tourist, was a service recipient, and thus was covered by the scope of the founding treaties. Refusing to pay compensation in this situation constituted discrimination.

The ECJ laid down an interpretation of the term 'discrimination' in its judgement in the case *Moulins Pont-à-Moussons*.[33] The judges emphasised the importance of non-discrimination as one of the fundamental principles of Community law, which requires that identical situations are treated always in the same way, unless there is an objective reason to do otherwise. In the judgement *Sermido*,[34] in turn, the Court had to give its opinion on different methods of calculating sugar levies for exceeding the sugar production quotas by sugar producers in Northern and Southern Europe. In the view of the judges in Luxembourg, elements of the common market organisation cannot vary depending on the region. The essence of discrimination may also refer to equal treatment in different situations. An exception to this is 'reverse discrimination', i.e. a situation when a state treats its own entities or goods more severely than entities and goods from other Member States (e.g. it imposes additional burdens, quality or safety requirements or procedures which go further than required by EU law).

The prohibition of discrimination has been the subject of many judgements, in particular in the context of Article 157 TFEU, concerning equal treatment of men and women, workers being nationals of different Member States (in the context of the free movement of persons), but also in relation to the prohibition of discriminatory taxation as an element of the customs union. As regards the unequal treatment of men and women in employment, let us invoke the example of the pension system

[32] Case 186/87 *I.W. Cowan* [1989] ECR 195.

[33] Joint cases 124/76 and 20/77 *Moulins Pont-à-Moussons v Office Interprofessionnel des Céréales* [1977] ECR 1795.

[34] Case 106/83 *Sermido v Cassa Conguaglio Zucchero* [1984] ECR 4209.

in a German department stores, which excluded part-time workers. By chance, it was found that most of these workers are women. The ECJ deemed it a disguised (indirect) discrimination.[35] As regards tax issues, the ECJ case-law covers mainly taxes on alcohols and cars. For example, when examining two seemingly identical cases, concerning progressive taxation of cars sold in Greece, Denmark and France, with progression increasing rapidly along with the increase of engine capacity, the ECJ decided that this was not a violation of the customs union, whereas it found a violation in the case of France. The reason was very simple: Greece and Denmark are not car produces, while France manufactures cars with small and medium capacity engines. Hence, by introducing tax progression, France encouraged consumers to buy French cars.[36] As regards alcohols, the ECJ has deemed maintaining different taxation for wine and beer protectionist, as both these products are similar because they satisfy similar needs of consumers.[37] Similarly, in a dispute between the Commission and France, the ECJ pointed out that brandy (Cognac, Armagnac, Calvados) and whisky (and gin) are similar goods, as their production method is in the same despite using different raw materials. Likewise, the ECJ has ruled that Greece was in breach of law due to the discriminatory nature of taxation of foreign products (tax on ouzo was lower by half than the tax imposed on other alcohols, without any justification whatsoever),[38] as was Denmark (a similar situation with fruit wines and wines made from grapes).[39] On the other hand, in the case against Sweden, the ECJ ruled that maintaining high taxes on wine was not discriminatory, as it would not affect the Swedish model of alcohol consumption.[40]

In recent years, the European Union took on itself the task of detailed regulation of various aspects of non-discrimination and equal treatment. The Treaty of Amsterdam introduced to the TFEU the provisions enshrined in Article 19, which was the basis for two directives: 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. In both cases, there was a long period of implementation – three and five years respectively – which indicated some challenges for national legislators. In fact, as shown in the legal writing on this subject, almost all Member States have some difficulties with correct implementation of directives. At the same time, the Council of the EU adopts five-year action programmes to combat discrimination.

[35] Case 170/84 *Bilka Kaufhaus GmbH v K.Weber von Hartz* [1986] ECR 1607.

[36] Cases: C-132/88 *Commission v Greece* [1990] ECR I-1567; C-47/88 *Commission v Denmark* [1990] ECR I-4059; 112/84 *Humblot v Directeur des services fiscaux* [1985] ECR 1367. Later the Court slightly restricted the effects of this judgement, while the trend in the case-law concerning France has been consistently maintained.

[37] Case 170/78 *Commission v United Kingdom* [1980] ECR 417.

[38] Case C-230/89 *Commission v Greece* [1991] ECR I-1909.

[39] Case 106/84 *Commission v Denmark* [1986] ECR 633.

[40] Case C-167/05 *Commission v* Sweden [2008] ECR I-2127.

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European Union Law and the Laws of the Member States. Sources of EU Law

Introduction

From the point of view of the Member States, EU law is a foreign (external) law, and taking into account the process of its creation and development, it should be labelled as public international law. Regulating the relations between international and national law remains the domain of constitutional law; this is also true for the procedures of incorporating the founding treaties into the legal systems of the Member States.

The special position of Community law in international relations required the creation of certain mechanisms which would ensure uniform application of Community law in all Member States. These mechanisms are: direct validity of Community law; direct applicability (direct effect) of Community law; primacy of Community law over national law; questions referred for preliminary rulings to the European Court of Justice (ECJ).

1. EU law and the laws of EU Member States

One exception from the principle of uniform application of Community law is the institution of enhanced cooperation between certain Member States. Although officially it was introduced some time earlier, in the form of the Schengen Agreements[1] (regulating the rules of entry of foreigners to and stay in the countries participating in the Agreements, and, as a matter of fact, in the Community as a whole,

[1] The Prüm Treaty of 27 May 2005 had a similar character. It concerned the deepening of police cooperation and cooperation in combating terrorism, illegal immigration and cross-border crime. Both the Schengen system and the Prüm system were incorporated into EU law under the Treaty of Amsterdam and the Council Decision of 12 June 2007, respectively. An interesting fact is that the Schengen system and the police and judicial cooperation include opt in and opt out solutions, allowing selected countries (mainly the United Kingdom, Ireland, Denmark) to freely choose the measures that will be binding for them.

as well as the rules of granting refugee status), the Economic and Monetary Union and the social policy (in the form of Protocol No. 14 to the TEU, which was to provide the United Kingdom with the possibility of opting out of certain EU procedures – rescinded after a short while in connection with the change of the British government), formally the laws regulating such a possibility were included in the Treaty of Amsterdam and later expanded in the Treaties of Nice and Lisbon. Currently enhanced cooperation is regulated by the provisions of Title IV TEU (Article 20) and Title III of Part Six TFEU (Article 326 ff). The regulations concerning enhanced cooperation can be divided into general provisions, applicable in all the fields of EU integration, and specific provisions, concerning enhanced cooperation in the individual pillars. A group of states can start a cooperation for the purpose of executing EU objectives and non-exclusive competences, using EU institutions and instruments. As a matter of fact, enhanced cooperation may concern issues which could be addressed by the entire EU, if for some reasons it is not possible. Consequently, enhanced cooperation is, in a sense, the 'last chance' for fulfilling the given objective.[2]

In order to be accepted by the Member States, enhanced cooperation must fulfil certain requirements, which can be divided into substantive and formal ones. As regards the former, it is necessary that the participating states respect the *acquis communautaire* (and especially the prohibition of discrimination, restrictions to the functioning of the internal market and violations of the principles of competition), that the cooperation does not concern areas belonging to the Community competences or the competences of the Member States, that the regulations concerning EU citizenship are observed and that the cooperation does not lead to discrimination or to the emergence of barriers in the trade between the Member States. As regards the formal requirements, the minimum number of states participating in enhanced cooperation is at least 9,[3] the cooperation must be open to all states interested in it in the future, and the Council of the EU must consent to the enhanced cooperation by a qualified majority of votes, usually on the motion from the Commission. Enhanced cooperation must be open at any time to all states which are willing to join and meet the requirements specified in the decision establishing this cooperation. There are certain special rules for the cooperation in the field of common foreign and security policy (the possibility of establishing permanent structures by countries with larger military potentials) and judicial cooperation in criminal matters (the possibility of blocking the coopera-

[2] In several cases, the TFEU provides for the possibility of an almost automatic initiation of enhanced cooperation in the case when one of the Member States uses the 'emergency brake' mechanism and prevents the implementation of EU measures (for example Article 82 concerning the cooperation in criminal matters).

[3] The minimum number of participating states helps avoid fragmentation of the EU and its potential into many interest groups, while also ensuring that the participating group has some quality and a significant potential for attracting others.

tion in the situation when a states considers the proposed cooperation to be violating the fundamental principles of its legal system).

In terms of procedures, the legal instruments adopted under enhanced cooperation are included in EU law (they are generally prescribed by the founding treaties). All Member States may participate in adopting these instruments by voicing their opinions, but only the countries formally participating in the cooperation are actually allowed to vote on them. The costs of the cooperation are incurred by the participating countries, with the reservation that the costs related to the handling of this cooperation by the EU institutions are covered from the institutions' administrative budget.

Direct validity and direct applicability of EU law in the Member States

The relation between international law (broadly understood) and national law is usually regulated by the constitution of the given state. In general, in this context we distinguish the monistic model and the dualistic model. According to the monistic model, international law and national law constitute a single common system of norms, which makes it possible to directly apply the former, without the need to issue any national implementing acts. In this situation we usually speak of incorporation of international law into internal law. On the other hand, in the dualistic model international law and national law are two separate legal systems. International law may regulate national relations only when it is transformed (transposed) into national law by the national legislator.

The efficient functioning of a complex economic entity such as the European Union requires that the laws regulating trade are applied simultaneously, i.e. from the same moment in time and in all the Member States. If we applied the model of traditional international law to Union law, we would quickly realise that this fundamental requirement is not met, as the constitutions of the Member States provide for different approaches to the relations between international and national law. Hence, the requirement of direct validity of Union law in the Member States. A legal act of the Union becomes valid in the legal systems of the Member States immediately after entering into force on the Union level. Moreover, the introduction of Union provisions to national law does not require any implementing legal act. In principle, direct applicability pertains to every norm of Union law, even though the second paragraph of Article 288 TFEU links it only to regulations (the Treaty does not define this notion). The very character of decisions implies that they must be directly valid for their recipients. The direct validity of directives, in turn, means that when they enter into force, they create the obligation for the Member States to enact national provisions implementing the directive.

The notion of direct effect (sometimes used interchangeably with direct applicability) of Community law stems from ECJ case-law and signifies a certain special quality of this law as a system. The Court stated already in its early

judgements that the intention of the Member States was to create a new legal system, the characteristic feature of which would be that the Community institutions can make law. This law is binding for the Community bodies, as well as for the Member States and their citizens (economic entities). It can confer rights on them, which are subject to protection and can be defended directly in courts of law and other state bodies of the Member States. In the first of a series of judgements addressing this issue (*Van Gend & Loos v Netherlands Inland Revenue Administration*),[4] the Court emphasised that the Member States indented to ensure the protection of the rights of individuals under the Treaties.

While all Community laws are directly valid, only some of them are directly effective. Direct effect pertains only to the norms which meet the conditions specified by the ECJ in its numerous judgements, starting with the judgement in the case *Lütticke GmbH v Hauptzollamt Sarrlouis*.[5] In this case, the Court was to address the issue whether Article 95 (presently Article 110 TFEU) may be applied by national courts in a situation when the state authorities have not issued national laws repealing the provisions on discriminatory taxation. In the judgement, the Court stressed that depriving this provision of direct effect and making its applicability dependent on the internal legislation would inevitably lead to depriving it of any practical significance. The provision in question imposes clear and unconditional obligations on the Member States, complete from the legal point of view and comprehensively defining the rights and obligations of both states and all the individuals under their jurisdiction. Thus the fact that the addressees of the provision are states cannot result in individuals being deprived of the rights stemming from it.

Direct effect can concern both horizontal relations (i.e. between entities having an equal position) and vertical relations (i.e. between an individual and the state), with the latter term interpreted by the ECJ extensively and concerning all institutions that perform tasks for the state and who are superior in relations with individuals. Directly effective are both the provisions of the TFEU and the provisions of the acts of secondary Community law (excluding directives, which have a limited direct applicability). In its case-law, the Court addressed the issue of direct effect of particular provisions. For instance: the provisions prohibiting a certain behaviour are always directly effective, e.g. Article 30 TFEU *('Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States')*, while a provision formulated like Article 60 TFEU *('The Member States shall endeavour to undertake the liberalisation of services beyond the extent required by the directives [...] if their general economic situation and the situation of the economic sector concerned so permit')* is not directly effective.

[4] The abovementioned Case 26/62 [1963] ECR, English special edition 0001.

[5] Case 57/65, judgement of 16 June 1966 [1966] ECR, English special edition 00205.

EU law in the laws of the Member States from the point of view of the EU

The founding treaties do not contain any general clause on the relations between Community law and the national laws of the Member States. Article 288 TFEU speaks only of direct applicability of regulations, without specifying explicitly the relations between these acts and national law. An attempt to regulate the issue of the relations between EU law and the laws of the Member States was made in the Constitutional Treaty. Article I-6 of the draft version of this act stated that EU law had primacy over national law, but only in the fields in which the Member States transferred their powers to the Union. In the Treaty of Lisbon, the issue has not been regulated. However, a declaration (No. 17) annexed to the Treaty states that the relation between EU law and national laws remains unchanged. The declaration also quotes an opinion of the Council's legal service referring to the principle of primacy established in ECJ case-law.

Therefore the issue was settled by the ECJ in a series of judgements. We will focus on the four which are considered the most important.

It is already in the *F. Costa v ENEL*[6] case that the ECJ stressed that conferring certain competences on the Community was bound to result in limiting the internal competence and, consequently, in the primacy of Community law. The Court pointed out that the primacy of Community law over national laws of the Member States stems not only from the *pacta sunt servanda* principle traditionally accepted in international law, but principally from the fact that the states conferred the exercise of their competences on the Community. As a result, the Member States are not allowed to legislate in the areas covered by Community competence. In addition, the Community legal system is special in that it forms an integral part of the national legal systems and the rights derived from it may be relied upon by individuals in relations with state agencies. Since European law must be applied in the same way in all the Member States, it would be difficult to accept a situation when the courts would be applying national laws adopted after the entry into force of relevant Community laws in a way which is inconsistent with EU law.

In the *Internationale Handelsgesellschaft* judgement[7] the Court had to address the issue of the relations between Regulation No. 120/67/EEC and the constitution of the Federal Republic of Germany. The subject of the main proceedings before the national court was an export licence guaranteed by a deposit. The claimant in the main proceedings failed to meet the requirement of exporting the amount of maize stipulated in the export licence. The deposit was subject to confiscation. In consequence of this, the claimant questioned the compliance of the Community regulation on the common organisation of the market in cereals

[6] Case 6/64 *Flaminio Costa v ENEL* [1964] ECR 585.

[7] Case 11/70 *Internationale Handelsgesellschaft v Einfuhr- und Vorratsstelle für Getreide* [1970] ECR 1125.

and the system of export licences with the fundamental laws specified in the German constitution, and in particular the freedom of establishment. The ECJ decided that the validity of legal measures undertaken by the Community can be judged only in the light of Community law. The effectiveness of Community law cannot be undermined by invoking a possible conflict between the Community act and the constitution. On the other hand, the Court stressed that the protection of fundamental rights is a perquisite of Community law, since these rights belong to the common constitutional legacy of the Member States, which the Community is obliged to observe; therefore, it should be assumed that by introducing certain legal solutions the Communities did not intend to violate the fundamental rights. All in all, the most important conclusion of this judgement is that regardless of their formal source, Community laws always have primacy over national laws, including the constitution.

The legal effects of this principle were specified by the Court a few years later in the *Simmenthal* judgement.[8] The question referred for a preliminary ruling concerned the compliance with Community law of a refusal to reimburse veterinary fees collected by the Italian administration under national law contrary with Community law. In the proceedings before the ECJ the Italian government stressed that the Italian administration was required to apply the valid national provisions until they were repealed by the parliament or deemed unconstitutional by the constitutional court. In the meantime, the court had in fact issued a judgement on the non-conformity of the veterinary fees with the constitution,[9] and as a result the Italian government attempted to persuade the ECJ to give up on issuing a judgement. However, the ECJ judges decided that the principle of primacy of Community law over national law implies that a national provision which is at variance with the Community provisions becomes automatically inapplicable, while a national provision adopted later cannot effectively enter into force and, consequently, may not be applied. The ECJ assesses the situation on the level of European law. Therefore, it cannot issue binding and decisive judgements on the effects of such conflicts in national law, leaving the decision on the invalidity of the norm to the relevant national bodies. Every national judge applying Community law has is competent to make such a decision. Moreover, the principle pertains also to any possible new legislative measures which might be implemented by a Member State in a field reserved for Community law. This judgement also stresses the immense confidence of the judges who have the power of choosing not to apply national law. In a subsequent judgement, in the *Factortame*[10] case, the Court went even further and ordered a British judge to suspend the application of a national

[8] Case 106/77 *Amministrazione delle Finanze dello Stato v Simmenthal SpA* [1978] ECR 00629.

[9] In Italy, Community law has equal importance as the constitution. Therefore, if national law is at variance with Community law, it is considered to be at variance with the constitution.

[10] Case C-213/89 *Factortame I* [1990] ECR I-02433.

provision inconsistent with Community law, despite the fact that the national law does not provide the judge with such power.

The last case discussed here concerns the first instance when a conflict between the constitution and Community law was not eliminated by court interpretation. T. Kreil, a citizen of Germany, wanted to enter military service in an armoured unit. The provisions in force, starting with the constitution and ending with the act on the profession of a soldier and the implementing order to it, forbade women to serve in front-line units. Ms. Kreil believed this regulation to be at variance with the Community directive concerning equal treatment of men and women as regards access to employment (Equal Treatment Directive of 9 February 1976). The Administrative Court in Hannover asked the ECJ for a preliminary ruling. In the context of its previous rulings, the Court had no doubts about the fact that a prohibition of military service for women formulated as strictly as in the said German provisions was indeed at variance with the European Community's 'old' Equal Treatment Directive 76/207.[11] As a result, Germany was forced to change the constitution and allow women to serve in the military (which, however, does not exclude certain restrictions resulting from the specificity of certain types of service). It is worth noting here that changing the constitution due to the requirements of Community law is nothing extraordinary in the practice of many Member States, including Germany and France.

The principle of primacy of Community law is not limited to defining the relations between European law and the normative acts of domestic law. The ECJ considers it to be much broader. The primacy pertains, as already mentioned, not only to courts of law, but also to other state bodies, including local authorities (the *Fratelli Costanzo* case)[12] and administrative bodies (case C-224/97 *E.Ciola*), and when necessary also the organs responsible for amending the constitution (case C-378/07 *Angelidaki et al.*[13]). For instance, in the judgement in the *Ciola* case,[14] the ECJ judges ruled that the principle of primacy must imply the invalidity of administrative decisions inconsistent with Community law, even if such a decision was issued before the given state joined the European Union. In a subsequent judgement *Kühne and Heitz*,[15] the Court pointed out that incorrect interpretation of Community law by national bodies, later confirmed by a preliminary ruling of the ECJ in an entirely different case, can constitute the basis for challenging a legally binding administrative decision, even one which had already been subjected to the national procedure of court control. The prerequisite for this is the admissibility of this solution in the domestic law of the relevant Member State. However, at the same time, the Court set the limit of certainty of law – it stated

[11] Case C-285/98, *T. Kreil v Federal Republic of Germany* [2000] ECR I-69.

[12] Case 103/88 *Fratelli Costanzo SpA v Comune di Milano* [1989] ECR 1839.

[13] [2009] ECR I-3071.

[14] Case C-224/97 *Erich Ciola v Land Vorarlberg* [1999] ECR I-2517.

[15] Case C-453/00 *Kühne and Heitz v Produktschap voor Pluimvee en Eieren* [2004] ECR I-00837.

that this principle cannot pertain to legally binding court judgements (such as in the *Kapferer* case).[16]

One of the principal commitments resulting for the Member States from the principle of sincere (loyal) cooperation is 'to recognize the consequences, in its internal order, of its adherence to the Community' (case 30/72 *Commission v Italy*[17]). In practice, this means that the Member States are obliged to adjust their internal laws to the Community law, which is clearly implied by ECJ case-law.

In this situation, the only rational legal basis for the justification of the nature of the relations between national law and Community law is Article 4(3) TEU. The difficulty here consist in the fact that the ECJ – even though it consistently supported the development and application of the principle of absolute primacy of Community law over national law – has not always referred to the principle of sincere cooperation. On the other hand, we should also take into account that the ECJ has not limited the obligation of ensuring effectiveness of Community law to the application of directly effective laws or to the obligation of implementing indirectly effective laws. The Member States and their organs also have to take into account the earlier judgements of the Court and the decisions of the Commission. For example, in the judgement in the *Weber's Wine World Handels-GmbH* case,[18] the judges pointed out that Austria's amendment of the act allowing for the reimbursement (in certain circumstances) of the paid tax on alcohol, considered by the ECJ as being inconsistent with Community law, was invalid, as it would prevent the implementation of the earlier judgement of the Court.

The primacy pertains both to provisions adopted earlier and later than the given Community provision. This does not imply an automatic invalidity of the provisions inconsistent with European law, but only the prohibition of their application. It is rather interesting that the ECJ has also pointed out the Member States' obligation resulting from the principle of sincere cooperation to repeal norms inconsistent with EU law.[19] This goes beyond the framework of traditional international law, which leaves a certain extent of freedom of decision to the Member States.

EU law in the laws of the Member States from the point of view of constitutions and national courts

The EU Member States, both the 'old' and the 'new' ones, which joined the EU in the 21st century, are sensitive about retaining their sovereignty. They are seldom willing to acknowledge absolutely and unconditionally the primacy of EU law over their internal (national) laws. The European point of view on the issue

[16] Case C-234/04 *R. Kapferer v Schlank & Schick GmbH* [2006] ECR I-02585.

[17] Case 30/72 *Commission v Italy* [1973] ECR 00161, point 11.

[18] Case C-147/01 *Weber's Wine World Handels-GmbH v Abgabenberufungskommission* [2003] ECR I-11365.

[19] So the judgement in Case 104/86 *Commission v Italy* [1988] ECR 1799.

in question has not been unambiguously and unconditionally accepted by the EU Member States. Particularly the constitutional courts of Germany, France, Italy, Spain and the Supreme Court of Denmark, acting as a constitutional court, are not willing to completely agree with the position of the ECJ.

The constitutional solutions concerning European integration in the individual Member States can be divided into two groups. The first of them includes provisions concerning directly the European Union, while the second group has a broader meaning and includes provisions concerning the implementation and place of international law in the internal legal systems of the Member States.

The most interesting is the constitution of the Federal Republic of Germany. The principal provision concerning European integration was introduced into it in 1990, by accident, so to say. The unification of Germany resulted in the need to amend the constitution by removing the provisions of its Article 23. To fill the free space, a new provision was proposed, which was to constitute the basis for Germany's membership in the European Union. The said provision specifies the most important principles of European integration: the rule of law, protection of fundamental rights, subsidiarity, the welfare state and federalism. In order to fulfil these objectives, Germany may, by means of a statute, confer its sovereign rights onto other entities. The German constitution also provides for cooperation between the federation and its constituent states in order to implement the aims of the European Union, should such cooperation be required in relation to the federal structure of the state and the vertical division of competences. Furthermore, the principle of federalism may not be changed by internal legislation nor any acts of international law or similar (i.e. EU law). In order to follow the constitutional instructions, in March 1993 Germany passed laws concerning the role of the parliament in the process of European integration and the principles of cooperation in this regard between the federation and its constituent states.

In the French legal system, the position of EU law has been shaped in consequence of cooperation between the legislative and government bodies, the Constitutional Council and case-law. As far as constitutional provisions are concerned, Articles 54 and 55 position the Community law between the constitution and the other national acts. The constitution of 1958 has been amended several times in accordance with the suggestions of the Constitutional Council in order to meet the requirements resulting from Community law. The most serious change was made on 25 June 1992. It introduced a new title to the constitution – Title XIV: On the European Communities and the European Union. Under these new provisions, certain competences can be performed jointly by France and other Member States of the EU. In consequence, France may confer on the EU the competences required for the establishment of the monetary union and the rules of crossing external borders.

The Belgian constitution was adopted in 1994. The previous constitution had been amended several times, also due to the requirements of European integration. Article 25bis (now Article 34) stipulated that certain competences of the

state may be conferred under an international agreement to institutions established by an act of public international law. This provision was treated *post factum* as the basis for the ratification of the founding treaties of the Communities and the TEU.

The Constitution of the Netherlands (amended in 1983) is based on the monistic approach. Article 68 used to stipulate that international treaties and agreements were the supreme law in the country. In the amended version of the constitution, Article 92 stipulates that the legislative, administrative or judiciary competences may be conferred to international organisations under relevant agreements. The next Article provides that the treaty provisions and decisions of international organisations which can be universally (generally) binding, are universally binding from the moment they are published in the Official Journal. The Dutch courts are not authorised to decide on the compliance or noncompliance of international agreements and acts with the constitution.

The Italian constitution does not contain detailed provisions concerning the incorporation of international agreements into the national legal system. Although Article 11 allows for conferring sovereign competences on an international organisation, but it does not specify the position of the international agreements in the legal system in this context. It is assumed that the republican form of government and the inalienable human rights are the limit of competences which can be conferred on the Community.

Article 29(4) of the Constitution of Ireland contains the provision that no other regulation of European law (neither the Accession Treaty nor the Treaty of Maastricht), including regulations adopted in the future, may be treated as inconsistent with the constitution. This entails important consequences, especially that the legislation implementing Community law may not be questioned as possibly inconsistent with the Irish constitution and that the compliance of Community law with the constitution may not be examined.

The accession to the European Community of Spain was possible under Article 93 of the constitution, which states that Spain may consent to an agreement entrusting an international organisation or institution with the performance of the competences resulting from the constitution by means of an organic law. The execution of such an agreement or the resolutions of the international organisation is ensured by the government or the Cortes Generales (parliament), depending on the case at hand. The doctrine sometimes considers this provision as acknowledging the primacy of treaty law over internal law. However, in fact, it is rather the basis for the division of competences between the state and the Community. The constitution lacks a provision specifying the position of Community law in the national legal system, while court practice places it between the constitution and other national legal acts.

The amendment of the Constitution of the Czech Republic, adopted in 2001 in relation to the intended accession to the European Union, introduced a new Article 10, which stipulates that the state may confer certain competences on an

international institution or organisation under an international agreement. In order for such an agreement to be ratified, the parliament must express its consent with the same majority of votes as required to pass the constitution.

The Hungarian constitution of 1949 was amended in December 2003, in the context of the intent to join the European Union. Article 2A states that Hungary, as a member of the European Union, may perform certain competences necessary for the performance of the commitments resulting from the founding treaties of the European Union and the European Communities jointly with other Member States. These competences may be performed individually or through EU institutions. The ratification of an agreement conferring such competences requires a 2/3 majority of votes in the parliament.

The Constitution of the Republic of Poland of 2 April 1997, in particular its Chapter III "Sources of Law", includes a set of provisions indirectly concerning the consequences of Poland's membership in the European Union for the Polish legal system. From this perspective, the founding treaties are "regular" international agreements. Their only distinguishing feature may be the special procedure of ratification, defined in Article 90 of the Polish Constitution. Under Article 87, ratified international agreements are sources of universally binding law. This notion certainly encompasses not only the agreement itself, but also all legal acts issued on its basis for the purpose of executing its provisions [so states Article 2(1) of the act of 14 April 2000 on international agreements]. Under Article 91(2) of the Constitution, in case of conflict between the founding treaties and a statute, the former have precedence over the latter as agreements ratified upon prior consent of the Polish Parliament. Under Article 91(3), in turn, the laws established by an international organisation has precedence before national law in the event of a conflict of laws, in so far as it is stipulated by the international agreement constituting the said international organisation, ratified under the consent of the Parliament. In practice, this concerns those international organisations whose statutes (constituting/founding agreement) must be ratified in accordance with the procedure laid down in Article 90 of the Polish Constitution. At the same time, it means that the European Union law is subordinated to the Polish Constitution. The principle of primacy/supremacy of EU law has also been explicitly confirmed by the Announcement of the President of the Council of Ministers of 11 May 2004 on the application of EU law.

The 1997 Constitution of the Republic of Poland also provides for a special procedure of ratification of international agreements which confer competences of the state upon international bodies or international organisations (this provision in fact concerns international organisations of integrationist nature). Article 90 stipulates that such agreements should be ratified by the President of Poland in line with a special procedure – after passing the ratifying statute by a two-thirds majority vote in both the Sejm and the Senate, in the presence of at least half of the statutory number of members of both Chambers. This procedure has so far been applied only to the Accession Treaty under which Poland joined the EU.

Constitutional courts have often expressed an opinion that the European Community operates under the competences explicitly conferred upon it by the Member States. It is obviously the consequence of the structure of the Community as an international organisation with an derivative legal personality. Therefore, when undertaking actions in international relations, the Community must each time indicate the legal basis for its action. Another consequence of this solution is the thesis stressed several times by constitutional courts that the Member States have conferred only some of their competences, or rather the performance of these competences, on the Community. The principle of conferring the sovereignty or parts of it on the Community by the Member States is hard to accept since, firstly, sovereignty is an attribute of states and not international organisations, and secondly, sovereignty is by definition indivisible, cannot be limited or partially passed. The constitutional judges were aware of the fact that the principle suggesting a restriction of state sovereignty by joining the Community is not very fortunate due to its inconsistency with international law; recently, national courts have been avoiding such statements, stressing that conferring the competence to act on an international organisation cannot in any way affect the state's sovereignty. An especially representative case is the *Carlson* judgement of the Danish Supreme Court of 6 April 1998. The court stated that the relevant provision of §20 of the Danish constitution does not allow the Danish authorities to confer on an international organisation the competence to make law or take decisions which would be at variance with the constitution. In its decision of 9 April 1992 concerning the conclusion of the Treaty of Maastricht by France, the French Constitutional Council also pointed out the that actions of the Community are only acceptable within the scope of the competences conferred upon it by the Member States.

We should also mention the case-law of the Constitutional Court of Spain. In the probably most representative judgement of 31 May 1993, this Court considered itself as incompetent to assess the compliance with the constitution of the method and manner of application of Community legal acts by general courts (in this particular case, one of the directives). It stressed that the control of the application of Community law is – in accordance with the Treaty – the competence of Community institutions, and the decision on the application of Community acts belongs to the general court competent in the given case. The Court believed that such a solution was in accordance with Article 24 of the Spanish constitution and that it did not infringe on the fundamental rights specified in the constitution. However, at the same time, it stressed that it cannot absolutely exclude the possibility of controlling the compliance of Community acts and the manner of their application with the constitution, for it could happen that the general court applies Community law and issues an obviously wrong decision or makes an arbitrary choice.

And finally, let us consider the solutions adopted in Ireland. The Constitution of Ireland is often quoted as an example of model adaptation of domestic law to Community law. Article 29.4.3 adopted in 1992 by a referendum stipulates that no provision of the constitution may undermine the effectiveness of laws adopted

in order to comply with the commitments resulting from the membership in the Community or the binding power of laws established by the Community. The frequently quoted judgement of the Supreme Court of Ireland in the case *Meagher v Ministry of Agriculture* of 18 November 1993 confirmed this principle. The European Communities Act of 1972, which is the basis for Ireland's participation in the Community, may introduce a special law, departing from the principle of exclusive legislative power of the parliament. However, the said court, acting as a constitutional court (also in the individual opinions of the judges) has also pointed out that certain legal acts issued in relation the membership and in order to perform the international commitments of Ireland will be *ultra vires* and will be beyond the competences of state bodies (in this case, the minister). The legality of these acts can then be examined in courts. Therefore, in this case the constitutional court will also have the right to control the compliance of such acts with the constitution, which is in line with the trend accepted in all other judgements mentioned above.

Preliminary rulings

Legal education in the Community is neither uniform nor harmonised. Legal acts specify only the conditions, under which lawyers from one Member State should be admitted to the given legal profession in another Member State. As there are several different legal systems co-existing in the Community, and even within each of these systems the legal orders differ from state to state, if while applying Community law every body acted in the same way as when applying its own national law. Thus, we would soon have to count with fragmentation of Community law. In order to avoid this, the founding treaties provided for the exclusive competence of the ECJ regarding the interpretation of Community legal acts and for deciding whether they are valid or not. A means for the exercise of this competence are questions referred for a preliminary ruling. The TEU only partially regulates this issue; the ECJ has developed it further in its judgements.

The great majority of Community laws are applied by national courts, which this way in fact become Community courts. When a national judge examining a case with a Community element faces a problem which requires interpretation, he may – and in some cases must – refer a question about the meaning of the particular norm oract to the Court of Justice.

The notion of 'court or tribunal' for the purpose of Article 267 TFUE (which regulates preliminary rulings) has been interpreted by the ECJ extensively and includes all permanent state agencies established under statutory law and performing judicial functions, even if they are not considered courts for the purpose of their respective national laws. The practice of formulating the questions by national courts is not uniform. Some of them briefly outline the facts and the state of national law, others include more detailed information, or even send the case files to the ECJ. The ECJ has tried to harmonise these practices by issuing special guidelines indicating how national courts should formulate questions referred

for preliminary rulings. The question should point out the basic facts of the case, the arguments of both sides, the legal situation and the reasons why the court referring the question considers asking it necessary for making a correct decision in the case.

The question must be formulated in such a way that the Court of Justice knows that the question is connected with the main proceedings before the national court and that it is necessary for the settlement of the proceedings. In particular, it is not allowed to ask questions which would force the Court to make a statement on the compliance with Community law of a law of a third country.

When referring a question to the ECJ, national courts usually expect the Court to assess the conformity of municipal law with Community law. However, the Court is not competent to answer such a question, as it has no competence to make statements on municipal laws of the Member States. Therefore, it can only say that a certain Community norm should be interpreted in a certain way and that this interpretation excludes some national regulations.

As a rule, the Court has absolute freedom to act as regards preliminary rulings. It may combine, it may answer them only partially (often leaving some issues to be decided by the national court which posed the question), and finally, it may omit some questions, and even point out to the national court that the question was improper or unnecessary. Should the ECJ decide that the question referred to it is not formulated properly, it may reformulate it.

Apart from the interpretation of law, the Court may also express its opinion in the preliminary procedure on the validity of a legal act. However, certain restrictions of this competence have been developed in the ECJ case-law – an entity may not invoke a plea of nullity in preliminary proceedings if it is an addressee of the legal act and if it has had the possibility to challenge this act in an annulment procedure but has not made the claim in the prescribed time.

The answers to questions referred for a preliminary ruling are binding only for the national court which submitted the question and possibly for other courts examining the same case in the next instance. They are not precedents. Moreover, it cannot be excluded that in different circumstances another court will receive a different answer to a request for interpretation of the same provision.

It is also interesting what happens when a national court does not refer a question for a preliminary ruling, especially when it is required by law to do so. This could of course be related to one of the situations in which the Court released the national courts of this duty. It is not required to submit a question if another court has already asked a similar question and received an answer (the *acte éclairé* principle). It is also not required if a Community norm is clear and explicit, and thus does not require interpretation or the interpretation poses no difficulty (the *acte clair* principle). However, we can imagine a situation when a national court should refer a question to the Court of Justice, but has failed to do so. Normally, this would be an infringement of Community law by a state body, which under the rules of international law should imply the responsibility of the state (in this

case this should result in the initiation of proceedings on the ground of the state's non-compliance with its commitments, as partly described above). On the other hand, we should remember about judicial independence. Any attempt to influence a national court would have to result in charges of violating its independence. Therefore, the Commission usually decides not to start a proceeding before the Court of Justice.[20] Let us add that the French courts are usually reluctant to refer questions for a preliminary ruling, while German and Austrian courts have no such reservations. The ECJ officially encourages all courts to submit questions, although the usual waiting period for a preliminary ruling is almost two years, which is hard to accept in economic cases. However, there has been a visible improvement in the Court's approach to questions referred for a preliminary ruling. After the initial euphoria, in the 1980s the ECJ indicated in its judgements some instruments which may decrease the number of questions submitted to it.

State liability for violation of EU law

Community law has developed a coherent system of state liability for violating Community law. The founding treaties formulated the principle of tortious liability of the Community for illegal actions of the Community and its officials. However, Article 340 TFEU stipulates only that such liability may be pursued in accordance with the general principles of law common to the laws of the Member States.

The breach of law by a Member State can entail two consequences. Firstly, an action against the state can be brought to the ECJ on the grounds of non-compliance with its obligations. Articles 258 and 259 TFEU entitle the Commission or any Member State to file a complaint with the Court of Justice. Secondly, an individual who suffered a material loss in consequence of a breach of Community law by a Member State may initiate an action for damages against it.

In the first situation, the action for damages is available to every legal or natural person who has suffered a loss in consequence of the Community's actions. The action is always directed against a particular institution, although the term is understood more broadly than it would result from Article 13 TEU and pertains to any body established under the founding treaties and acting on behalf of the Community. The Community, in turn, is liable for the actions of its officials only when they are undertaken as official activities, i.e. activities directly related to the actions of the Community. In all other cases, compensation for losses may be only sought before national courts. Seeking compensation before the ECJ is only possible within five years from the moment the loss is revealed and only if the loss is real and material, i.e. it can be measured in money. In the event of a moral loss, damages are usually not paid and the Court's judgement is considered a sufficient compensation. Yet another condition for the Community's liability is the illegality of the action in

[20] So far, there has only been one exception from this rule, and even so, in the end the Court has not issued a ruling in the said case.

question. This leads to a considerable limitation of the liability for universally binding acts, especially for the decisions regarding economic policy – in particular when the Community has discretionary competences. Such liability is only possible in the case when an institution violates a provision of primary legislation with fundamental importance for the protection of the rights of individuals. In certain judgements, the Court has taken into account the considerable extent of the damage as a necessary condition for the liability for economic decisions. The last condition for the Community's liability is the causal connection between the loss and the infringement on the law by the Community institution.

In contrast to the Community's tortious liability discussed above, the Member States' liability for a violation of Community law resulting in a damage for individuals was introduced to Community law by the Court of Justice. It entails the consequences of infringing on primary and secondary law of the European Union. Initiated in the judgement in the *Francovich* case, concerning Italy's failure to implement the directive on the establishment by the Member States of guaranteed benefits funds for employees to be used in the event of insolvency of their employer, this matter was further developed in the judgement in the joint cases *Brasserie du Pêcheur v Federal Republic of Germany* and *Factortame v Great Britain*. The first case concerned an action brought by a French brewery against Germany in relation to the limitation resulting from German law (the so called beer purity law of 1516, repeated in the Beer Tax Law of 1952) on the imports of French beer which did not meet the requirement that only beverages produced using four ingredients – malt, hops, yeast and water – may be sold in Germany as beer (the French added certain ingredients which were not allowed under German law). However, already in 1979, in the case commonly known as *Cassis de Dijon*,[21] the ECJ introduced the principle of mutual recognition into Community law. According to this principle, a product lawfully produced in one Member State must be accepted for marketing in all the other Member States as well (although it does not prohibit introducing certain limitations by the Member States or certain additional requirements for the producers or distributors of foreign goods, such as supplying information on the product's content, etc.). In this particular case, a liquor made from blackcurrants in accordance with a traditional Burgundy recipe had to be admitted for marketing in Germany despite the fact that it did not meet the requirements for minimum alcohol content under German law.

Maintaining a consistent line in its case-law, the ECJ stated in its judgement in the beer purity case that the limitations on the imports of beer from France resulting from the German law are at variance with the prohibition of introducing quantitative restrictions or measures having equivalent effect. In consequence, based on the Court's judgement, the French brewery filed a claim for damages on the grounds of the German government's illegal prevention of marketing of French beer in Germany. According to the brewery, the compensation should

[21] Case 120/78 *Rewe v Bundesmonopolverwaltung für Branntwein* [1979] ECR 649.

cover both the losses actually incurred and the lost profit. The Court concurred with the claimant's position in the main proceedings, stating that the state should pay damages for violating Community law. The conditions are: a) direct effect of the violated law, which makes it possible to determine the rights of individuals; b) serious nature of the violation (in accordance with the principle *de minimis non curat praetor*, commonly accepted in Community law); and c) causal connection between the violation and the loss.

The violation must be attributable to the state by the state. Since the notion of 'state' is understood rather broadly in European law, it is immaterial on which organisational level the infringement actually took place. The infringement may consist in illegal action or failure to act.

The ECJ judges rejected the attribution of fault in the event of state liability due to the fact that guilt is understood differently in the various Member States. As the serious nature of a violation can give rise to controversies concerning its interpretation, the Court listed several factors which should be taken into account during the assessment: the structure of the law, the extent of freedom of th state's action (the more the state exceeds its decision-making competence, the greater its liability), the intention of violating the law by a state body, the type and nature of the irregularity etc. Furthermore, it is always a serious infringement if a directive is not implemented at all (especially in a situation when the freedom of choosing the form and content of the action is limited, e.g. in fields subject to harmonisation of laws) or if a judgment of the Court on non-compliance with the state's commitments is not abided by. On the other hand, liability can be mitigated when European laws are imprecise and admit diverse interpretation. At the same time, the ECJ has formulated certain procedural rules concerning the pursuing of claims. First of all, proceedings in such cases should be held before a national court, under the jurisdiction and in line with the procedure applied in similar cases concerning the liability of the state for violating national law. Furthermore, all real or legal barriers which could excessively hinder or prevent the pursuing of claims stemming from Community law should be removed (although it is allowed – for the purpose of ensuring the legal certainty – to, for example, introduce deadlines for filing claims by means of a statute). The principles governing the extent of the damages should also be identical as in the case of claims based on national law; it is particularly forbidden to introduce limitations concerning the highest value of the compensation if such limitations are not provided for in the national law.

The principle of the state's liability for violating Community law was particularly emphasised in the *G. Köbler* case.[22] The ECJ has not excluded the possibility of financial liability of the state in a situation when an individual has suffered a loss due to the fact that the supreme court has failed to refer a question for a preliminary ruling to the Court of Justice in Luxembourg, which

[22] Case C-224/01, *G.Köbler versus Austria* [2003] ECR I-10239.

consequently resulted in a violation of Community law by the judgement of the court. In this situation the damages should be set by a national court.

2. Sources of EU law

The legal system of the EU has three levels. The most important place belongs to primary law (especially the founding treaties), the next level are international agreements concluded by the EU, while the third is secondary law, i.e. legal acts issued by EU institutions.

As regards international agreements, in this text we will only discuss their place in the legal system. From the formal point of view, the basis for an international agreement is always a decision of the Council of the European Union, i.e. an act of secondary law.

Primary law

The main element of primary law are the founding treaties, i.e. the Treaty on European Union (Treaty of Maastricht) and the treaties establishing the Communities: The European Coal and Steel Community (1951), the European Economic Community, later named the European Community (1957), and the European Atomic Energy Community (Euratom, 1957).

Primary law also includes the international agreements modifying the founding treaties. Such agreements only contain amendments to the binding founding treaties, and not the consolidated versions of these treaties.

In addition, primary law includes some other agreements between the parties to the founding treaties, in particular the 1965 Merger Treaty (establishing the common Council of Ministers and Commission for all three Communities), the Single European Act (which created the conditions for the establishment of the internal market), the Treaty of Maastricht (introducing the Treaty on European Union, and amending the Treaty establishing the European Community), the Treaty of Amsterdam, the Treaty of Nice and the Treaty of Lisbon. The latter also gave the rank of primary law to the Charter of Fundamental Rights.

The Accession Treaties are also considered a part of primary law, as they contain provisions modifying the founding treaties, in particular as regards changes to the composition of the institutions and the decision-making procedures in the Community (e.g. the method of calculating weighted votes).

Primary law also includes two acts which, though formally belonging to secondary law, play a constitutional role due to the subjects they deal with; these acts are: the decision on introducing direct elections to the European Parliament and the decision on establishing the Court of First Instance. Both these legal acts are very specific: they are not merely decisions of the Council of Ministers (Council of the EU), but decisions of the representatives of the Member States in the Council, hence, in fact, a special type of international agreements. The first of them changed the system of electing the members of the Parliament. Before, it was

composed of delegates from the national parliaments; since 1979 – under the said directive – it has been elected in direct elections. The elections are held in line with the national election procedures. Despite some attempts, no uniform parliamentary election rules for the entire EU have been established so far. The decision of 1988, establishing the Court of First Instance, resulted from the need to take some burden off the ECJ. The new court, as an auxiliary body of the Court of Justice, took over the actions brought by individuals, in particular as regards competition law and state aid and employment relations of Community officials. The Treaty of Nice has modified the status of the Court of First Instance by treating it as an institution separate from the Court of Justice and by extending its competence.

And finally, primary law includes non-written rules, in particular customary law and general principles of law.

As regards customary law, on the one hand, it is possible to invoke the rules of customary international law, for instance the law of international agreements, and on the other hand – the rules developed by actions of the Community or the Member States. The rules sometimes invoked in this context are the possibility of representing a country by its secretaries or under-secretaries of state at the meetings of the Council of the EU, or the 'Luxembourg Compromise' (departing from majority voting and striving for a consensus in situations concerning the fundamental interests of the Member States).

The general principles of law play a triple role in Community law. First, the ECJ formulates some (implied) general principles of law of the Member States, in order to introduce some legal norms, for which it is not able to find a sufficient legal basis. For example, when formulating the non-discrimination principle with regard to age, the Court has held that the prohibition of such discriminatory treatment is derived from the principles common to the legal orders of the Member States.[23] Secondly, they are the basis for claims for damages on the grounds of tortious acts committed by the Community or its officials. Thirdly – and this is where the role of the general principles of law is the most important – they were the basis for the introduction of the protection of human rights to Community law by the ECJ.

International agreements

International agreements are a specific type of source of Community law. As already mentioned, they have a special place in the hierarchy, somewhere between primary and secondary law. It means that the agreements can be concluded only in accordance with the provisions of the founding treaties (both practically and formally). If an intended agreement is to be inconsistent with EU law, it would first require an amendment of the treaties. On the other hand, concluding and international agreement also requires the consent of the Council of the EU in the form of a decision – an act of secondary law.

[23] Case C-144/04 *W. Mangold versus R. Helm* [2005] ECR I-9981.

Under Article 216(1) TFEU, *'the Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope'*. The competences in this field are derived partly from the wording of the founding treaties and partly from the construction of the 'implied powers'.

Mixed agreements are a special category of agreements concluded by the European Union. They concern issues which are covered both by EU competence and Member State competence, and thus require joint action of the two types of entities. An example of a competence dispute over the conclusion of a mixed agreement was the act of joining the World Trade Organization by the European Community (cf. ECJ opinion No. 1/94).

The current Article 216(2) TFEU explicitly stipulates that agreements concluded by the Union are binding upon the institutions of the Union and on its Member States. This allows for a general conclusion that such agreements have their place within the hierarchy of sources of law between primary and secondary law, as they must be concluded in accordance with EU law, in particular under a relevant provision of the founding treaties or implied powers (in accordance with the rule that the institutions are allowed to act only when they are authorised to do so by primary law). The basis for concluding an agreement is always the decision of the Council, which is an act of secondary law; at the same time, the principles of international law forbid invoking secondary legislation in order to justify non-compliance with contractual commitments.

Secondary law

The notion of secondary law legal acts adopted by the Communities. The Treaty of Lisbon has maintained the division of secondary legislation into binding and non-binding, which overlaps with the new classification – into legislative, non-legislative and implementing acts. Legislative acts are legal instruments adopted by 'ordinary legislative procedure', which corresponds to the former co-decision procedure; the Commission prepares a legislative proposal, which is then adopted by the Council of the EU and the European Parliament. In addition, in this procedure the Parliament can block the adoption of a legal act. In some cases, strictly specified by the Treaty, legislative acts can be adopted by special procedures, i.e. by the Council, with the participation of the European Parliament and by the Parliament with participation of the Council. Among the non-legislative acts we distinguish delegated acts and implementing acts. Delegated acts are issued by the European Commission under the delegation granted to it by legislative acts and modify some less important elements of these legislative acts. Implementing acts are issued by the Council or the European Commission in order to ensure the uniform application of legislative acts.

There are three rules applicable to all acts of secondary law – a legal act must be justified, must have a defined legal basis and finally, must be published.

The requirement to provide reasons for an EU legal act is related to the principles of proportionality, indispensability and necessity in Community law. Each legal act is subject to control by the Court, which must have the possibility of assessing the work of the enacting institution. Hence, the reasons should be formulated in such a way as to enable control by the Court, in particular when EU institutions act under discretionary competences, as well as when there is a possible violation of the principle of proportionality or subsidiarity. From the viewpoint of EU citizens and the postulate of transparency of the Community's actions, the justification also has an additional function, which is to enable a closer look at and better understanding of the actions of Community institutions, which are often criticised for insufficient democracy. The justification should always refer to facts as well as indicate the laws on which the given legal measure is based. The exception is when an economic entity takes part in the procedure leading to the issuing of the decision which concerns it. In this situation, it is enough to state the most important reasons for the decision in its justification. On the other hand, when the new legal act departs from the binding laws, it requires a particularly detailed analysis of the underlying reasons for the new legal solutions. In practice, the reasons of a legal act is usually enshrined in its preamble.

The obligation of stating the legal basis for a legal act stems first of all from a principle of international law under which an international organisation can operate only when it has a relevant authorisation granted to it by its members. The legal basis can be either a specific provision of the treaty, the provisions on the harmonisation of law (Articles 114–115 TFEU) or the provision on implied powers (art. 352 TFEU).

An example of a specific provision is Article 109 TFEU concerning state aid, under which *'the Council, on a proposal from the Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 107 and 108'*.[24] The said article specifies the agency competent for taking relevant legal measures (i.e. for issuing a legal act), the procedure and type of legal act to be adopted. If a provision does not indicate the type of legal act or procedure, the law-making institution should choose it based on EU practice and on procedures typical of the given field of EU law.

The second option are the harmonisation provisions (Article 114–115 TFEU). They form the legal basis for the directives for the approximation of laws of the Member States. Article 115 has substantially expanded the possibility of making law for the purpose of approximation of laws by simplifying the procedure (qualified majority voting instead of unanimous decision-making) and by allowing acts other than directives as instruments of harmonisation.

[24] Articles 107 and 108 define the rules of admitting state aid and the Community procedures for it.

Article 352 TFEU refers to the implied powers in Community law by stipulating that if the Treaties have not provided the necessary powers for an action necessary to attain one of the objectives set out in the Treaties, the Council of the EU, acting on a proposal from the Commission and after obtaining the consent of the European Parliament, may unanimously adopt the appropriate measures. The Council can freely assess the need to take such action, but this freedom is subject to control of the Court of Justice. The legality of the implied powers is limited by the wording of the TFEU – the Council cannot take actions *contra legem*. The implied powers have been interpreted by the ECJ in two ways. According to the narrow interpretation, the existence of one power to act must imply a power to act in other fields reasonably connected with this power. The broad interpretation refers to the wording of the Treaty and allows the Council to take any actions which it considers necessary for fulfilling the objectives and tasks specified – even generally – in the Treaty.

The third necessary condition for a legal act to be effective is its publication. The form of publication depends on the type of act. Universally (generally) binding legal acts (regulations, directives addressed to all Member States as well as all legal acts adopted under the co-decision procedure) are published in the "Official Journal of the European Union"; the other legal measures should be notified to their addressees. Under the internal Rules of Procedure of the Council, also other legal acts (recommendations, opinions) should be published.

Article 288 TFEU divides the legal acts into binding and non-binding. The first ones include regulations, directives and decisions; the second include opinions and recommendations.

Regulations

Regulations have general and abstract application, which means that they are addressed to an unlimited number of unspecified addressees and intended for repeated application. Regulations are always directly binding and, as a rule, directly effective. They are incorporated into domestic laws always in the same form in which they were published in the "Official Journal of the European Union". This means that the Member States are not allowed to change even a comma. Moreover, they cannot adopt any legislation implementing the regulation or changing its classification from Community to national law. They are also prohibited to enact guidelines for the interpretation of regulations; this role belongs to the national courts. The Member States can pass rules connected with a regulation only when the regulation itself provides for such an option (which is usually the case when there is a need to introduce criminal provisions), as well as when it is necessary to determine the institutions (bodies) responsible for the implementation of the regulation in intra-national relations. Hence, regulations are the only measure for the unification of law in the Community.

Although the doctrine of EU law has never questioned the obligation of applying regulations in horizontal relations (i.e. between two economic entities),

the ECJ case-law confirmed it only in 2002, in the *A.Muñoz* case.[25] There the Court has admitted the possibility of pursuing a claim for damages in civil proceedings before a national court by one or several enterprises trading in grapes from another enterprise, which has failed to fulfil the obligation derived from a regulation to properly label the marketed cases with grapes.

In practice, there might be problems with distinguishing the regulations from other EU legal acts. However, the Court has worked out some general rules. For example, not only general acts addressed to all entities should be treated as regulations, but also the acts addressed to the Community institutions or to the population of one or several Member States. Hence, a regulation governs the status of Commission officials. Secondly, some regulations, which can be treated as sets of individual decisions, in practice give rise to doubts. In this case, the most important thing is to determine which entities have the right to challenge it before the Court of Justice. A decisive criterion used in this situation by the ECJ is the possibility of repeated application and the abstract group of addressees. Thus, it is not important how the institution adopting the given legal act named it, but rather what type of act it actually is.

So far, the Court has admitted an action brought by individuals against a regulation only once. The case took four years to be resolved, and still no coherent joint position was achieved. It concerned the regulation on the names of sparkling wines.[26] The Court admitted the individual complaint against the regulation by applying the test of direct interest, i.e. checking if the entity in question was individually affected by the regulation in a way which distinguished it from other entities. In this case, the ECJ has ruled that the company was directly affected because the regulation prohibited the use of a product name registered in 1924 and used traditionally before and after this date. What is interesting, after the said judgement, similar cases fell within the competence of the Court of First Instance, which was unwilling to depart from the test in its established form.[27] The test concerns Commission decisions as well – e.g. the Court has not recognised the competence of Greenpeace to challenge the decision of the Commission on granting state aid to the Spanish government for the construction of a power plant on the Canary Islands, stressing that the organisation only had a general interest in

[25] Case C-253/00 *Antonio Muñoz y Cia SA and Superior Fruiticola SA v Frumar Ltd and Redbridge Produce Marketing Ltd*. [2002] ECR I-7289.

[26] Case C-309/89 *Codorniu v Commission* [1994] ECR I-01853.

[27] The Court of First Instance, in its judgement in the case T-173/98 *Union de Pequeños Agricultores v Council* ([1999] ECR II-3357), contested the right of individual entities to challenge a regulation. The Court pointed out that although the refusal to admit a complaint of a private entity against a regulation constitutes a breach of the principle of effective judicial protection of individuals, as the entity in question (UPA) would not have any other means of challenging the regulation (in this case the regulation restricted the assistance for producers of olives), the Court of First Instance is not competent to modify the founding treaties. Despite the different position of the Advocate General, the judgement was maintained by the ECJ (case C-50/00, judgement of 22 July 2002). The Court of First Instance changed its stance in the judgement in the case T-177/01

environmental matters.[28] Finally, regulations imposing anti-dumping duties are a specific kind of regulations, as they essentially combine the elements of a regulation and a decision. If such a regulation mentions specific entities on which the duty is imposed, the Court is willing to treat it as a 'collective decision' and grant a *locus standi* to all parties concerned to challenge the said regulation. What is interesting, in relation to other regulations the Court has applied this concept only twice – in both cases the decisive fact was that the group of addressees was strictly defined.

Decisions

Decisions are specific and individual acts, adopted both by the Council of the EU and the Commission. They are always addressed to an clearly defined group of addressees – all Member States (as usually done by the Council), some Member States or individual entities. The fact that their addressees are specified is the main criterion for distinguishing decisions from regulations, although it happens sometimes that the Court makes the classification based on the aim of the act instead. It is worth stressing that 'decision' has been interpreted in the same way in all provisions of the Treaty. The Treaty of Lisbon has partly changed the definition of decision. Currently, under the new Article 288 paragraph 4 TFEU, it covers all secondary legal acts not subject to other classifications. From the formal viewpoint, different acts adopted within the framework of the Common Foreign and Security Policy are also decisions, regardless of their formal name. Decisions are also binding for Community institutions and their officials, although they are not directly addressed to them. The aim of a decision is to settle a certain matter. As a rule, decisions do not have legal consequences for third entities; however, there might be some exceptional situations. In the judgement in the *F.Grad* case,[29] the Court expressed its opinion on the consequences of Germany's failure to execute the decision ordering the replacement of all turnover taxes in transport with value added taxes. The suing transport company refused to pay the turnover tax imposed on it and filed a complaint with a court. The court in Munich referred a question for a preliminary ruling to the ECJ, asking whether an individual may rely in its relations with the state on the rights derived from a decision addressed to the state and not implemented by it. The judges of the ECJ had no doubts that depriving a decision of direct effect would negatively affect the effectiveness of Community law in general. Therefore, individuals must have at their disposal

Jégo-Queré v Ciommission rendered in May 2002, recognising the need for securing the individuals' right to judicial protection. However, this time the ECJ contested the judgement (judgement of 1 April 2004) and maintained its previous position, i.e. the requirement of individual involvement. At the same time, the Court pointed out that a Member State must introduce to its national legal system all effective measures which ensure the possibility of pursuing the rights of individuals stemming from Community commitments.

[28] Case T-585/93 *Greenpeace et al. v Commission* [1995] ECR II-2205.

[29] Case 9/70 *F.Grad v Finanzamt Traunstein* [1970] ECR 00825.

a protection measure against the state's non-compliance with its commitments. The abovementioned judgement was later confirmed by other rulings of the ECJ, which additionally stressed that decisions can only confer rights on third persons, however they cannot imply any obligations for them.

This line adopted by the Court confirmed the earlier judgement in the *Plaumann* case,[30] which granted the right to challenge a decision before the ECJ to third persons, i.e. entities which are not the addressees of the decision, on the condition that the decision is of individual significance to the said entity, i.e. that it concerns its real or legal situation individually (in a way that distinguishes it from amongst all other entities). However, the Court has not given any further guidelines how to determine whether the condition is met or not, as in this particular case it decided that the company Plaumann was not individually affected by the Commission's refusal to consent to Germany reducing the customs duty on mandarines, on the grounds that other companies importing the same fruit were in an identical situation.

Directives

Directives are the most interesting acts of Community law. They are addressed to Member States (either to all of them or – less frequently – to a selected group), they specify the goals and objectives to be achieved and the deadlines for the states to reach these goals. The method of execution is to be decided by the states, although often – especially when they define technical standards – they are so specific that there is little left to be decided by the states, which only gives the illusion of free decisions. In order to implement a directive, states adopt relevant acts of municipal law, following with certain requirements formulated in ECJ case-law.

Before the deadline for implementation, directives are directly binding, i.e. they create an obligation for a Member State to implement it. During this time, Member States already have some obligations derived from a yet unimplemented directive. First of all, they concern the prohibition of frustrating the purpose and subject of the directive, in particular by issuing legal acts which would be at variance with the objectives of the directive; state bodies are not allowed to apply such provisions of national law in practice.[31] Moreover, national law which is non-compliant with a directive must not be applied, even if the deadline for the directive's implementation has not yet come, if such legislation infringes on the fundamental rights of the EU. This principle has been formulated by the ECJ in connection with the prohibition of discrimination on grounds of age in a situation when the arguments of the Court are not sufficiently convincing.[32] The ECJ

[30] Case 25/62 *Plaumann v Commission* [1963] ECR, English special edition 00095.

[31] Case C-129/96 *Inter Environement Wallonie v Région wallonne* [1997] ECR I-7411 and C-422/05 *Commission v Belgium* [2007] ECR I-4749.

[32] Cases: C-144/04 *W. Mangold v R. Helm* [2005] ECR I-9981; C-555/07 *S. Kücükdeveci v Swedex GmbH/Co. KG* [2010] ECR I-00365.

went further in the *Adeneler* judgement,[33] by ordering the courts of the Member States (and other public authorities) to interpret national law before the implementation deadline consistently with the yet unimplemented directive (this case, just as the previous one, also concerned employment contracts concluded for a specified period).

First of all, in order to implement a directive, the Member States must enact universally binding legal provisions – the administrative practice itself is not enough. Even if relevant provisions are already in force in a given state before the implementation of the directive, the state must still issue a legal act referring to the directive – if possible, even to specific provisions. The implementing acts should be notified to the European Commission, which supervises the actions of states and, if necessary, brings actions against them to the ECJ on grounds of non-compliance with their commitments – in this case, of failing to implement or incorrect implementation of a directive. If a directive provides for the possibility of choosing one of a set of proposed measures, the states have to make such choice; furthermore, they have to recognise the effects of legislation of the other states if the measures selected by them are different but still comply with the directive. When there is a need for an amendment in the legislation concerning the implementation or the need to adjust law to an amended directive, the amendment must be introduced by means of an act of equal rank as the implementing act.

Just as other legal acts of the EU, directives are directly binding – however, in a slightly different way than the others. Upon entry into force, a directive creates an obligation for the state to issue relevant national provisions. The direct effect of directives has been established in ECJ case-law. In its judgements of the 1970s (in particular *Y. van Duyn v Home Office* of 1974 and *Pretura di Milano v Ratti* of 1979), the Court referred to directives only for additional support material for its position, which was based on the founding treaties. Later, in the *U.Becker* case,[34] the Court made a noteworthy statement on the direct effect of directives. Ms. Becker, a tax advisor, had acquired the right to tax deductions under a Community directive. The Federal Republic of Germany had not implemented the directive, and therefore the tax office refused to recognise the deductions. The national court examining this case referred a question for a preliminary ruling to the ECJ. The Court of Justice stressed that if the provisions of a directive meet the conditions of direct effect (they are clear, precise, unconditional and complete), an individual can rely upon them in proceedings against the state even in the absence of a national implementing measure. In such situations, we speak of vertical direct effect of a directive. The ECJ added that the fundamental underlying idea for this decision was that individuals must be protected against arbitrary actions of states. It is unacceptable that a state violates law and still benefits

[33] Case C-212/04 *Adeneler et al. v Ellinikos Organismos Galaktos (ELOG)* [2006] ECR I-6057.

[34] Case 8/81 *U. Becker v Finanzamt Münster-Innenstadt* [1982] ECR 00053.

from it. A 'state' in this case is to be understood as any institution executing public tasks whose relations with individuals are not equal.

The last two cases concern the state's liability for infringement. In the first one, the commonly known judgement in the *Francovich* case,[35] the Court held that if a state does not implement a directive within the prescribed period (in this particular case, directive 80/987 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer), and it results in a damage for an individual, the state must compensate the damage, on the condition that the right of the individual stems directly from the directive, being sufficiently specified by it, and that there is a causal relation between the damage and the infringement. According to the *Faccini-Dori* judgement,[36] in turn, if a state has failed to implement a directive within the prescribed period, and an individual has suffered damage as a result of a horizontal legal relationship (in this case – sales), the individual cannot rely on the provisions of the directive in proceedings against the other party of this legal relationship, but it can file a claim for damages against the state on the grounds of its losses resulting from the state's failure to fulfil its obligations. Such claims should be pursued before national courts and in accordance with national procedures.

Thus, the ECJ case-law has shaped the principle of direct effect of directives, even though this principle is not mentioned in the founding treaties. In the recent years, the ECJ has developed and modified this concept. In the judgement in the *Wells* case[37] it pointed out that an individual can rely on the rights derived from an incorrectly implemented directive, if the directive imposes certain obligations on the state. In this particular case, the British government should have had issued provisions introducing the obligation to execute an environmental impact assessment when resuming certain forms of business activity. Ms. Wells, who lived near abandoned quarries which were intended for resumed use. The only option for blocking the resuming of work in the quarry was to refer to the text of the directive. In the joint cases *Pfeiffer et al.*,[38] the ECJ decided that directives have no horizontal direct effect, and at the same time substantially extended the obligation of pro-Community interpretation of national law (all its formal sources); national law is to be interpreted in such a way as to achieve all aims of a directive. Indeed – despite a strong distinction by the ECJ of interpretation and horizontal effect of a directive – this judgement treats them as equal with regard to their effects. In the *Unilever* case,[39] the Court emphasised that the rules of assessing the direct effect of directives which do not confer specific rights on individuals and only create some obligations for state bodies (and thus do not require detailed implementation)

[35] Joint cases C-6/90 and 9/90 *A. Francovich and D. Bonifaci et al. v Italy* [1991] ECR I-5357.

[36] Case C-91/92 *P.Faccini-Dori v Recreb* [1994] ECR I-3325.

[37] Case C-201/02 *Wells v Secretary of State for Transport* [2004] ECR I-723.

[38] Joint cases C-397-401/01 *B.Pfeiffer et al. v Deutsches Rotes Kreuz, Kreisverband Waldshut* [2004] ECR I-8835.

[39] Case C-443/98 *Unilever Italia v Central Food* [2000] ECR I-7535.

are different. Finally, in the judgement concerning the Grosskrotzenburg power plant,[40] the Court confirmed that directives which do not confer rights on individuals but only create obligations for the state can also be directly effective; state bodies have to apply such directives even if they have not been correctly implemented, however, under the condition that they are sufficiently precise and unconditional and that the prescribed period for implementation has passed. This concerns in particular directives in the field of environment protection.

The direct effect of directives is restricted to those directives which confer rights on individuals. The ECJ case-law has excluded the possibility of relying on an unimplemented directive which imposes obligations on individuals. In the *Kolpinghuis Nijmegen* judgement[41] the public prosecutor office charged a cafe owner with selling saturated tap water as mineral water, in breach of a directive. The ECJ stressed that the requirements of the founding treaties do not allow entities other than the Member States to invoke the obligations derived from incorrectly implemented directives in court proceedings. A directive itself cannot justify imposing obligations on individuals.

However, directives can also have indirect effect, in situations when they have not been correctly implemented in a Member State. Under the principle of loyal cooperation, the state must ensure full effectiveness of EU law. Therefore, the ECJ case-law[42] has developed the principle of indirect effect of a directive. Once again, the subject of the case was directive 76/207, and in particular the question, whether it gives rise to claims for employment for the interested party in case of a breach of the principle of gender equality in recruitment proceedings. The ECJ had no doubts that a directive addressed to Member States cannot be relied upon by an individual against other entities, in particular in horizontal relations. The state is not allowed to apply legal provisions inconsistent with a directive, and must interpret national law in such a way as to comply with the purpose of the directive. Moreover, in later judgements the ECJ stressed that the obligation of interpreting national law in compliance with directives extends also to internal laws adopted before the directive was adopted by the Community. On the other hand, the state may not invoke a directive against individuals in order to enforce obligations imposed on it before it correctly implements the said directive.

Non-binding acts

As regards non-binding acts, apart from the measures explicitly enumerated in the TFEU, the Community also issues 'nonstandards' or 'innominate' acts. They all have one thing in common – they are subject to control of the Court of Justice. For instance, one of the most important judgements of the ECJ, the ERTA judgement, concerning the division of competences between the Member States and the

[40] Case C-431/92 *Commission v Germany* [1995] ECR I-2189.
[41] Case 80/86 *Criminal proceedings against Kolpinghuis Nijmegen BV.* [1987] ECR 3969.
[42] Case 14/83 *S. von Colson and E. Kamann v Nordrhein-Westfalen* [1984] ECR 1891.

Community and implied powers to conclude international agreements, was issued in connection with the innominate act adopted by the Council of Ministers (the present Council of the EU) – a manual for the negotiation of treaties by the Member States. Other innominate acts include: conclusions and resolutions of the Council of the EU (if the latter exceed the scope of Community competences, they are referred to as resolutions of the Council and the Representatives of the Governments of the Member States meeting with the Council), interinstitutional agreements (usually specifying some procedures), as well as communications from the Commission. Any binding effect of these acts is inferred each time from the text, taking into account the hypothetical intention of the relevant issuing institution. However, we should remember that the ECJ has analysed the legal nature and the binding force of Commission recommendations only once so far.[43] It stressed that although recommendations do not confer rights on individuals, they should be taken into account in the process of pro-Community interpretation of national law (especially the laws implementing Community law) and of interpretation of Community law by national courts.

Interinstitutional agreements

These instruments have existed in EU law for a long time (see the comments on institutional balance). However, the Treaty of Lisbon has raised them to the rank of named acts. Under Article 295 TFEU, the European Parliament, the Council and the Commission consult each other and by common agreement make arrangements for their cooperation. To that end, they may conclude interinstitutional agreements of a binding nature, defining the framework and the conditions of cooperation.

Conclusions

The legal order of the EU constitutes an important step in the development of international law. After the entry into force of the Treaty of Lisbon, the Union has been granted a legal personality and acquired a status of an international organization. Distinctive features of this organizations are: law-making power and judicial autonomy. Norms enacted by the Union are directly applicable (binding upon all subjects without a legislative action by the Member States – with some modification as to directives) and – under certain conditions (clear, precise and unconditional nature of norms) – directly effective, i.e. granting rights and imposing obligations upon individuals. Those rights and obligations can be enforced by the Member States and must be protected by domestic courts. On the other hands, ultimate guardian of the application of EU law is the Court of Justice of the EU as the only agency interpreting and evaluating a validity of legal acts of the Union. European law prevails over domestic law of the Member States, including constitutional law, although this perspective is to some extent modified by the jurisprudence of domestic constitutional/supreme courts.

[43] Case C-322/88 *Grimaldi v Fonds des maladies professionnelles* [1989] ECR I-4407.

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Freedoms of the EU Internal Market: An Outline

Introduction

Today, in the times when the economic and financial situation has inspired a broad debate on the shape of the economic and financial policy of the European Union, the idea of internal market is still an unquestioned value in itself. The freedoms of the internal market are the foundation of the Member States' economies, since they are the basis for the functioning of undertakings. It is because of its very general definition of the internal market that the Treaty of Lisbon has not changed much in this regard. However, the Treaty has a certain ordering value, for it has explicitly divided competences between the EU and its Member States.

General principles of EU substantive law

European Union law focuses mainly on economic relations. Since the signing of the Treaty of Maastricht in 1992, there has been a tendency to extend the scope of EU law by adding areas not strictly related to economy, for instance, European Union citizenship or common migration and asylum policy or judicial cooperation. Hence, the concept of substantive law of the European Union is broader than the concept of internal market.

The Treaty of Lisbon has abolished the three-pillar structure of the European Union, and consequently the European Community (earlier referred to as the European Economic Community) ceased to exist, while Community law became a part of EU law. Currently, the basis for the existence and functioning of the internal market is the Treaty on European Union (TEU), in particular its Article 3 (2), and the Treaty on the Functioning of the European Union (TFEU).

EU law does not regulate all legal relations in a given field; some matters are regulated by both EU law and national laws. In order for EU law to be applicable to a given legal relation, it has to include an EU element (formerly referred to as 'Community element'), which is present when a given problem is within EU competence.

The limits of EU competences are governed by the principle of conferral (Article 5(1) TEU), under which the EU may act (e.g. make law) when the Member States have conferred relevant competences upon it. Competences not conferred upon the European Union in the Treaties remain with the Member States (Article 4(1) TEU). It is, therefore, not enough that a certain situation has happened on the territory of the EU or between EU citizens. For example, EU law prohibits discrimination of nationals of other Member States by a Member State on the grounds of nationality, but this prohibition does not concern reverse discrimination, i.e. a situation where nationals of a Member State get less favourable treatment in their own country than the nationals of other Member States or when a higher tax is imposed on a domestic product than on a product imported from another Member State. Leaving aside the aforementioned exception, the Treaties are based on the prohibition of discrimination, which is applicable within the scope of the Treaties, and thus has a strictly defined scope (it concerns goods and persons, i.e. natural persons, and enterprises in some situations).

The EU's competences can be exclusive (Article 2(1) TFEU) or can result from the division of competences between the Member States and the EU, regulated by the TFEU (shared competence, Article 2(2) TFEU). Within the scope covered by this paper, the exclusive competence includes two aspects of the internal market: the customs union and the common commercial policy (Article 3 (1) TFEU). Legislative and executive actions in these fields can be taken only by the bodies of the European Union. This concerns not only the relations between the Member States, but also external relations of the EU. For instance, trade agreements with third countries (i.e. with non-EU countries) can be concluded only by the EU, on behalf of its Member States, and the Member States cannot take any actions on their own in this respect (Article 3(2) TFEU).

All other aspects of the internal market belong to the shared competence (Article 4(2)(a) TFEU). Within the shared competence, under which powers pertain both to EU bodies and the organs of Member States, the principle of subsidiarity is applied (Article 5(3) TEU). This principle applies not only in the legislative and executive activity of EU bodies, but is also reflected in the case-law of the European Court of Justice.

A more general principle, which is applied to EU activities both under shared and exclusive competence, is the principle of proportionality (Article 5(4) TEU), which is a logical consequence of the principle of conferral.

The principle which regulates the actions of the Member States in relation to the European Union is the principle of sincere cooperation (often referred to as the principle of solidarity, Article 4(3) TEU). These principles are discussed in detail in other texts in this book. All of them have been mentioned above in order to highlight their application in the process of creating and applying the law concerning the internal market. For example, in almost all fundamental case-law of the 1970s concerning the free movement of goods. The Court of Justice promoted

the principles related to the prohibition of free movement of goods, often invoking the principle of sincere cooperation of states with the European Economic Community.

The aims of the European Union

As stipulated in Article 3 TEU, the main aim of the European Union is to promote peace, its values and the well-being of its peoples. As its second objective, the EU provides an area of freedom, security and justice without internal frontiers, namely free movement of persons in conjunction with external border controls, asylum, immigration and the prevention and combating of crime. Economic aims, in particular establishing an internal market, are mentioned only as third in row. It is a somewhat new feature, introduced by the Treaty of Lisbon. The establishment of an economic and monetary union, whose currency is the euro, is only on the fourth place in the list of European Union aims. The list ends with aims of external, or even global nature.

The way in which these aims are ordered reflects, to some extent, the ideas and expectations of the representatives of the Member States and the Union when adopting the Treaty of Lisbon. It is worth stressing that presently, in the face of lively discussions on the directions of the migration policy, when the basic objectives of the economic and monetary union and some other policies are put into question, the rules of functioning of the internal market are still an unquestioned foundation of the community of European states. Access to the internal market is a conclusive argument for accession to the EU for the candidate countries (just as it was in Poland's case). Below are only some of the advantages of the common market, which encourage third countries to apply for membership:

- the state's economic effectiveness increases as a result of the expansion of sales markets for enterprises;
- there is a greater choice for consumers – due to the more restrictive conditions of competition, there is more stress on price competition, and as a result more effectively functioning enterprises are more successful in the internal market;
- better competitiveness in the world market of the states which are members of the European Union.

In difficult economic situations, an essential advantage of being part of the internal market is greater economic stability than in the individual economies of the Member States.

The concept of internal market

The literature on the European Union uses three terms: single market, common market and internal market. They essentially denote the same concept (the term common market is used in economics and denotes the highest level of integration of markets of several states). Originally, the Treaty contained the term single market, which had not been defined then. Only after the revision of the

achievements of the European Economic Community, drawn up by the Commission in the form of a White Paper in the early 1980s, a programme for the establishment of the internal market was adopted. The concept of internal market was introduced to the TFEU in 1986 by the Single European Act, in which, along with the definition of the common market, the Community committed to the establishment of the internal market by the end of 1992. The definition of the internal market was introduced to former Article 14(2) TEC: area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. The terminological dichotomy, which lasted until the Lisbon Treaty, contributed to the emergence of many academic papers and gave rise to controversies and reservations of legal nature. In consequence of entry into force of the Lisbon Treaty, the Treaties in their present form contain only one term: internal market, defined in Article 26(4) TFEU in line with the former Article 14(2)TEC.

Freedoms of the internal market

Although Article 26(4) TFEU distinguishes four freedoms of the internal market, there are in fact five of them. Free movement of persons should be divided into free movement of workers and freedom of establishment. The need for such division results not only from the internal division applied in Title IV of the TFEU, but also from the diversified personal and subjective scopes of treaty provisions regulating each of the two freedoms.

Consequently, we distinguish the following freedoms of the internal market:

1. free movement of goods;
2. free movement of persons;
3. the right of establishment (also called the freedom of establishment);
4. free movement of services;
5. free movement of capital and payments.

1. Free movement of goods

Free movement of goods is the elementary and best implemented freedom of the internal market. It concerns products of EU origin and products from third countries, hence it has an internal and external dimension. The internal dimension consists in abolishing customs duties and charges having equivalent effect, and covers the exchange of goods between the Member States. In relation to goods of non-EU origin (the external dimension), the Common Customs Tariff (CCT) is applied.[1] After crossing the external border of the EU and after meeting the formal requirements concerning imports (in particular after the customs duty is paid in accordance with the CCT), goods are admitted to free trade within the EU (Article 29 TFEU) and are treated as equal with the goods originating from a Member State.

[1] Article 28(1) TFEU.

The concept of goods

The concept of goods is not defined in the Treaties but has been developed in the case-law of the Court of Justice. In its ruling, the Tribunal described goods as 'products which can be valued in money and which are capable, as such, of forming the subject of commercial transactions'.[2]

The substance of the free movement of goods[3]

We can distinguish the following elements constituting the substance of the free movement of goods:

1. The establishment of a customs union, under which:
   a) in all trade relations between the Member States, there is an absolutely binding (i.e. without exceptions) prohibition of customs duties on imports and exports and of all charges having equivalent effect (Article 28 and 30 TFEU);
   b) a common customs tariff applies (Article 28 and 31 TFEU);
2. in trade between the Member States, there is a relatively binding (i.e. with exceptions) prohibition of quantitative restrictions and of all measures in imports and exports having equivalent effect (Article 34 TFEU as regards imports, Article 35 TFEU as regards exports and Article 36 TFEU containing the list of justified exceptions from the prohibition).[4]

The external dimension of the free movement of goods is complemented by the Common Commercial Policy conducted by the EU with regard to third countries (Article 206–207 TFEU). However, this policy is a separate matter from the internal market, and therefore it will not be discussed in this paper.

It is worth stressing that the elementary provisions concerning the free movement of goods, i.e. Articles 28 and 29 TFEU, are directly effective vertically as well as horizontally,[5] regardless of the fact that they are addressed to the Member States. The treaty objectives addressed to the Member States, which include the elimination of fiscal and non-fiscal barriers to trade between the Member States, can form grounds for actions brought by natural and legal persons in national courts on the non-application of national provisions which limit the free movement of goods. This was the result of, for instance, the first Polish

[2] Case 7/68 *Commission v Italy* concerning export tax on art treasures [1968] ECR 617.

[3] Joint cases 56,58/65 *Consten & Grundig v Commission* [1966] ECR 299. See further: 78/70 *Deutsche Gramophon v Metro* [1971] ECR 487, 119/75 *Terrapin v Terranova* [1976] ECR 1039.

[4] Among the provisions concerning the prohibition of quantitative restrictions there is also a provision on state monopolies of a commercial character (Article 37 TFEU). Due to the nature of this provision, it is often discussed under competition law (rules addressed to states). It concerns situations where a Member State reserves for itself the right to trade in certain goods or to specify the conditions for trade in these goods (e.g. monopoly on the sales of alcohols). State monopolies of a commercial character are not prohibited, in so far as they operate on a non-discriminatory basis.

[5] On the subject of direct effect see: case 26/62 *Van Gend en Loos* [1963] ECR 1. See further: joint cases 52,55/65 *Federal Republic of Germany v Commission* [1966] ECR 227.

case before the Court of Justice, *Maciej Brzeziński v Dyrektor Izby Celnej w Warszawie*.[6]

Customs union

Prohibition of customs duties and charges having equivalent effect

Historically, states are formed as separate customs territories. Income from customs duties was designed to create an additional fiscal burden imposed on the imported or exported goods. Thus, we speak of customs duties as fiscal barriers to the movement of goods. On the one hand, they constituted an income for the state (the fiscal element), and on the other hand their aim was to regulate the flow of goods from and to other countries (the protectionist element). The European Economic Community abolished these barriers by establishing a customs union, consisting in creating a single customs territory of all the Member States' territories. Hence, the customs union of the present European Union is based on the prohibition of customs duties (on imports and exports) covering all trade in goods between the Member States. In addition, the prohibition covers all charges having equivalent effect (i.e. charges, which formally are not customs duties, but which have the same effect on trade). The prohibition of customs duties and charges having equivalent effect has been in effect since the end of the transition period, i.e. since 1969, and there are no exceptions to it.

The term customs duties is understood as charges, which a country imposes on goods imported from other countries in order to protect its own market. Countries can place charges on goods in a more or less disguised way, therefore the Founding Fathers of the European Economic Community introduced the term charges having equivalent effect to the Treaty. It was aimed at ensuring full effectiveness of the prohibition by extending it to include also those charges which do not meet the formal requirements to be considered customs duties, but which in fact cause the same effect, i.e. greater burden for the imported goods as compared to national goods.

Under the case-law of the European Court of Justice, the name of a charge (i.e. tax, fee) is not a determining factor; what is essential is the effect of the national measure applied and the fact that it affects the trade between the Member States in the same way as a customs duty would. A charge having equivalent effect is any financial burden imposed on goods by a Member State or an autonomous body by reason of the fact that they cross frontiers. Such charge does not have to be applied on the border – it has to be applied in connection with the fact of crossing a border by the goods. Its name and aim are not important, nor is public interest. The charge even does not have to be protectionist in nature (e.g. obligatory social charge paid in the Netherlands by the importers of raw diamonds for a social fund for diamond workers).[7]

[6] Case C-313/05 [2007] ECR I-513.

[7] Joint cases 2&3/69 *Sociaal Fonds voor de Diamantarbeiders* [1969] ECR 211.

The prohibition of customs duties concerns also 'regional duties' (e.g. municipal tax, calculated on the basis of the value of a product, on imports or exports of goods to and from some regions of Greece).[8] It happens so because customs duties and charges having equivalent effect constitute a fiscal barrier in the movement of goods in the internal market.

On the other hand, under the ECJ case-law, the following charges imposed on goods in connection with crossing a border are not considered customs duties and charges having equivalent effect:

- payment for services really provided in connection with imports of goods (only such services which bring benefits to the importer), in so far as the services in question are voluntary; it is not important whether the services are provided by public authorities or a private entity;
- charges imposed in the interest of the EU under provisions which have harmonised the procedures permitted in the light of Article 36 TFEU (the Member States are allowed to demand charges for controls of the given good conducted under EU law in order to cover the costs of these procedures);
- charges covering not only imported goods, but also, to the same extent, domestic goods (i.e. internal charges – see below); if a charge is imposed on all goods, regardless of their origin, the case-law examines the essence of the charge and the manner in which it is calculated, as well as who benefits from it (e.g. funds obtained from such charges cannot be allocated for purposes which bring benefits only to domestic producers).

It is worth noting that customs duties are distinguished from internal charges (taxation). The first are the fiscal charges related to the fact that a product has crossed a border, while the second are real taxes (Article 110 TFEU). As opposed to customs policy, tax policy is still within state competence, and thus the Member States are free to shape their tax systems as they will (except for the taxes which have been partly harmonised,). Under case-law, a tax system is considered to be a general system of internal taxation imposed by the state on certain categories of goods according to objective criteria, regardless of the origin of these goods.[9]

Article 110 TFEU prohibits discriminatory taxation. Taxes which are borne only or mostly by imported goods as compared to domestic products are considered, in reference to this difference, as prohibited customs duties.

Common Customs Tariff (CCT) and Community Customs Code

The Common Customs Tariff specifies the rates of customs duties to be paid for each product imported to the Community from third countries. Its inseparable part is the Tariff and Statistical Nomenclature, which enables the classification of products into groups and the application of a relevant tariff rate.[10]

[8] Cases C-485 & C-486/93 *Simitzi v Kos* [1995] ECR I-2655.

[9] Case 90/79 *Commission v France* [1981] ECR 283, 301.

[10] Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, OJ L 256, 1987, pp. 1–675, as amended.

The Community Customs Code[11] defines uniform procedures applied by customs authorities. The Common Customs Tariff and the Community Customs Code, along with the implementing rules,[12] take the form of regulations and are directly applicable by the customs authorities of the Member States. Consistent application of these regulations is supervised by the Court of Justice, which gives interpretation of their provisions by means of preliminary judgements.

Tariff rates are calculated on the basis of a contract price (*ad valorem*). Namely, they take into account the price really paid or to be paid, transport costs, commission, packaging costs, etc. When the price declared by the importer seems questionable to the customs authorities, it may be raised. Tariff rates are either autonomous, i.e. are set independently by the Council, or conventional, i.e. set in accordance with the international commitments made by the European Union under trade agreements with third countries (e.g. the former Europe Association Agreement, which established an association between Poland and the European Community prior to Poland's accession).

It is clear from the above that the origin of a product is of key importance. If it originates from a Member State of the European Union, it enjoys preferential treatment. If it comes from a third country, it is treated non-preferentially and customs duty is calculated according to the rules prescribed in the CCT. In practice, the problem of identifying the country of origin is highly controversial, as it is very difficult to say in which country the goods '*underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture*' under the Community Customs Code. Case-law includes the case in which the company Thompson introduced to the French market TV sets produced in Poland from parts originating from Poland and other countries.[13] The judgement illustrates how the European Union protects itself from the abuse of the rules of origin by EU producers.

Prohibition of quantitative restrictions on imports and exports and all measures having equivalent effect (Articles 34–36 TFEU)

As opposed to customs duties and charges having equivalent effect, quantitative restrictions and measures having equivalent effect are of non-fiscal nature. Just as customs duties, they are prohibited in trade between the Member States. However, it is a relative prohibition, as TFEU provides for a set of justifying rea-

[11] Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, OJ L 302, 1992, pp. 1–50.

[12] Commission Regulation (EEC) No 2454/93 of 2 July 1993. Implementing rules to Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, OJ L 253, 1993, pp. 1–210.

[13] Joint cases C-447/05 and C-448/05 *v Administration des douanes et droits indirects* [2007] ECR I-2049.

sons; the introduction of such restrictions or measures is justified on the grounds of the reasons enumerated in Article 36 TFEU.

In the event of infringement of these rules, Member States are liable only for their own actions. Distortions of trade in goods between the Member States which occurs due to certain behaviour of entities unrelated to the state (e.g. undertakings) are subject to the rules of competition. The concept of state must be interpreted very broadly. In some cases the state may also be responsible for introducing obstacles to trade in goods created by third persons, for which the state is liable on the grounds of failure to act (e.g. road blocks as a form of protest). It concerns cases when a Member State has taken insufficient measures to remove the obstacles (e.g. for political or social reasons). These issues are governed by Council Regulation (EC) No 2679/98 of 7 December 1998 on the functioning of the internal market in relation to the free movement of goods among the Member States.[14]

The concept of quantitative restriction

The most commonly applied quantitative restrictions are quotas. They can be volume quotas or quotas in terms of value. When a quota is exhausted, i.e. when goods of total ceiling volume or value defined by the quota are imported (or, rather rarely, exported), further import (or export) of these goods is prohibited or is subjected to higher customs duties, as a result of which the competitiveness of the product on the market falls (in which case, the restriction transforms into customs duty).

Quantitative restrictions on imports have a protectionist character. Their goal is to control the quantity of the imported or exported product, usually in order to protect the domestic market.

Quantitative restrictions on exports to other Member States are very rare and are usually introduced for the protection of state interest (e.g. the prohibition of exporting objects of art in order to protect national heritage), and therefore are often justified pursuant to Article 36 TFEU.[15] Such prohibitions are rarely

[14] The Charter of Fundamental Rights introduced certain changes as regards the state's failure to act and remove obstacles to the free movement of goods. In the judgement in the *Schmidberger* case the Court of Justice ruled that the state is not liable for causing damage in relation to undertakings which suffered damage as a result of road blocks which took place under the acquiescence of national authorities. The Court held that in such cases the road block may be a manifestation of freedom of expression protected by the Charter of Fundamental Rights, thus being a justified restriction to free movement of goods. Case C-112/00 ECR [2003] I-5659, OJ L 337, pp. 8–9.

[15] An example of such regulations is the case *Commission v Italy*, in which the Court of Justice held that a charge for the exports of objects of art is essentially a prohibited customs duty and recommended that Italy introduced a system of export permits, which would be a measure having equivalent effect to quantitative restriction justified under the present Article 36 TFEU. Quantitative restrictions in the form of absolute prohibition of exports are more often applied against non-EU countries (e.g. prohibition of exports of dual-use goods or technology, i.e. such which can be used both for civil and military purposes), but this problem belongs to the scope of Common Commercial Policy, which is not discussed in detail in this text.

absolute (without exceptions); usually such cases concern a system of permits, which should rather be classified as measures having equivalent effect to quantitative restrictions.

The concept of measure having equivalent effect to a quantitative restriction

The concept of 'measure having equivalent effect' was introduced in the 1950s to the original version of the Treaty in order to cover all actions of states which essentially are not quantitative restrictions (e.g. are not protectionist, their objective is not the protection of the domestic market) but which have the same effect as quantitative restrictions. The definition of this term was laid down in the Treaty, but the interpretation can be found in ECJ case-law. However, the interpretation differs depending on whether a measure having equivalent effect causes distortion in the imports to or exports of goods from a Member State. Case-law concerning the measures distorting imports is broader due to higher economic importance of this subject. Judgements concerning measures distorting exports are not frequent.

Prohibition of measures having equivalent effect in imports (Article 28 TFEU)

The Dassonville case[16]

According to the ECJ judgement in the *Dassonville* case, all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade (i.e. between the Member States) are to be considered as measures having an effect equivalent to quantitative restrictions. There is no *de minimis* principle in relation to Article 28 TFEU (no requirement of having 'appreciable' impact on trade), and thus even minor distortions of trade are subject to the prohibition.

Although Dassonville did not directly concern indistinctly applicable measures, the Court did not make any distinction between distinctly and indistinctly applicable measures (see below). It rather considered the effect of the measure than the distortion caused by it. Lack of distinction between measures applied distinctly and indistinctly to domestic and imported goods raised protests on the part of the Member States against such an extremely broad interpretation of this term. Moreover, this broad interpretation increased the number of actions filed with the Court of Justice, in which entrepreneurs demanded changes in their national legislation allegedly restricting free trade. It forced the Court of Justice to change its case-law by specifying a definition, taking into account whether such measures had been introduced by a Member State in public interest (see judgement in the case *Cassis de Dijon*).

[16] Case 8/74 *Procureur du Roi v Dassonville* [1974] ECR 873.

Measures which distort trade within one country, but which cannot, even potentially, influence trade between the Member States, are not prohibited, since there are no treaty provisions which would prohibit the application of quantitative restrictions within one country. In practice, however, it is hard to imagine such a situation. Hence, any measure, even purely domestic, may be considered as prohibited, as it may potentially distort trade between the Member States.[17]

Earlier, the Court of Justice rejected cases concerning such situations, in which trade between the Member States had not been distorted. More recent case-law is more liberal in this respect. Today the Court issues judgements even in cases, in which trade between the states is not distorted, provided that there is a potential threat that it may do so.

Cassis de Dijon Judgement

From the perspective of application we can distinguish distinctly and indistinctly applicable measures.

Distinctly applicable measures (also called unequally applicable measures) distort imports which could otherwise take place, and include measures which make import or sales of foreign products more burdensome or less profitable than imports or sales of domestic products. Such measures are subject to the application of the formula established by the judgement in the Dassonville case (the Dassonville formula).

Indistinctly applicable measures (also called equally applicable measures), in turn, are accepted only in so far as the requirements established in the Cassis de Dijon case are met.[18]

Cassis de Dijon I

In the judgement in question, the Court of Justice held that in some cases, even when the Dassonville requirements are met and in the absence of EU provisions, measures distorting trade can be allowed (i.e. are not considered a prohibited quantitative restriction) in so far as they can be justified by a public-interest objective and meet the following conditions:

- are indistinctly applicable (i.e. domestic and imported goods are treated equally),

[17] One of the few judgements in which the Court of Justice based its ruling on the lack of influence (even potential) on the trade between the Member States and considered the measure in question as purely national (and thus not prohibited) was the case concerning the prohibition of trade on Sundays in the United Kingdom. The Court stated that due to geographic conditions border trade with continental states, in which the prohibition was not in place, is unthinkable even potentially, as the duration of travel by ferry discourages the British from shopping on the continent. The judgement was issued before the Keck judgement, so it should be assumed that under the present case-law the justification given by the Court could be based on different premises (although with the same result).

[18] Case 120/78 *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein* (*Cassis de Dijon* case) [1979] ECR 649.

- are necessary (i.e. there is no other way to protect the public interest in question),
- are proportionate (i.e. the restriction to trade caused by them is proportionate to the objective).

The list of public-interest objectives was formulated in the case-law of the Court of Justice. These aims include, for instance: the effectiveness of fiscal supervision, the protection of the consumer, the fairness of commercial transactions, the protection of the natural environment and the maintenance of press diversity. The list is not exhaustive and can be extended by ECJ case-law. In the literature on this subject these objectives are often referred to as mandatory requirements; they are introduced with public interest in mind. The introduction of the formula concerning these requirements made the application of treaty provisions more flexible (present Article 34 TFEU), as the formula allowed for derogations from the prohibition of measures having equivalent effect to quantitative restrictions, independently of the justifying reasons stipulated in Article 36 TFEU.

Cassis de Dijon II

Another rule concerning the interpretation of this concept is applied in the situation when a measure is indistinctly applicable but does not fulfil the requirements of derogation from the prohibition, either under mandatory requirements (and the accompanying conditions) or under the reasons provided for in the treaty (Article 36 TFEU). Moreover, it is not possible to apply the formula if there are already existing rules harmonising the matter in question on the EU level (for instance, a directive harmonising the production requirements for a given product). Consequently, in the absence of common EU rules relating to a product, provided the product has been lawfully produced in one of the Member States and is sold in another Member State, it must be admitted for trade in the other Member State (mutual recognition of goods).

Keck & Mithouard formula[19]

Another judgement specifying the concept of measures having equivalent effect to a quantitative restriction is *Keck & Mithouard*.[20] The practical reason for this judgement were numerous claims filed with the Court of Justice concerning the alleged violation of the prohibition of quantitative restrictions and measures having equivalent effect by the Member States. It turned out that the definition of a measure having equivalent effect derived from the Dassonville judgement proved too broad, and the exception – *Cassis de Dijon I* – too narrow. Entrepreneurs took advantage of this situation and applied 'eurodefence', which consisted in questioning these national rules which were burdensome for them, when there was no such regulation in other Member States. The rules subject to most frequent

[19] Case C-267, C-268/91 *Keck & Mithouard* [1993] ECR I-6097.
[20] Ibidem.

attacks were those concerning restrictions on advertising or sales in shops (e.g. prohibition of Sunday trading).

The Keck formula, or the Keck test, concerns only indistinctly applicable measures. The main idea is that the judgement of the Court of Justice distinguishes between measures directly regulating production and measures regulating selling arrangements. The Keck judgement distinguishes the requirements to be met by such products when they are manufactured (such as requirements as to designation, form, size, weight, composition, presentation, labelling, packaging) to which the formulas *Dassonville* and *Cassis de Dijon II* apply, unless they are subject to the derogation under *Cassis de Dijon I*.

On the other hand, as regards rules concerning selling arrangements, the prohibition of measures constituting a quantitative restriction under Article 34 TFEU is not applied (i.e. they are not considered measures having equivalent effect to a quantitative restriction); thus, they are *per se* (in themselves) in compliance with Article 34. For example: the requirement of selling milk powder for infants in pharmacies, prohibition of sales with loss or very low profit margin, prohibition of advertising diesel oil. The judgement in the Keck case can also be treated as a proof of application of the principle of subsidiarity in ECJ case-law, for it gives more freedom to Member States in adopting legislation containing indistinctly applicable measures resembling quantitative restrictions, taking into account the existence of national customs, conditions and traditions.

Although in its judgement in the *Keck & Mithouard* case, the Court clearly pointed out that the formula established there is a new development, and had not existed in prior case-law, the application of the formula in practice gives rise to many controversies. Detailed analysis of the ECJ case-law after the *Keck* judgement would be too extensive for the purpose of this paper.[21] Consequently, we will only conclude that after the Keck judgement, the case-law concerning the interpretation of the term 'measure having equivalent effect' has been developing chaotically and it is hard to establish on its basis a coherent and indisputable idea of the Court's intentions.[22]

The prohibition of quantitative restrictions on exports and measures having equivalent effect (Article 35 TFEU)

Distinctly applicable measures would have to be protectionist to violate the prohibition under Article 35 TFEU. According to the Court, indistinctly applicable measures do not infringe Article 35 TFEU, hence the Dassonville formula does not apply to them.

[21] See cases: C-142/05 *Mickelsson and Roos* [2009] ECR I-4273, C-110/05 *Commission v Italy* (trailers) [2009] I-519, C-518/06 *Commission v Italy* (motor insurance) [2009] ECR I-3491.

[22] For further criticism see J. Snell, *The Notion of Market Access: A concept or a Slogan?*, "Common Market Law Review" no. 47/2010, pp. 437-472.

Derogations from the prohibition of quantitative restrictions on exports and measures having equivalent effect (Article 36 TFEU)

Derogations from the prohibition of quantitative restrictions and measures having equivalent effect are admissible when the introduction of the measure in question by the state is justified by the reasons listed in Article 36 TFEU. Introducing quantitative restrictions or measures having equivalent effect must be justified on grounds of the following reasons (which concern public interest):

- public morality;
- public policy or public security;
- the protection of health and life of humans, animals or plants;
- the protection of national treasures possessing artistic, historic or archaeological value;
- or the protection of industrial and commercial property.

Quantitative restrictions or measures having equivalent effect can be introduced, provided that the above justifying reasons do not constitute measures of arbitrary discrimination or disguised restrictions to trade between the Member States. These reasons are interpreted by the Court in a restrictive way. The ECJ is not interested in the name of the national measure or the reasons for its introduction; it focuses on the effect of the measure on trade, i.e. on checking whether it constitutes a real barrier to trade or not. Introducing such measures by a Member State, most often in the form of statutory laws, must be objectively justified. Many measures which were not intended as protectionist were later prohibited by the Court.

There is a Commission Directive[23] in place, which specifies the distinctly applicable measures which are considered quantitative restrictions or measures having equivalent effect (they concern only imported goods). Whereas measures applied indistinctly to domestic and imported products are also considered a quantitative restriction unless they meet the conditions of Cassis de Dijon I and Keck formulas, that is:

1. If they concern such product characteristics as: form, size, weight, composition, presentation and are not necessary, i.e. the same goal can be achieved by using less restrictive measures;
2. If they are not proportionate, which means that even though restrictions to trade are necessary, they are not proportionate to the goals which they serve.

A question which is asked quite often is about the point of existence of two different systems of derogations from the prohibition of quantitative restrictions and measures having equivalent effect: the treaty system (Article 36 TFEU) and the system established by case-law (Cassis de Dijon I and related judgements). The answer is easy: in the 1950s, when the treaty provision which is now contained in Article 36 TFEU was formulated, the Member States' ideas about the

[23] Commission Directive (EEC) No 70/50 of 22 December 1969 based on the provisions of Article 33(7), on the abolition of measures which have an effect equivalent to quantitative restrictions on imports and are not covered by other provisions adopted in pursuance of the EEC Treaty, OJ L 13, 1970, pp. 29–31.

rules of its application were quite different. The restrictive interpretation of this provision adopted by the Court of Justice, which was necessary at the beginning of its operation, later proved to be an obstacle to flexible application of the prohibition. Namely, some public-interest objectives (such as, for instance, environment protection, consumer protection, protection of fundamental rights) became important only later. Therefore, an additional list of mandatory requirements, to which new items are added by case-law, proved to be a necessary element for flexible application of the prohibition of quantitative restrictions.

From the legal viewpoint, the difference between applying derogations under Article 36 TFEU and under the Cassis de Dijon I is that Article 36 provides derogation for both indistinctly and distinctly applicable measures, while the condition for derogation under Cassis de Dijon I is that the measure in question is indistinctly applicable (it does not concern distinctly applicable measures at all).

Common Commercial Policy

The external trade relations of the European Union are defined uniformly for all Member States. EU bodies set the Common Commercial Policy, which belongs to the exclusive competence of the EU. It means that EU bodies cannot shape trade relations with third countries on their own.

At the same time, EU bodies ensure that the EU market is protected from unfair competition on the part of undertakings from third countries in the form of imports at dumping prices (dumped imports) or subsidized imports.[24] A product is considered as being dumped if its export price to the European Union is less than a comparable price for the like product, in the ordinary course of trade, as established for the exporting country. Investigations conducted in such cases establish whether dumping actually occurred. If the charges are confirmed and the release of the product for free circulation in the EU causes injury, anti-dumping duties may be applied to the imported products. We should distinguish dumped imports from subsidised imports.[25] Subsidies may be granted by the government of the country of origin of the imported product, or by the government of an intermediate country from which the product is exported to the EU. Subsidies are understood as a financial contribution by a government or any public body for the manufacture, production, export or transport of any product or other form of income or price support, or other benefit conferred on the recipient enterprise.[26] A countervailing duty may be imposed for the purpose of offsetting any subsidy granted, if the release of a product for free circulation in the EU causes injury. Anti-dumping and anti-subsidy rules of the European Union are related to the free

[24] Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, OJ L 56, 1996, pp. 1–20, as amended.

[25] See: Council Regulation (EC) No 597/2009 of 11 June 2009, OJ L 188, 2009, pp. 93–126.

[26] The most common forms of subsidies include: grants, loans, equity infusions or fiscal incentives, such as tax credits.

movement of goods, as it concerns the protection of the internal market from the inflow of products from non-EU states. On the other hand, in trade relations between the Member States dumping and subsidising practices are subjects to rules of competition (rules applied to undertakings and prohibition of state aid).

Nonetheless, anti-dumping and anti-subsidy rules can also be considered as part of competition law, as dumped imports may violate the rules of competition on the market.

2. Free movement of persons

Free movement of workers

Free movement of workers should be distinguished from the freedom of establishment (the right to pursue a business activity) of self-employed persons and from the free movement of services. The difference is that free movement of workers concerns employed persons. To put it simply, free movement of workers concerns natural persons employed under a fixed work contract. The freedom of establishment and the freedom of providing services concern self-employed natural persons as well as legal persons and entities without legal personality (such as subsidiaries, agencies etc.)

As regards natural persons, the Treaty provisions regulate only the free movement of workers. By means of secondary laws some rights are extended to worker's family members. The Treaty protection covers those who work in a different Member State than the one of which they are nationals, that is those who are migrating ('moving'). The provisions of the TFEU usually do not concern those working in their own countries (with the exception of cases when a national of a state has obtained in another Member State qualifications for the work which he or she is starting in his or her own country). Moreover, this freedom covers only persons who work professionally (against remuneration), and not those who work without being paid, e.g. for altruistic reasons or solely for the purpose of rehabilitation or as a part of education.

Legal basis

Primary law

The general legal basis is stipulated in Articles 45–46 TFEU. Article 45(1) and (2) are directly effective, as they constitute the national treatment clause concerning workers, which consists in abolishing discrimination between national and foreign workers as regards employment, remuneration and other conditions of employment. The essence of the free movement of workers is the prohibition of different treatment of workers who are nationals of other Member States, and thus are guaranteed a treatment which is not worse than that of national workers.[27]

[27] The so called reverse discrimination was mentioned earlier.

Discrimination can be open (on grounds of nationality) or hidden (on grounds of other factors but having equivalent effect – such as the requirement of residence in the host state). Any collective or individual regulation concerning eligibility for employment, employment, remuneration and other conditions of work or dismissal issued by a Member State is ineffective in so far as it is contradictory to the prohibition of discriminatory treatment.[28]

A specific legal basis for the free movement of workers is laid down in Article 47 TFEU, which concerns international exchange programmes for young workers and Article 48 TFEU, which is the basis for secondary legislation concerning social insurance of employed persons moving in the territory of the European Union and their entitled dependants.[29] For the purpose of this text, these issues have been omitted.

The most important provisions of secondary law laying down more specific rules to Article 45 TFEU are:

- Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union,[30]
- Council Directive No 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (the 'Residence Directive').[31]

Personal scope of application

The Treaty provisions regulating the free movement of workers are applied to employed persons (including seasonal workers and frontier workers). Under secondary law the families of workers also have some rights in this respect.

Employed persons

An employed person is a natural person who performs work for and under the direction of another person in return for which he or she receives remuneration. Employees must be citizens of the European Union.[32] Case-law established that this work does not have to be of commercial character (e.g. priest), but must be genuine and effective (e.g. work relations established without the need to actually pursue the activity are excluded).

The free movement of workers does not apply to employment in the public service (Article 45 (4) TFEU). It means that a Member State may make access to employment in public service dependent on having the nationality of this state. Under case-law, this exception applies only to access to employment, and not to

[28] See: Article 7(4) of Regulation (EEC) No 1612/68 of 15 October 1968, OJ L 257, p. 2.

[29] However, this provision has a broader personal scope – it refers also to self-employed persons (those enjoying the right of establishment) and to their dependants.

[30] OJ L 141, pp. 1–12.

[31] OJ L 158, p. 77.

[32] A citizen of the European Union is every person who is a national of one of the Member States; each state defines its rules of nationality on its own.

the conditions of employment. Therefore, if a Member State does not take advantage of the admissible exception and allows for nationals of other Member States to be employed in its public service, it may not invoke the exception to justify unequal treatment as regards employment conditions.[33]

The substance of worker-related rights

Workers have the following rights:

- The right of access to employment under the same rules as national workers. National provisions which are in conflict with this rule are not applicable. It concerns in particular the Member State provisions which limit application for and offers of employment, or the right of foreign nationals to take up and pursue employment or subject these to conditions not applicable in respect of own nationals. It also concerns national rules where, though applicable irrespective of nationality, their exclusive or principal aim or effect is to keep nationals of other Member States away from the employment offered (disguised or hidden discrimination). However, these rules are not applied to language requirements, if relevant language skills are necessary due to the nature of the performed tasks. The right of access to employment also encompasses the right of access to the assistance from employment offices or other forms of job-seeking assistance. Employment offers cannot depend on meeting health or professional criteria, which are discriminatory on the grounds of nationality.
- The right to equal treatment in employment (equal conditions of employment and work). The Court of Justice interprets the concept of conditions of employment very broadly. It encompasses, for instance, completing military service in another country or length of service, or the right of railway employees to rail discounts. However, the right to equal conditions of employment in particular concerns remuneration, dismissal, and reinstatement or re-employment in the event of becoming unemployed. In addition, migrating workers are subject to the same social and tax benefits as national workers (in older case-law of the Court, for instance the right of residence of a cohabiting partner who was not a worker was considered a social benefit[34]). Under Article 7(4) of Regulation 492/2011 *'any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for employment, remuneration and other conditions of work or dismissal shall be null and void'* in so far as it is not in conformity with the above rules.
- Equal trade union rights and the right to trade union activities. Each worker has the same trade union rights and the right of eligibility for workers' representative bodies in the undertaking (for instance, in work councils

[33] Case 152/73 *Sotgiu v Deutsche Post* [1974] ECR 153.
[34] See: case 59/85 *Netherlands v Ann Florence Reed* [1986] ECR 1283.

operating in some countries). However, workers may be excluded from taking part in the management of bodies governed by public law and from holding an office governed by public law.

- Equal access to the rights and benefits accorded to national workers in matters of housing, including ownership of the housing the worker needs.

Families of workers

The only right of family members which remains in strict relation to the status of a worker who is or was employed in the territory of another Member State is the right of the worker's children (regardless of their nationality) to access the common education system, professional education and vocational training under the same conditions as the nationals of the host Member State (on the condition that these children live in the territory of the state in question).[35]

As opposed to the earlier rules on this subject, the right of residence of workers' family members is presently related to EU citizenship. Consequently, the right of residence of family members of an EU citizen who are not nationals of any Member State depends on their bonds with the EU citizen, and not on his/her worker status. In these matters, the provisions of the Residence Directive apply.

3. Right of establishment

The right of establishment was regulated in Title IV of the TFEU, concerning the free movement of persons, services and capital. From the point of view of the Treaty structure, it constitutes a separate freedom of the internal market. This understanding of the right of establishment is justified, as it differs in terms of substance and personal scope of application from the free movement of workers and the free movement of services. Thus, the right of establishment can be treated as a separate freedom of the internal market, a natural bridge between the movement of workers and the movement of services, having its own unique features.

Legal basis

The current right of establishment is governed by Articles 49–55 TFEU. The substantive and personal scopes of this right are regulated in Articles 49 and 54 TFEU. Exemptions (justifying reasons) are listed in Articles 51 and 52 TFEU. The other Articles of the Treaty take the form of competence norms (i.e. they establish the competence of the Council and the Commission for adopting legal acts in certain areas, which is to facilitate the implementation of this freedom).

[35] This right was specified in Council Directive 77/486 of 25 July 1977 on the education of the children of migrant workers, OJ L 199, p. 32.

Personal scope

As opposed to the free movement of workers, the right of establishment pertains not only to natural persons (Article 49 TFEU), but also to legal persons and entities without legal personality (Article 54 TFEU).

As regards natural persons, only EU citizens enjoy this right. As regards legal persons or entities without legal personality, their 'nationality' (belonging to a certain country) is determined, depending on the country, either according to the location of their registered office or according to the place of registration.

As is the case with the other freedoms, the personal scope of the right of establishment covers 'moving' entities, i.e. those which take on activities as self-employed persons in a different Member State than the one of which they are nationals (natural persons) or in which they have been established (legal persons or entities without legal personality).

As regards undertakings, the right of establishment encompasses the following forms of activity in the host state:

- pursuing activities through an agency or branch (primary establishment);
- setting up a secondary establishment (e.g. a subsidiary which is formally a separate legal entity).

The right of establishment also covers persons managing an undertaking, but not being its employees in the host state (e.g. company representatives).

The right of establishment pertains only to entities pursuing activities of a commercial character. Thus, persons pursuing non-professional activities or performing voluntary work do not enjoy protection. Activity of a commercial character is an activity for which the given person receives remuneration, although it does not necessarily have to be profit oriented. However, in vague situations, it will depend on the interpretation adopted by the Court of Justice in each individual case.[36]

Substantive scope

The substance of this freedom is based on the following rights:

- the right to take up activities as self-employed persons and access to such activities;
- the right to set up and manage undertakings (particularly companies).

The first sentence of Article 49 contains a prohibition of restrictions on the freedom of establishment of nationals of a Member State in the territory of

[36] There is a broad range of situations which require individual judgement, as proved by the case C-16/93 *R.J. Tolsma v lnspecteur der Omzetbelasting Leeuwarden*, ECR [1994] I-753. The Court of Justice provided an interpretation of the term 'service' for the purpose of the Sixth Directive on the harmonization of laws relating to the VAT, in the context of activities of a street musician who performs for voluntary donations of passers-by. In its interpretation (made for the purpose of tax law) the Court held that the activity of a street musician is not a *'service effected for consideration'* within the meaning of the Second Directive. The reason for this judgement was that no remuneration had been stipulated for the musician's activity as a form of consideration and that the amount of donations is impossible to determine.

another Member State. Business activity can be pursued in the territory of another Member State under the conditions laid down for the nationals of the country where such establishment is effected (the prohibition of discrimination). The observance of this non-discrimination rule is strictly supervised by the Court. Discrimination is prohibited, both in the open form (i.e. on the grounds of nationality or citizenship), and in the hidden form (e.g. on the grounds of place of residence). As established by case-law, Article 49 TFEU has a direct effect.[37]

A necessary condition for pursuing economic activity is the prohibition of restrictions on the lease of premises, purchase of real estate and capital investments under the provisions on the free movement of capital. Therefore, the condition for introducing the right of establishment in this respect is a full liberalisation in terms of freedom of investment.

The right of establishment also has a number of links to other personal freedoms, namely:

- enjoying fully the right of establishment (as well as the freedom of services and taking up employment) often depends on recognising the validity of qualifications. In the mid-1980s, the Community introduced a common system of mutual recognition of diplomas (horizontal harmonization), which complemented the vertical harmonisation system applied so far;[38]
- EU rules concerning the right of establishment do not exclude the possibility of specifying the conditions for pursuing a certain activity (so called 'regulated professions'), which (although non-discriminatory) may constitute a hindrance in starting the activity by entities from other Member States, or even may constitute additional requirements for foreign entities.[39]

[37] See below: case 2/74 *Reyners*.

[38] Article 53(2) TFEU – as the legal basis for medical and pharmaceutical profession and related (paramedical) professions, such as general practitioners, nurses, dentists, veterinaries, midwifes etc. Usually each specialisation is governed by two sets of rules: one harmonizing minimum formal qualifications and one concerning the recognition of qualifications provided that some minimal requirements are met. Article 53(1) TFEU covers all other occupations and constitutes a general legal basis for directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications. E.g. Council Directive 77/249/EEC concerning legal services.

[39] It is especially important as regards financial and insurance services. Several directives were adopted in the field of insurance activity, which harmonise the conditions for administrative permits for this kind of activity in another Member State and the conditions for financial guarantees for: life insurance and civil liability insurance, 'major risk' insurance and single Community authorisation (currently there are two directives in place: one relating to life insurance and the other relating to other direct insurance).

As regards banking, the directives adopted concern the harmonization of conditions for issuing a permit, and introducing the freedom of providing banking activities (a single Community authorization since 1 January 1993 r. and establishing a subsidiary without permit).

As regards the functioning of the stock exchange and public trade in securities, the harmonized issues include the conditions for admitting securities to official listing and conditions for investment funds (see also the section on the free movement of capital).

Under Article 51 TFEU, the provisions of the right of establishment do not apply to activities which are connected, even occasionally, with the exercise of official authority in one of the Member States concerned. The interpretation of this provision by the Court is functional and restrictive. It is similar to the rules applied by the Court to 'employment in the public service' subject to the provisions on the free movement of workers. For instance, the activity of security agencies or court experts for road accidents is not covered by this exception.[40]

4. Free movement of services

Legal basis

The primary law which forms the basis of the free movement of services, namely the provisions of the Treaty on the Functioning of the European Union, is contained in Articles 56–62 TFEU.

Personal scope of application

As regards personal scope, this freedom concerns service providers as well as service recipients. The condition for enjoying this freedom is that the recipient of a service is located in another Member State than the service provider. Thus, we can derive the following rule from it: the freedom of providing services concerns nationals of Member States residing in other Member States than the recipients of services and recipients who reside in a different Member State than the service provider. Consequently, we speak of the right to provide services and the right to use the services.

It should be pointed out that Article 56 TFEU, which is directly effective,[41] contains a prohibition of any restrictions on the freedom to provide services. Therefore, we could say that the EU legislator supports full liberalisation of trade in services.

The key concept for the free movement of services is the concept of service. As opposed to the freedoms of the internal market, which lack the definition of elementary terms, the definition of 'service' is stipulated in Article 57(1) TFEU. It is a negative definition, as under this Article 'services' within the meaning of the Treaties are the services normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. As regards types of services, the Treaty distinguishes for instance: activities of an industrial character, activities of a commercial character and activities of the professions.[42] The constituting element of a service is that

[40] Case C-42/92 *Adrianus Thijssen v Controledienst voor de verzekeringen* [1993] ECR I- 4047 or C-306/89 *Commission v Greece* [1991] ECR I-5863.

[41] Case 33/74 *Van Binsbergen v Bedrijfsvereniging voor de Metaalnijverheid* [1974] ECR 1299.

[42] Professions should be understood as, for example: lawyers, nurses, doctors, architects etc.

the service provider receives remuneration for it. Under case-law, activities pursued on a voluntary basis or activities which are a manifestation of beliefs of a person are not services within the meaning of the Treaty, and thus are not subject to protection.[43]

In the provision of services on the territory of a state for which they are provided, there is a prohibition of discrimination, which means that foreign entities must be treated the same as national entities. There is also a prohibition of disguised (hidden) discrimination, seemingly based on neutral conditions, but in fact hindering the provision of services exclusively, or mainly, with respect to service providers from other states.

As mentioned above, the freedom of providing services concerns natural persons, legal persons and entities not having legal personality. As opposed to the freedom of establishment, service providers or recipients reside in another Member States only temporarily, in order to provide a service or receive a service.

Consequently, we can distinguish three forms of movement of services:

- active – when a service provider goes to another Member State in order to provide services;
- passive – when a service recipient goes to another Member State in order to use a service;
- distance – when the service provider and the recipient remain in different Member States, and service itself moves.

We should note that only some types of services can take the form of distance service (in particular those, where a service can be provided, for instance, by phone, fax, electronic mail etc.). Due to the development of means of communication, this form is becoming increasingly popular. For this reason, the EU supports the development of these means, as every distance form significantly extends the possibilities of trade in services between the Member States (for example, the EU fosters the development of electronic trade by adopting relevant laws harmonizing national legislations of the Member States).

Some types of services may be subject to derogation from the free movement of services. Such exemptions are made under Article 51 TFEU (through a reference to this provision made under Article 62 TFEU). In reference to the first paragraph of this Article, activities which in one state are connected, even occasionally, with the exercise of official authority are exempted from the free movement of services. This exemption may be invoked by a state from which the service is provided as well as by the state in which it is provided. The rules concerning exemptions described in the section concerning the right of establishment apply also to the freedom of providing services, as regards the functional and restrictive interpretation and the examples of judgements.

[43] C-159/90 *Society for the Protection of Unborn Children v S. Grogan & Others* [1991] ECR I-4685.

The substance of the free movement of services

Under the last paragraph of Article 57 TFEU, the person providing a service may, in order to do so, temporarily pursue his or her activity in the Member State where the service is provided, under the same conditions as are imposed by that State on its own nationals. Hence, this freedom is based on the national treatment clause. However, it has a different meaning than the same rule in the freedom of establishment. In interpreting the national treatment clause we should assume that the service provider provides services under the rules applicable in his country of origin. Therefore, the fact of being in the territory of the host state is limited in time. The service provider does not have any economic connection to the host state. Thus, it would be unreasonable to require that he fully meets the requirements applicable to activity pursued in the host state.

We should distinguish two different situations which are subject to the rules of two different freedoms of the internal market: the right of establishment and the free movement of services. The right of establishment covers situations when an entrepreneur becomes a permanent part of the economy of another Member State, and thus has to meet all the legal requirements which this state applies to its own entrepreneurs. On the other hand, as regards the free movement of services, the presence of an entrepreneur in another Member State is only occasional and the stay is limited in time to the provision of the service. Therefore, the rules applied to it are more liberal: as regards the conditions of pursuing an activity, it is based on the laws of the country of establishment.

Attempts to circumvent the national rules by invoking the more liberal system of movement of services in situations when a service provider is permanently established in the host state have forced the Court of Justice to take a stand on more detailed rules distinguishing these two freedoms. Detailed guidelines were specified in the judgement in the Gebhard case.[44] The most important of them is the place of residence (for natural persons), tax domicile, having a relevant infrastructure in the host state, duration of stay of the entrepreneur (or his employees) in the territory of the state in which services are provided as compared to the state in which the main activity is pursued. Also the percentage of customers handled in a given country in relation to the total number of customers of the enterprise is not without importance. On the basis of the above guidelines, we can make a distinction only in very explicit situations. The Court stressed that none of the above guidelines can alone determine whether we classify a case to one freedom or the other. Thus, the assessment of vague or more complicated situations may give rise to doubts. We also have to take into account the type of activity (e.g. in the case of construction services the duration of stay in the host state will be much longer and will require a more extensive infrastructure than the activity of a tax advisor).

[44] Case C-55/94 *Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano* [1995] ECR I-4186.

Another question which requires an explanation is the relation between the treaty provisions on the free movement of services to the provisions on the free movement of goods.[45] Delivery of goods is often linked to some services or the other way round – a necessary condition for the provision of a service is sometimes the delivery of certain goods. Sometimes the same activity will be qualified to one of the freedoms, and next time to the other, depending on the carrier. Broadcasting a film in the television or paid films on-line will be treated as service, while cross-border sales of a DVD carrier with a film recording will constitute movement of goods. However, with the development of technology, many unclear situations give rise to legal challenges. For example, a situation which is hard to classify is when a film is downloaded, against payment, from the Internet (although the author of this text believes that such a situation should rather be governed by the rules of free movement of goods). Doubts of this kind of are generally dispelled by ECJ case-law.

The final question concerning the relations between the free movement of services and the other freedoms of the internal market is the relation between this freedom and the free movement of workers when employees are sent to another Member State to provide services. It is only natural that entities providing services may want to use their own workers employed in the state of establishment. This problem is related to an extremely sensitive issue of 'social dumping'. There is no doubt that the conditions of employment and the related employee rights are an important element influencing the price of service. Due to the fact that there are substantial differences between the Member States in this respect, undertakings operating in countries with lower employment costs, by posting their workers in the framework of the provision of services may, from the perspective of entrepreneurs established in the host state, cause unfair competition. There is no common position among the Member States on how to solve this problem, which was one of the main reasons for the collapse of the rule of 'origin of the service' laid down in the first proposal for the Services Directive.[46] The issues concerning the delegation (posting) of workers were therefore regulated by Directive 96/71 concerning the posting of workers in the framework of the provision of services.[47] Under this directive, as regards the minimum standards of employment protection applicable in the host state to posted workers, the rules established by the law of the state in which the services are provided apply, even when they are posted on a temporary basis. Other rules which can be applied are the provisions of collective agreements negotiated in the host state in the industry or profession, in

[45] The classic judgement in the case C-275/92 *H.M. Customs and Excise v Schindler* (ECR [1994] I-1039) explained that when a material substrate (e.g. lottery or concert ticket) is only supplementary to the main activity which consists in providing services, the rules of free movement of services apply.

[46] Directive 2006/123/EC of 12 December 2006 on services in the internal market, OJ L 376, p. 36.

[47] OJ L 1997, p. 1.

which the services are provided. The problem of applying national law to posted workers was the subject of a preliminary ruling of the Court of Justice in the Laval case.[48]

An essential barrier to the provision of services of a certain kind can be the requirements of a Member State aimed at the protection of public interest (e.g. a requirement to obtain a licence or permit for the provision of services from host state authorities). In this case we speak of regulated professions or activity (e.g. performing the tasks of a barrister in a Member State requires being a member of a bar association or other lawyer association in this state; insurance services are supervised by the host state in order to protect the consumers). There is a principle of proportionality of restrictions on activity, i.e. the type of restriction must be proportionate to the objectives which it is to protect (for instance, an excessive requirement would be the requirement of obtaining a licence in the host state if the service provider has similar authorisations in his own state and if they are issued in a similar procedure or by applying similar requirements).

The right of residence of EU citizens

The basic condition for enjoying personal freedoms is the possibility of free movement and residence of persons in the territory of the European Union.

The Schengen Agreements abolished border controls and the Treaty of Maastricht introduced the institution of EU citizenship to the Treaty on the European Community, thus becoming the germ of important changes in the ECJ case-law concerning the right of residence, which in consequence brought about changes in the secondary law.

In the traditional case-law, only the citizens of a Member State having a privileged status – i.e. workers or persons subject to the right of establishment or provision of services enjoyed the right of residence on the territory of another Member State. These rules existed either on the basis of the Treaty or on the basis of secondary law (as was the case with family members). Equal treatment did not apply to persons who did not have such status. Thus, the right of residence of workers' family members depended on the existence of family bonds with the given worker. For example, after divorce the spouse who was not a worker lost the right of residence in the host state. It was the same with persons searching for work. Persons searching for work, who failed to prove that they were actively searching for work and that they had a chance to find it, could be expelled from the host state.

Later, persons who by definition were not workers, for instance students or retired persons or former spouses of a worker, gained the right of residence under

[48] Case C-341/05 [2007] ECR I-11767. The case had an interesting final in the national court: the Swedish court adjudicated to the company Laval (under insolvency) a compensation for the action conducted by Swedish trade unions which prevented the company from building a school in Sweden. The amount of compensation was higher than the loss actually incurred by the company, which is to discourage the perpetrators from harmful actions in such situations in future (so called 'exemplary damages').

separate provisions (directives) and under conditions specified in these provisions, not under the Treaty provisions on the free movement of workers.[49]

In 1998, the Court of Justice issued a judgement in the case Maria Martinez Sala, which was a milestone in residence matters.[50] The Court accorded the right to equal treatment to a Spanish citizen who had resided permanently in the territory of the host state (Germany) for a long period and benefited from social assistance (she had been unemployed for a long time). The Court linked her right to equal treatment in receiving a child raising allowance to the fact of being a national of a different Member State, and not with the fact of having the right of residence. As a consequence of the above judgement, the right to equal treatment was no longer a privilege enjoyed by employed and self-employed persons, service providers or recipients, and has become the privilege of all EU citizens.

The Residence Directive

As a result of the direction established in the ECJ case-law, in 2004 the Council adopted Directive No 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (the 'Residence Directive'), which harmonised the conditions under which EU citizens and their family members have the right of residence. As a rule, the directive applies to all persons who are EU citizens and their family members (regardless of nationality). Therefore, it is not important for the purpose of these rights, whether the person in question is a migrating worker or not. The necessary condition is only EU citizenship. At the same time, the directive harmonised the rules of applying exemptions under the Treaty.

Under the Residence Directive, all EU citizens who move to or reside in a Member State other than that of which they are a national have the following rights:[51]

- The right to leave the territory of the sending Member State (prohibition of exit visas) and to enter the host Member State (prohibition of entry visas);[52]

[49] In the early 1990s the Community adopted directives concerning tourists, students and retired persons who obtained the right to a retirement pension in another Member State than the host state:

– Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ L 180, p. 26);

– Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity (OJ L 180, p. 28);

– Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students (OJ L 317, p. 59); all provisions described above have been repealed by the Residence Directive.

[50] Case C-85/96.

[51] Most of the rights derived from the Residence Directive were already guaranteed prior to the adoption of the directive under the extensive interpretation by the Court of Justice. For illustration, these judgements are cited in the footnotes.

[52] Case 41/74 *Van Duyn* [1974] ECR 1337.

- The right of residence in the host Member State[53] and the right to move in the territory of the host state.[54] If a person resides in the territory of another Member State for a period of up to three months, he or she does not have to fulfil any additional conditions or any formalities other than the requirement to hold a valid identity card or passport. If the period of residence in another Member State is longer than three moths, any EU citizen has the right of residence if he or she is a worker or is self-employed. A citizen is still treated as an employed or self-employed person when he or she is temporarily unable to work because of a illness or accident or is involuntarily unemployed.[55] Persons who do not belong to any of the above categories can acquire the right of residence if they can prove that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State. In addition, the person and his/her family members must be covered by health insurance in the host Member State. There is a special rule concerning students – they are required only to have health insurance coverage. EU citizens who are staying in another Member State longer than three months can be required to register at the relevant state authority. The registration is not constitutive, i.e. it is not the basis for the right of residence. It has a declarative and not permissory character.[56] The right of residence is established directly under the provisions of the Residence Directive, which were formulated in such a way as to make them directly effective;
- EU citizens who have resided legally for a continuous period of five years in the host Member State acquire the right of permanent residence there; a document confirming this status is the permanent residence permit/card;
- The right of exit from the host state after the termination of employment;
- The right of persons who terminated employment in the host state and their families to remain in the territory of the host state, provided that all premises set forth by secondary law are fulfilled.[57]

The term family member has been specified in the Residence Directive and today it covers only persons who are not citizens of the European Union. Family member means: the spouse, the partner with whom the EU citizen has contracted a registered partnership (if the legislation of the host Member State treats registered partnerships as equivalent to marriage), the direct descendants (under the age of 21 or being dependants), the dependent direct relatives in the ascending

[53] Case 118/75 *Watson & Belmann* [1976] ECR 1185.

[54] Case 36/75 *Rutili* [1975] ECR 1219.

[55] Maintaining the status of worker or self-employed person by unemployed persons is subject to an additional condition, which is an obligatory registration in a relevant employment office. If a person worked for over a year, the status is maintained for the whole period of unemployment. However, if a person worked under an employment contract for a period shorter that a year, he/she maintains the status for six months.

[56] Case 48/75 *Royer* [1975] ECR 497.

[57] Article 17 of the Residence Directive.

line and those of the spouse or partner. The present definition of family member is broader than the earlier definition, stipulated in the repealed Regulation 1612/68. By including partner relationships in the personal scope of this right the new definition takes into account earlier case-law created by the Court of Justice, which, as mentioned before, had included the right of residence of a worker's partner to social benefits under the said regulation. The conditions for obtaining the right of residence for family members who are not Union citizens are essentially the same as those for EU citizens, the difference being that family members who are citizens of third countries are subject to more specific formal requirements than the Union citizen himself/herself. For instance, they are not exempted from the obligation of having an entry visa, if such an obligation is prescribed by EU law. If their stay lasts longer than three months, they are required to obtain a residence card. There may be additional formal requirements related to the issuing of such permit. The card is valid for five years or for the expected duration of stay, if it is less than five years. As is the case with EU citizens, family members who are not citizens of the Union also obtain the right of permanent residence after five years of legal stay in the host state. As a confirmation of this right, family members receive a permanent residence card. The right of residence or permanent residence is linked to other related rights, such as the right to work or to be self-employed in the host Member State.

Justified derogations from the restriction of the free movement of persons and services in individual cases

Under the first paragraph of Article 45(3) TFEU, a Member State may limit the free movement of workers on grounds of public policy, public security or public health. Similarly, under the right for establishment and free movement of services, Member States can apply rules providing for special treatment of foreign nationals on grounds of public policy, public security or public health (Article 52(1) and 62 TFEU).

These exceptions are interpreted in a restrictive way.[58] The Member State measures adopted within the framework of these provisions consist in restrictions on the right of residence (e.g. by prohibition of entry or by expulsion from the host state) and must fulfil the conditions laid down in the Residence Directive.[59] Due to the fact that the Residence Directive is based on citizenship, the above rules concern not only economically active persons, but all EU citizens and their family members who are not EU citizens in so far as the national laws infringe the right of residence. Hence, the personal scope of the Residence Directive is broader than the personal scope of the treaty provisions mentioned above. The Directive is based on the following rules:

[58] Cases 41/74 *Van Duyn* [1974] ECR 1337, 36/75 *Rutili* [1975] ECR 1219.

[59] Earlier, they were regulated in the Council Directive 64/221 of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, OJ L 56, p. 850.

- the grounds mentioned above may be invoked to serve economic ends;
- measures taken by a Member State on grounds of public policy or public security must be based exclusively on the personal conduct of the individual concerned (they cannot constitute a general prevention measure), which must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of the society;
- measures taken on grounds of public policy or public security must be proportionate;
- previous criminal convictions do not constitute in themselves grounds for taking such measures;
- ascertaining whether the person concerned represents a danger for public policy or public security must take place not later than three months from the date of arrival;
- the fact that the identity document which was used to enter the host state or obtain the residence card is no longer valid does not constitute the basis for expelling the person from the host state;
- the only diseases justifying a denial of entry to a host state under the public health objective are the diseases with epidemic potential as defined by the relevant instruments of the World Health Organization and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the host Member State. Whereas diseases occurring after a three-month period from the date of arrival do not constitute grounds for expulsion.

Persons who were denied entry or a residence card, or whose residence card has not been prolonged, and persons in relation to whom there is an expulsion decision, have certain rights and procedural safeguards, which were specified in the Residence Directive (e.g. the obligation of notifying the person about the expulsion decision, the right for justification of the decision, the right to appeal from such a decision).

Some provisions of the Residence Directive are formulated in such a way that they fulfil the conditions of direct effect, and therefore the persons concerned may invoke them in order to render noncompliant national measures invalid.

5. Free movement of capital and payments

The primary law basis of the free movement of capital

The matters concerning free movement of capital and payments are regulated by Articles 63–66 TFEU. These provisions have been in effect in this form since 1 January 1994, i.e. since the commencement of the implementation of the common economic and monetary policy with the aim of creating the Economic and Monetary Union. This policy is regulated separately in Title VIII Economic and Monetary Policy, namely by Articles 119–133 TFEU. Due to the narrow scope of this text, the principles of this policy will not be discussed here in

depth. However, it should be stressed that it is a somewhat artificial division. From the economic viewpoint, the free movement of capital is part of the subject matter regulated by the provisions concerning common monetary policy (Articles 127–133 TFEU).

Free movement of capital – the scope of application

Subject to Article 63 FTEU, the free movement of capital encompasses:

- a prohibition of restrictions on the movement of capital *sensu stricto* (i.e. investments),
- a prohibition of restrictions on payments.

Both these prohibitions concern not only mutual relations between the Member States, but are also applicable to third countries. Thus, free movement of capital is the only freedom of the internal market which concerns not only the movement between the Member States, but also regulates the capital flow from the Member States to third countries.[60]

Free movement of capital – the aims

The free movement of capital is a necessary element of the internal market. It is difficult to imagine the implementation of the other freedoms without the possibility of paying for services, transfer of gains from one country to another or without the possibility of investing capital in the country in which there are the best conditions for it.

Before the Economic and Monetary Union was established, the free movement of capital had been the least advanced freedom in the internal market. The reason for this was that the movement of capital is important from the point of view of monetary policy, which then was the exclusive competence of Member States. This justified the doubts whether the scope of liberalisation of the movement of capital was the same as the liberalisation of the free movement of goods, services and workers. Most theories gave a positive answer to this question. Today, this problem is no longer valid, as after the establishment of the monetary union the barriers related to the existence of national currencies were broken.

Generally, we can say that free movement of capital is introduced by organising space where demand meets supply from the whole Union in an unhindered way in order to facilitate investment in trade and industry (so it is not only about liberalising direct investment).

With respect to investment and loan policy, the aim of the free movement of capital is optimal allocation of production. As regards the issue of inflow of speculative capital, introducing this freedom is supposed to prevent it by coordination of economic policies of the Member States.

[60] It does not necessarily mean that the prohibition of restrictions on the free movement of capital and payments must be reciprocated by third countries. These prohibitions are not dependent on reciprocity, as regards third countries.

The concept of capital and the concept of payment

The main judgement of the European Court of Justice defining capital and payments is Luisi & Carbone.[61] In this judgement, the scope of the free movement of services and capital show the meaning of the free movement of payments. The export of a large quantity of banknotes from a country is not interpreted as the movement of capital, if the aim of this export is to fulfil financial obligations under transactions liberalised since the end of the transition period. This refers to transactions in the fields of tourism, business, education and medical treatment.

It is noteworthy how the terms are distinguished. Namely, financial operations essentially consist in investing funds, not in paying for services. The Member States must allow the movement of capital meant for payments. If there is a system of permits, such a permit must be issued. This obligation is directly effective and must be enforced by national courts.

Free movement of capital – exceptions

Community law defines a set of exceptions concerning the free movement of capital:

1. Article 64(1) TFEU (standstill clause) stipulates that restrictions on the free movement of capital introduced under national laws of the Member States are allowed if the following conditions are fulfilled:
   - the restrictions in question were already in place on 31 December 1993,[62] (or, in relation to Bulgaria, Estonia and Hungary, on 31 December 1999);
   - the restrictions must belong to the scope of the free movement of capital to or from third countries;
   - the restrictions were taken under national or EU law;
   - the restrictions involve direct investments, investments in real estate, investments related to establishment, the provision of financial services or the admission of securities to capital markets.
2. Under Article 65(1) TFEU, the Member States are entitled to (provided that the provisions do not constitute arbitrary discrimination or disguised restriction on free movement of capital):
   - apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested;
   - take all requisite measures to prevent infringements of national law in the field of taxation and supervision of financial institutions, and procedures for the declaration of capital movements for purposes of administrative or statistical information;

[61] Cases 286/82 and 26/83 *Luisi & Carbone v Ministero del Tesoro* [1984] ECR 377.

[62] That is, on the last day before the establishment of the Economic and Monetary Union (its implementation in the territory of the European Union started on 1 January 1994).

- take measures which are justified on grounds of public policy or public security.

3. Pursuant to Article 66 TFEU, where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of the economic and monetary union, the Council may take safeguard measures restricting the movement of capital, if such measures are strictly necessary.

An addition to the liberalisation of capital is the harmonisation of large areas of the Member States' legal systems. This concerns in particular tax law (e.g. unequal discriminatory taxation, double taxation of profits from undertakings), special rules for certain financial channels, rules of stock exchange as well as rules for institutional investors and administrative interventions as to the investment of funds.

Conclusions

What follows from the above is that the concept of the common market is heading towards the establishment of an economic area in which all the participants of economic relations coming from the Member States may freely invest, produce, work, sell, purchase, provide or use services where it most fits them. These participants are to be treated without discrimination on grounds of nationality and without any distortions of competition caused by states or other participants in the market. The above text provides a simplified outline of the functioning of the four freedoms the internal market. It does not, however, include a description of European Union policies. In particular, it passes over the Common Commercial Policy, which is the external aspect of the free movement of goods, and the competition policy, the aim of which is to ensure uniform conditions of competition for enterprises in the European Union.

To conclude, it should be emphasised that the freedoms of the internal market constitute a solid foundation for the functioning of the European Union, ensuring stability of economic exchange and competitiveness of the EU Member States' economies in relation to non-European economies.

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The EU in Action – Institutions and Decision-Making Processes

Introduction

The institutions of the European Union, their composition and scope of competences, have been shaped in a very long process of deepening the European integration. Initially, the institutional system was created for the European Communities comprising six states, with cooperation between them limited to several sectors of economy. The further process of enlarging the Communities by including new states and of deepening cooperation by adding new sectors of economy has contributed to the evolution of the institutional system. The evolution was accompanied by competition between two models of organisation of the European Communities/European Union, i.e. the federal model and the confederal model. The Treaty of Lisbon, which is, to a certain extent, the result of attempts to establish a European constitution, is a temporary compromise between these two visions. After the Treaty of Lisbon, the European Union is an international organisation in which supranational and intergovernmental solutions have been merged. As a result of many years of negotiations between the 27 Member States of the European Union, two treaties entered into force in 2009: the Treaty on European Union and the Treaty on the Functioning of the European Union (jointly referred to as the Treaty of Lisbon), which defined the institutional system of the European Union and reformed the EU decision-making process.[1]

1. Institutions of the European Union

Under the Treaty on the Functioning of the European Union, the organisation has the following institutions:

[1] See: A. Adamczyk, *The Role of Poland in the Institutional System of the European Union* in: *Poland in the European Union: Adjustment and Modernisation. Lessons for Ukraine*, A. Adamczyk, K. Zajączkowski (eds.), Warsaw–Lviv 2012.

- The European Council,
- The European Parliament,
- The Council (Council of the European Union),
- The European Commission,
- The Court of Justice of the European Union,
- The Court of Auditors,
- The European Central Bank.

1.1. The European Council

The European Council is a political and intergovernmental body established in 1974.[2] It was formed rather late in relation to the establishment of the European Communities, as initially their activities were focusing on economic aspects.[3] The direct reason for the establishment of the European Council was that the EC Member States wanted to play an important role in international relations at the beginning of the 1970s due to the energy crisis in the Middle East (which 'hit' the Community economies particularly hard) and the process of cross-bloc détente related to the preparations to the Conference on Security and Co-operation in Europe.

The political nature of the European Council is determined by its composition, its members being the highest officials of the Member States – the Heads of State or Government – who enjoy the greatest actual power in their countries (hence, there are no monarchs in the body). Most Member States are represented at the summits by their Prime Ministers, but Presidents from several countries (Cyprus, France, Finland) also attend the meetings, depending on the political systems in these countries.

The meetings of the European Council are chaired by the President of the European Council. The President of the Commission, the High Representative of the Union for Foreign Affairs and Security Policy (HR), and the Secretary General of the Council also participate in the summits of the European Council, but do not have the right to participate in the decision-making process. The members of the European Council may decide each to be assisted by the competent minister.[4] The President of the European Parliament may also be invited to the meetings 'to be heard' by the European Council. This is, however, not much more than a courtesy and it happens very rarely.

One of the most important decisions made by the Lisbon Treaty is the establishment of a new position – the President of the European Council. The Presi-

[2] The European Council (composed of the heads of state and government) should not be confused with the Council of the European Union (composed of ministers) – they are two different institutions of the EU. Where the sole name 'Council' appears in documents and texts concerning the European Union, it always means the Council of the European Union.

[3] It functioned informally as early as in the 1960s, under a different name, as the Meeting of Heads of States and Governments, but it was not yet an official institution provided for in the Treaties. For the first time, it was mentioned in the 1986 Single European Act.

[4] Usually the minister of foreign affairs or finance.

dent is elected by the European Council by qualified majority for two and a half years, renewable once. The person who holds this position may not hold any other political functions in any of the Member States. The first President, elected in 2009, was the former Prime Minister of Belgium Herman Van Rompuy. The tasks of the President of the European Council include: preparing, chairing and driving forward the work of the European Council, ensuring the continuity of its work and acting as a mediator to facilitate consensus within the European Council. After each meeting, the President of the European Council presents a report to the European Parliament. The President's tasks also include the external representation of the Union, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy. When the President cannot fulfil his duties (for instance, due to an illness), he is temporarily substituted by the head of government of the country holding the Presidency of the EU Council.

Competences

According to the Treaty of Lisbon, the European Council gives the EU the necessary impetus for its development and defines the general political directions and priorities thereof. This is a fairly general provision, confirming the political nature of this institution; on the other hand, due to its generality, it leaves space for a very broad interpretation, and thus provides great power. However, based on its many years of activity, we can describe its prerogatives in more detail.

The European Council sets the medium- and long-term policy of the development and functioning of the European Union, while coordinating the directions of actions as regards the deepening and stabilisation of the integration process. It dictates the pace at which the EU develops by making decisions on institutional reforms, enlargements, or international agreements. The European Council can suggest (obligatory) drawing up of relevant legislation necessary for the intensification of cooperation within the EU; it is on the European Council's initiative that the convergence criteria were specified and the Economic and Monetary Union (EMU) was created. It was also responsible for deciding which countries were allowed in the EMU. The European Council controls the activity of the Commission, as regards the preparation of documents defining the EU's prospects for development by meticulously examining these documents, as was the case with the Agenda 2000 (a document describing the state of preparations of Candidate Countries to join the EU).

Its most important competences are in the field of external activity of the EU. The Lisbon Treaty provides that the European Council, acting by a qualified majority, appoints the High Representative Foreign Affairs and Security Policy (HR).[5] The HR can also be dismissed by the same procedure. The European Council also takes decisions on the Common Foreign and Security Policy.

[5] In fact, there is no voting because the members of the European Council try to reach a consensus on all decisions.

It also has prerogatives in the fields of free movement of persons, judicial cooperation in criminal matters and police cooperation. In the field of the Area of Freedom, Security and Justice, the European Council sets the strategic directions of the legislative and operational planning. As regards the economic policy, the European Council sets out the general directions of economic policies of the Member States and the EU, and adopts conclusions on the state of employment in the EU.

In addition to appointing the High Representative, the European Council can also appoint: its President, as well as (jointly with the European Parliament) the President of the European Commission and the Members of the Commission. The European Council can also change the number of Members of the Commission. It elects the President, the Vice-President and the members of the Board of the European Central Bank.

Due to its superior political role in relation to the Council of the European Union (because ministers are subordinates of their heads of governments), it always examines conflict matters which cannot be solved within the Council of the EU. Also, despite the official treaty provisions pointing to the Council of the European Union as competent for making decisions, many decisions are made by the European Council, and later formally prepared by the Council of the European Union.

The rules of functioning

The Treaty of Lisbon stipulates that the European Council meets at least twice every half year (so-called EU summits); however, the President may convene an extraordinary summit in case of crucial international or internal events. All formal meetings of the European Council are held in Brussels, but, in exceptional cases, the President may choose a different place for a meeting. Usually the summit then takes place in a city in the country which currently holds the Presidency in the Council of the EU.

Since initially (from 1974) the summits of the European Council were taking place in different venues, depending on the country which held the Presidency, no decision was made to establish a secretariat for this institution to prepare its meetings. Although now there is a permanent place of meetings (Brussels), the institution still has no secretariat of its own. The meetings of the European Council are prepared by its President and the EU Council (composed of ministers for European affairs – the General Affairs Council), mainly by the General Secretariat of the Council. The summits usually last two days.

The meetings are closed and the media are not admitted to them. They consist mainly of negotiations, during which the real role and power of each EU Member State is shown, and the decisions are reached by consensus. The importance of each country in the European Council depends mainly on its ability to form coalitions to pursue its interests. It can be observed that in matters most essential to the EU, the main roles in the European Council are played by

Germany and France, who are usually coalition leaders, while Poland plays an ever greater part in the sphere of EU's Eastern Policy, however, it needs the support of Germany.[6]

Each summit ends with a press conference, at which its decisions are communicated to the public. After each official summit, the European Council publishes its conclusions, which have no legal force, but serve as guidelines for the European Commission and the Council for their further works.[7] The additional, informal meetings of the European Council called by the President do not end with any official decisions, but with a press release instead.[8]

The European Council is of great importance, as it is the decision-making and political centre of the European Union and the main architect of its policy. Its activities are beyond the supervision of any other EU institution, even the Court of Justice of the European Union. The members of the European Council are responsible for its activities in the EU only in their own countries, the citizens of which show their opinion in the national elections.

1.2. The European Commission

The Commission is a supranational Community institution reflecting the federal dimension of the EU. This is shown by its aim – its role is to represent the interests of the Union as a whole, and not the specific interests of individual Member States.

Assuming a position in the Commission, each Member takes an oath not to accept any instructions from their governments, to refrain from activities which are incompatible with the duties of the Commissioner; they are also not allowed to perform other professional activities. State governments undertake not to exert any pressure on their Commissioners. The Commission's term of office is five years, and the term of each Member is renewable. The Commission's seat is in Brussels. The composition of the Commission must be approved jointly by the European Council and the European Parliament.

The procedure of electing the Commission is as follows:[9]

1. The European Council, by a qualified majority of votes, chooses the President of the Commission.[10]
2. The European Parliament endorses the nomination.

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[6] A. Adamczyk, *Prospects for Creating Coalitions witthin the European Union Following its Eastern Enlargement* in: *Globalization, International Business and European Integration,* A.Z. Nowak, J.W. Steagall and M.N. Baliamoune (eds.), Warsaw 2012.

[7] *Proces decyzyjny w Unii Europejskiej. Przewodnik dla urzędnika administracji publicznej (Decision-Making in the European Union. A Guide for Public Officials)*, A. Ambroziak (ed.), Warszawa 2011, p. 17.

[8] Ibidem, p. 31.

[9] Article 17 of the Treaty on the European Union.

[10] The European Council, however, usually does not vote – instead, it makes decisions by consensus.

3. The European Council, with a qualified majority of votes (in consultation with the elected President), nominates the remaining Commissioners, on the basis of the proposals submitted by the Member States.
4. The elected Commissioners and the President are presented to the European Parliament for approval.
5. The Parliament, by voting, approves (*en bloc*) the composition of the Commission.
6. After the Parliament's approval, the European Council formally appoints the Commissioners.

It should be stressed that the approval of the proposed composition of the Commission by the European Parliament is not a pure formality. The Parliament plays an ever greater role in the process of appointing the European Commission. In some cases, the MEPs demanded withdrawing candidates for Commissioners who were morally or professionally controversial, and presenting new proposals by the European Council.[11]

In the term 2009–2014, the Commission is composed of 28 Commissioners, one for each Member State. Under the Treaty of Lisbon, from the next term, which begins in November 2014, the number of Members of the Commission will correspond to two thirds of the number of Member States, based on rule of equal rotation reflecting the demographic and geographical diversity of the Member States. The Treaty, however, leaves it for the European Council to take the final decision on the number of Members of the Commission.

An important innovation introduced by the Lisbon Treaty is the decision that the functions of the Commissioner for External Relations (with the rank of Vice-President of the Commission) and the High Representative for Foreign Affairs and Security Policy (member of the EU Council) will be held by the same person. Therefore, the two functions in two different EU institutions – the European Commission and the Council of the European Union – were combined in one person in order to consolidate EU external policy.

The current President of the Commission (2009–2014) is José Manuel Barroso of Portugal.

A Commissioner's term of office may end in several different ways. In case of a breach of the oath or any abuse by the Commissioners, the European Parliament may vote to dismiss the whole Commission *en bloc* (it cannot dismiss individual Members). In the event of serious misconduct of or inability to exercise the function (for instance, due to a chronic disease) by a Commissioner, the Court of Justice may (but only at the request of the Commission or the Council of the European Union) decide to dismiss the Member of the Commission. Commissioners can also be dismissed by the President of the Commission. Resignation can also

[11] The MEPs have forced the European Council to withdraw the nomination of Rocco Butiglione, a candidate (Italy) to the Commission for 2004–2009 and Rumiana Jeleva, a candidate for Commissioner in the years 2010–2014.

be voluntary or natural (death).[12] In the event of a vacancy, the position in question may remain vacant until the end of the term or a new Commissioner (from the same country) may be appointed by the European Council, by qualified majority voting, but also only until the end of the term.

The rules of functioning

The Commission is a collective body, which is reflected by the fact that decisions are made jointly by its Members. Commission meetings are convened by the President at least once a week. Each Member of the Commission is responsible for a certain range of topics (one or more sectors). According to the Lisbon Treaty, portfolios are distributed among the Commissioners by the President working jointly in this regard with the Member States. However, practice shows that the division of responsibilities is carried out by negotiations between the countries. Major sectors are managed by the Commissioners from the so-called strong countries. Despite the fact that the Members of the European Commission are officially independent and do not execute any instructions from the states, in fact, the Commissioners secretly care about the realisation of the priorities of countries from which they originate. For this reason, every time when it comes to the selection of the European Commission, very difficult negotiations are conducted between governments on the distribution of portfolios. Each country fights for the portfolio which is most advantageous for them in relation to the implementation of their priorities over the following five years.

Each Commissioner has his own political cabinet, composed of six or seven experts and advisors. Officially, the principle of balance should be observed as regards the cabinet members' nationality and sex, but unofficially, they are the most trusted persons of the Commissioner. They are responsible for contacts with other Commissioners and their political cabinets; they prepare positions, which their Commissioner presents at the weekly meetings of the College of Commissioners.[13z] They also monitor the decision-making process in other institutions, i.e. the Council of the EU and the European Parliament, each Commissioner monitoring the field for which he or she is responsible. But, what is most important, the members of a political cabinet maintain unofficial special relations with the Member State from which the Commissioner originates, trying to 'keep in mind' the priorities of their country (despite the official supranational nature of the European Commission).

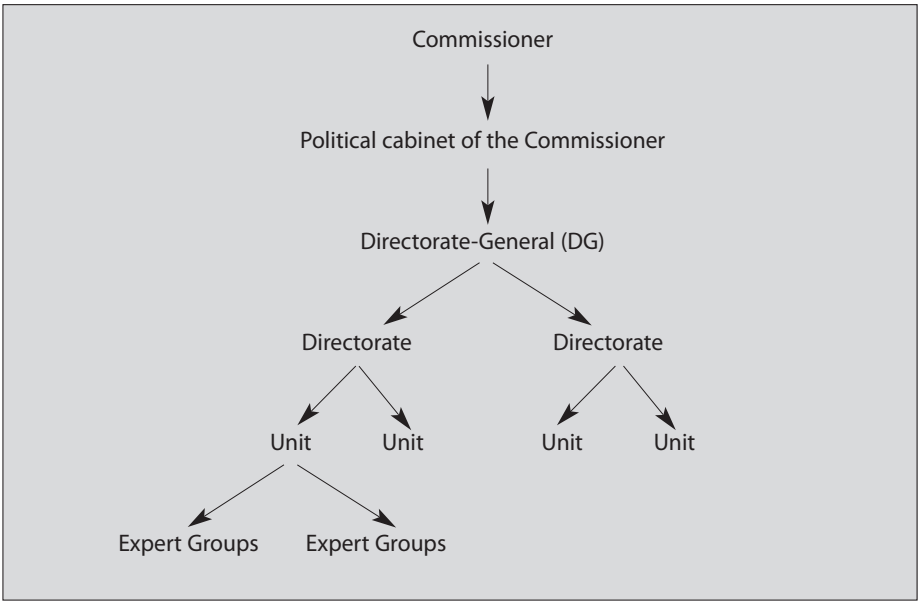
[12] There have been cases of Commissioners resigning their posts in the Commission during the given term of office, as they received proposals to become heads of Ministries in national governments.

[13] The meetings of the College of Commissioners usually take place once a week, on Wednesdays.

The organisational structure of the European Commission includes directorates-general (28), general services (8) and internal services (11). The functioning of the directorates-general resembles the functioning of ministries in national administrations of the Member States. Each directorate-general reports to the Commissioner responsible for the given policy area and performs its duties in accordance with the work plan of the European Commission. Each directorate-general is headed by a Director-General. The activities of directorates-general are controlled by the political cabinets of the Commissioners and the Directors-General have to consult their actions with them. Meetings of the Directors-General with their respective Commissioners take place approximately once a month.

The directorates-general are divided into directorates, of which there are several dozen. They, in turn, consist of units, which work together with expert groups. These groups are composed of scientists, representatives of social and economic partners and officials from some of the Member States. Overall, the whole administrative machinery of the European Commission comprises over 34,000 people.[14]

Chart 1. The organisational structure of the European Commission



Source: Own compilation.

[14] *Policy-Making in the European Union*, H. Wallace, M.A. Polack, A.R. Young (eds.), New York 2010, pp. 72-74.

The College of Commissioners takes decisions by a majority of votes. Usually, however, there is no voting – the decisions are made already at lower levels of administration, in accordance with the principle of consensus.

Competences

The main role of the Commission is to control and monitor the correct application of Community law. This institution observes the correctness of actions of other Community institutions and Member States and national entities. Within its powers, the Commission may bring an action before the Court of Justice if it discovers an infringement of Community law.

Another important competence of the Commission is the making of law. The institution's legislative activity involves the adoption of legal acts – regulations, directives, permits, etc. – which execute the decisions of the Council or under the direct authority from the Treaty; the latter is very rare and applies, for instance, to public enterprises.

Furthermore, the Commission has direct legislative initiative – legislative proposals have to come from the Commission (the Treaty of Lisbon allows, however, in justified cases, that legislative initiative may come from a group of Member States, at the order of the European Central Bank or on the motion from the Court of Justice). The European Commission can also be forced to take legislative initiative by the Council of the EU and the European Parliament.

When taking the legislative initiative, the Commission must consult the proposals in advance with the Economic and Social Committee and the Committee of the Regions, which present an opinion on the content of the proposal. Also, when drawing up the proposal, the Commission consults it with various interest groups (business organisations, trade unions, consumer groups, chambers of commerce, scientific centres, religious communities, etc.).

Another important function of the Commission is conducting current policy, i.e. an executive and coordinating function. In this capacity, the Commission executes the regulations of the Council and the Parliament, implements the EU budget and is responsible for it, presents annual reports on the functioning of the European Union in the Parliament and the Council.

The last important prerogative of the Commission is international activity. On behalf of the European Union, the Commission maintains diplomatic relations with other international organisations and countries. Delegations from the Commission represent the EU with other entities (e.g. the Commissioner for Trade always represents the EU at the meetings of the World Trade Organization). The Commission (but only after obtaining a mandate for negotiations from the Council) negotiates international agreements on behalf of the Communities with other entities, such as trade agreements and customs agreements, association agreements with third countries, cooperation agreements with countries and international organizations, accession agreements of new countries. The European Commission also has certain powers in the field of external activity (it has an impact on the development and

functioning of the European External Action Service), mainly by trying to achieve consistency in the positions of EU Member States in the international arena.

The Commission plays an especially important role in the area of visas, asylum, migration and free movement of people, in which it has legislative initiative.

The European Commission has a stable position in the institutional system of the EU. It has contributed to the initiation of very important processes related to the realisation of the Single Market, the Economic and Monetary Union. Despite its extensive structure, it is an effective and efficient organ of the EU.

1.3. The Council of the European Union

In the Treaty of Lisbon, this institution is referred to as 'the Council'. However, by the decision of 1993, it named itself the 'Council of the European Union' and it is usually referred to in this way. Unlike the Commission, which is a supranational body, the Council is an institution whose main purpose is to represent the interests of Member States and has an intergovernmental nature. The Council of the EU consists of ministers of the Member States (who's task is to implement the priorities of their countries), but it is not a permanent group of the same representatives. The composition of the body varies depending on the subject of the meeting. For example, a debate on agriculture would be conducted by ministers of agriculture, whereas a meeting on transport would be attended by ministers of transport. In total, there are ten configurations of the Council. The most important of them, however, is the Foreign Affairs Council, composed of foreign ministers. This meeting is chaired by the High Representative for Foreign Affairs and Security Policy. It is a new function, introduced by the Treaty of Lisbon Treaty.

The High Representative is also a member of the European Commission in the rank of Vice-President, who deals with the EU's external relations. He is appointed by the European Council by qualified majority voting, but also must be approved as a member of the European Commission by the European Parliament. The term of office of the High Representative is 5 years. Currently, Catherine Ashton from the UK is the High Representative.

Ministers of European affairs meet in matters of general policy and coordination of Council policy. This configuration is called the General Affairs Council. This Council is responsible for the preparation of the European Council meetings and the cooperation with the President of the European Council and the Commission. The problems of the Economic and Monetary Union are examined by the Council composed of ministers of economy and of finance (called ECOFIN). The Foreign Affairs Council, the General Affairs Council, the ECOFIN and the Agriculture Council meet most frequently, at least once a month, while the remaining configurations meet only a few times a year.

Thus, we have one Council in 10 different forms. Due to the special composition of this institution, it has no terms of office.

The seat of the Council of the European Union is in Brussels. Three times a year (April, June, October), however, the Council meets in Luxembourg City.

Table 1. Formations of the Council of the European Union

Formation	Responsibilities
General Affairs	General coordination of policy, institutional and administrative issues, horizontal dossiers, enlargement
Foreign Affairs	All external affairs, including the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP), common trade policy, cooperation on development and humanitarian assistance
Economic and Financial Affairs	Economic and fiscal policy coordination, budget
Justice and Home Affairs	External border control, visas, asylum, police cooperation, judicial cooperation, including civil protection
Employment, Social Policy, Health and Consumer Affairs	Employment, working conditions, public health, consumer protection
Competitiveness	Internal market, industry, research, plus tourism
Transport, Telecommunications and Energy	Transport, telecommunications, energy
Agriculture and Fisheries	Common Agricultural Policy, Common Fisheries Policy, food safety
Environment	Environment, sustainable development,
Education, Youth and Culture	Education, vocational training, cultural protection, audiovisual sector and sport

Source: Own compilation based on the website of the Council of the European Union, http://www.consilium.europa.eu/searchresults?lang=en (last visited 10.12.2012).

The rules of functioning

An important element of the functioning of the Council is the Presidency, under which one Member State performs the function of the Council's president for six months (from January to June or from July to December). The minister of the country holding the Presidency of the EU Council chairs the Council meetings in all configurations, except for the Foreign Affairs Council, which is always chaired by the High Representative for Foreign Affairs and Security Policy. Since each country holding the Presidency tries to achieve mainly its own priorities, the Council experienced lack of continuity in its work. Therefore, the Treaty of Lisbon introduced the principle of presidency trios. States holding the Presidency consecutively were combined in trios and given the task of setting common priorities for a period of 18 months.

As mentioned above, the Council members do not meet too often (after all, the ministers perform their duties in their home countries), therefore they are

assisted by the General Secretariat (supporting the administrative activities of the Council) and the Committee of Permanent Representatives (COREPER). COREPER operates in two compositions. COREPER II, is composed of permanent representatives in the rank of ambassadors, is responsible for preparing meetings of the Council in the following formations: General Affairs, Foreign Affairs, Economic and Financial Affairs, and Justice and Home Affairs. It should be stressed that COREPER II is responsible for political affairs, which are the most controversial among the Member States; whereas COREPER I, composed of deputy ambassadors, prepares the meetings of the following Council formations: Agriculture and Fisheries, Competitiveness, Transport, Telecommunications and Energy, Environment; Education, Youth, Culture and Sport; and Employment, Social Policy, Health and Consumer Affairs.

The main task of COREPER I and II (with the seat in Brussels) is to examine the legislative proposals of the Commission before the Council meetings and to prepare legislation to relieve their own ministers. COREPER usually works 2–3 days a week, but it has at its disposal working groups (meeting every day), composed of experts in given fields from the Member States. Members of these working groups are officials from the ministries of all Member States. Their main task is to represent the interests of their countries in the work on the proposals for legal acts, which the Commission submits to the Council. The main task of the working groups (of which there are approx. 250) is to prepare the contents of legal acts which would be satisfying to all the members of the European Union. Usually, the content of approximately 70 per cent of legal acts is determined on the level of working groups. Another 10 to 15 per cent is determined on the COREPER level, and the rest – the most difficult part – is passed on to the ministers.[15]

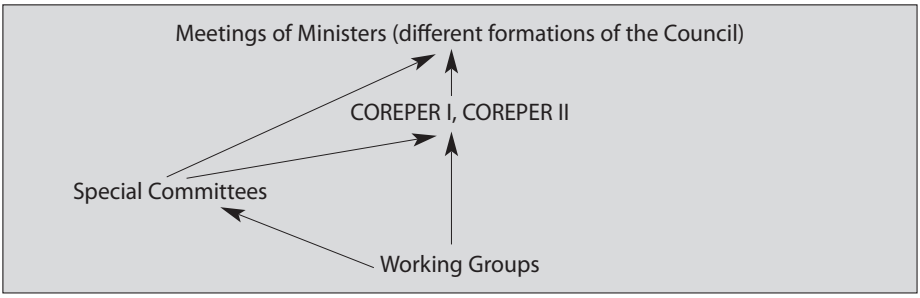
In matters of special importance to the Member States, the ministers are assisted by special committees. They are specialised bodies within the structure of the Council, composed of high-ranking officials from the Member States, which help prepare decisions in the most difficult matters directly for the ministers (without the involvement of COREPER), and sometimes in cooperation with COREPER. These special committees include: Political and Security Committee, Economic and Financial Committee, Special Committee on Agriculture, Trade Policy Committee, Strategic Committee on Immigration, Frontiers and Asylum, Social Protection Committee, Standing Committee on operational cooperation on internal security.[16]

It should be stressed that on all levels of functioning of the Council, from the working groups to the ministerial level, the predominant principle of decision-

[15] On all levels of functioning of the Council of the European Union (ministers, COREPER, working groups), the meetings of officials are chaired by the representatives of the state which holds the presidency in the Council at the given moment. This rule does not apply only to the meetings of structures subject to the High Representative for Foreign Affairs and Security Policy.

[16] *Proces decyzyjny w Unii Europejskiej*..., op.cit., p. 101.

Chart 2. Organisational structure of the Council of the European Union



Source: Own compilation.

making is by consensus. Voting is allowed only at the level of ministers, and even there it is rather avoided; instead, the ministers try to find a common position, acceptable for all EU Member States.[17]

Competences

The most important competence of the Council is its law-making function. Until 1993 (entry into force of the Treaty of Maastricht) the Council was the only Community institution serving as a legislative body; thereafter, in most cases it co-creates the law (through the ordinary legislative procedure, formerly known as the codecision procedure) with the European Parliament.

The EU Council also has indirect legislative initiative; it may force the European Commission to initiate the legislative procedure. The Council itself does not have, however, independent direct legislative initiative.

Another important prerogative is the power to establish other bodies and their composition. The Council elects representatives to the Committee of the Regions, the Economic and Social Committee, elects the judges of the Court of Auditors. The Council also determines the salaries and retirement pensions of the highest EU officials, including: the President of the European Council, the High Representative, judges of the Court of Auditors and Court of Justice, as well as Members of the Commission.

Another important function of the EU Council is to control the implementation of Community standards by the Member States and enterprises. This applies mainly to the functioning of the EMU and the Common Commercial Policy. An extremely important field of competence is the coordinating function, which requires the Council to coordinate economic policies of the Member States in order to implement the single market.

[17] A. Adamczyk, *Polska w Radzie Europejskiej – pierwsze doświadczenia po akcesji (Poland in the EU Council – first experiences after accession)*, „Problemy Zarządzania" no. 3/2005.

The last, but equally important prerogative is the Council's role in the international sphere. The Council (jointly with the Parliament and the Commission) initiates and concludes international agreements on behalf of the Communities with other actors in international relations, takes decisions necessary for the implementation of the CFSP (while trying to maintain unity, consistency and effectiveness of the EU).

The decision-making process

The Council of the European Union can make decisions by way of three different procedures:

- unanimity,
- simple majority,
- qualified majority.

Under the Lisbon Treaty, unanimity remains the method of decision-making in the field of judicial cooperation, police cooperation, fiscal policy, the financial aspects of environmental policy, migration and asylum policy. Unanimity is also still applied for the Common Foreign and Security Policy, concluding international agreements (Association and Accession Agreements), as well as revisions of treaties and adoption of uniform laws on elections to the European Parliament.

Simple majority is the decision-making procedure applied only in procedural and organisational matters (and thus non-substantial ones).

The qualified majority decision-making procedure was meant to make the cooperation between the EU Member States more effective. Currently, until 31 October 2014, the Nice formula is applied. Passing a legislative act requires meeting all the three following conditions: obtaining a sufficient number of votes and the required number of states representing a sufficient part of the EU population.

Every country was allocated a pool of votes: Germany, the United Kingdom, France and Italy – 29 votes each, Poland and Spain – 27 votes each, Romania – 14, the Netherlands – 13, Greece, Belgium, Portugal, the Czech Republic and Hungary – 12 votes each, Austria, Bulgaria and Sweden – 10 votes each, Croatia, Denmark, Finland, Ireland, Slovakia and Lithuania – 7 votes each, Luxembourg, Latvia, Slovenia, Estonia and Cyprus – 4 votes each, Malta – 3 votes.

The total number of votes for the current 28 Member States is 352. The qualified majority required for adopting a law accepted on a proposal from the Commission is 260 votes cast by the majority of countries (over 50 per cent of countries). However, to adopt a legislation which does not originate in the Commission, a majority of 260 votes cast by at least 2/3 countries is required. Any Council member can also request verification that the Member States constituting the qualified majority represent 62 per cent of the total EU population. If this condition is not met, the law cannot be adopted.[18]

[18] http://www.european-council.europa.eu/home-page/highlights/welcome-to-croatia!?=lang=en (last visited 10.08.2013).

The Nice formula proved to be quite troublesome for efficient decision-making within the Council of the European Union. The main problem is certainly the requirement to meet the three conditions to pass a legislation.

The Treaty of Lisbon was intended to streamline the decision-making process. It was agreed that from 31 October 2014, the new decision-making process in the Council will be applied, based on two tests: a sufficient number of countries representing the required amount of the EU population.

In cases where a legislative proposal originates from the European Commission or the High Representative for Foreign Affairs and Security Policy, the qualified majority is at least 55 per cent of countries (not less than 15 members) representing 65 per cent of the population of the European Union. The blocking minority must consist of at least four Member States representing over 35 per cent of the EU population.

When the Council does not act on a proposal from the Commission or from the High Representative, the qualified majority is defined as at least 72 per cent of the members of the Council representing Member States comprising at least 65 per cent of the population of the EU.

It was also agreed that the period from 1 November 2014 to 31 March 2017 will be a transitional period, when the new formula adopted in the Lisbon Treaty will be applied, but at the request of a Member State it will be possible to return to the Nice voting formula. In the transitional period, it will also be possible to apply the Ioannina formula, under which it is easier to block decisions. The Ioannina formula was a concession to the countries which feared that they could be easily outvoted. According to this principle, in order to oppose a legislative proposal it is sufficient to gather ¾ of countries or ¾ of the population required to form the ordinary blocking minority.

After the transitional period, i.e. from 1 April 2017, the Ioannina formula will still apply, but in an amended form. In order to express opposition to a legislative proposal it will be enough to gather 55 per cent of countries or 55 per cent of the population required to constitute a blocking minority. In such case, the Council of the EU must find a satisfactory solution within a reasonable time.

Under the Lisbon Treaty, decision-making by qualified majority is applied in most cases and correlates with the ordinary legislative procedure.

Throughout the history of the functioning of the principle of qualified majority voting in the Council, the Member States avoided it, always trying to find a solution by consensus. In all matters covered by the principle of qualified majority voting, over 80 per cent of legislative acts have been adopted by acclamation. It is questionable whether the procedure of qualified majority is needed at all. The fact that countries apply it very rarely does not mean that it is redundant; the Member States realize that it is possible to pass or block a decision by voting, and this is what "subconsciously' motivates them to find a solution by consensus at any price. However, when it comes to qualified majority voting, the countries forming a coalition usually rely on the rule of reciprocity of the other coalition

partners, counting on their support for potential future votes on legislation, and therefore having the highest number of votes by a Member State is strategically important.

There is no such notion as permanent coalitions in the European Union. Depending on the project concerned and the priorities of the countries in the discussed field, various coalitions are formed. Hence, countries are highly flexible with regard to shaping their attitudes and participation in coalitions. There have been different coalition divisions: advocates of the free market against protectionist countries, rich against poor, northern against southern, supporters of the intergovernmental attitude against those seeking to deepen the integration process, the recipients of structural funds against net donors to the budget.

1.4. The European Parliament

The European Parliament (EP) has existed since the beginning of the Communities, i.e. since the establishment of the ECSC. Originally, it was called the ECSC Common Assembly; after signing the Treaties of Rome establishing the next two Communities, the name was changed to the Parliamentary Assembly. In 1962, yet another resolution was passed to rename the institution to the European Parliament, and it is still in force today.

The seat of the European Parliament is in Strasbourg (where most of its plenary sessions take place), but some plenary sessions and the meetings of parliamentary committees take place in Brussels. Luxembourg City is the seat of the EP General Secretariat.

Until 1979, the European Parliament had no direct legitimacy because its members were representatives delegated by national parliaments. The first direct elections to the European Parliament were held in 1979. From this point, we can definitely say that the European Parliament is supranational and is an institution whose structure and composition are the best examples of the transformation taking place in the integration process.

So far, no uniform election law was adopted for all EU Member States. The members of the European Parliament are elected in direct universal elections in accordance with the voting systems in the individual Member States.[19]

The Lisbon Treaty established that the composition of the European Parliament comprises no more than 750 MEPs and the President (751). The allocation

[19] Active and passive voting rights pertain to the citizens of the Member States and to individuals residing in the territory of a Member State. The elections take place on the date specified by the given EU country, within the time frame defined by the Council, usually within four days, from Thursday to Sunday (Thursday is the election day in Denmark, the Netherlands, the UK and Ireland; the other countries hold their elections on Sunday). In Greece, Belgium, Luxembourg and Italy the voting is obligatory, and citizens are fined for failing to participate. These differences are proof that there is no single voting system. The Council has tried to unify it three times already, but each time the initiative was blocked (this matter requires unanimity).

Table 2. The composition of the European Parliament in the term 2014–2019

Country	Number of MEPs	Country	Number of MEPs	Country	Number of MEPs
Germany	96	Belgium	21	Lithuania	11
France	74	Hungary	21	Ireland	11
Italy	73	The Czech Republic	21	Croatia	11
United Kingdom	73	Sweden	20	Latvia	8
Spain	54	Austria	18	Slovenia	8
Poland	51	Bulgaria	17	Luxembourg	6
Romania	32	Finland	13	Estonia	6
The Netherlands	26	Denmark	13	Cyprus	6
Greece	21	Slovakia	13	Malta	6
Portugal	21				

Source: Own compilation: www.europarl.europa.eu

of the number of seats to each country was made on the basis of demographic factors and was accepted unanimously by the Council.

The final decision on the composition of the Parliament is taken by the European Council after approval by the European Parliament.

Despite the assignment of a specific number of seats to each country, no national groups may be formed in the European Parliament; only political groups are allowed (hence the supranational nature of the institution). For a political group to be formed, it must include 25 MEPs representing at least one quarter of the Member States.

The following factions were formed in the term 2009–2014: the biggest is the EPP – European People's Party Group, the second-largest is the S&D – Progressi - ve Alliance of Socialists and Democrats Group, third is the ALDE – Alliance of Liberals and Democrats for Europe; some smaller factions are the Verts/EFA – the Greens/European Free Alliance, ECR – European Conservatives and Reformists Group, GUE/NGL – the Confederal Group of the United Left/Nordic Green Left, EFD – Europe Freedom and Democracy and non-associated members.

The work of the Parliament is directed by the President, assisted by 14 Vice-Presidents. The term of office of the President and Vice-Presidents is half of the term of the EP, i.e. 2.5 years. The President elected for the first term in the Parliament 2009–2014 was a Pole, Jerzy Buzek from the EPP. The next President of the European Parliament (for the next 2.5 years) is Martin Schulz (Germany) from S&D. Usually the result of voting for the President of the European Parliament results from an earlier agreement between the two largest political parties, which simply 'divide' these positions among themselves.

The rules of functioning

The structure of the European Parliament has two dimensions: political and task based. The former is reflected by the formation of political fractions, while the latter is reflected in the division of the European Parliament into standing parliamentary committees. Each MEP has to participate in at least one such committee.

After the Parliament receives a proposal for a legal act from the European Commission, the competent standing committee of the European Parliament starts working on the text. The decision on which committee is competent in the given matter is made by the Bureau of the European Parliament. The parliamentary committee chooses a rapporteur who is responsible for the work on the legal act.[20]

Table 3. Standing Committees of the European Parliament

AFET Foreign Affairs	**BUDG** Budgets	**ITRE** Industry, Research and Energy
DROI Human Rights	**CONT** Budgetary Control	**IMCO** Internal Market and Consumer Protection
SEDE Security and Defence	**ECON** Economic and Monetary Affairs	**TRAN** Transport and Tourism
DEVE Development	**EMPL** Employment and Social Affairs	**REGI** Regional Development
INTA International Trade	**ENVI** Environment, Public Health and Food Safety	**AGRI** Agriculture and Rural Development
PECH Fisheries	**JURI** Legal Affairs and Home Affairs	**LIBE** Civil Liberties, Justice
CULT Culture and Education	**AFCO** Constitutional Affairs	**FEMM** Women's Rights and Gender Equality
PETI Petitions		

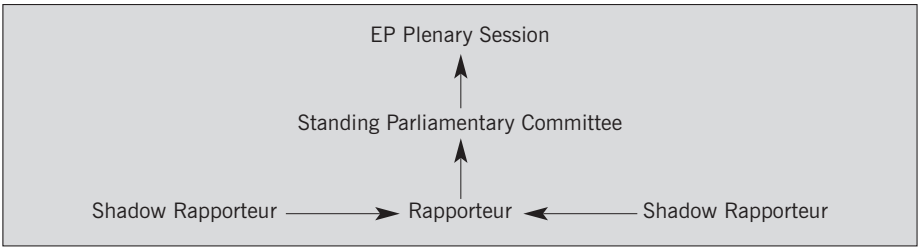
Source: Own compilation, based on http://www.europarl.europa.eu/committees/en/parliamentary-committees.html (last visited 10.08.2012).

Naturally, he works together with other members of the committee (his work is closely watched by other members of the committee belonging to other fractions – they are called shadow raporteurs. After the rapporteur presents his or her opinion, the committee votes, and the amended legal instrument is submitted at the plenary session, where, after a discussion, the whole European Parliament votes on it. Passed proposals for legal instruments are then presented to the Council of the European Union and to the European Commission. At plenary sessions the Parliament makes decisions by majority voting – simple or absolute, depending on the nature of the issue in question.[21]

[20] J. Greenwood, *Reprezentacja interesów w Unii Europejskiej* (*Interest Representation in the European Union)*, Łódź 2005, pp. 77–81.

[21] *Proces decyzyjny w Unii Europejskiej*, op.cit., p. 282.

Chart 3. Working structure in the European Parliament



Source: Own compilation.

Generally, we could say that the Parliament works on a monthly basis. Each month, there is one working week in the electoral district, one in political groups, one in parliamentary committees, and one at a plenary session.

Competences

The European Parliament, in contrast to its national counterparts, has no law-making powers, it only co-creates law, sharing this competence with the Council. This power is realized through the ordinary legislative procedure, whereby the Parliament can block the adoption of a legislative act.

The European Parliament has no legislative initiative; officially this prerogative is exercised by the European Commission. However, the EP can exercise indirect legislative initiative by suggesting to the European Commission to prepare a legislative proposal.

Another important power vested in the EP is the control function. The EP has the right to interpellate, or to refer questions to officials of other institutions to enable the EP the evaluation of the other bodies; this concerns mainly the European Commission and the Council.

The European Parliament also has very important prerogatives in the field of budget; it gives a discharge to the Commission in respect of the implementation of the budget for the given year, and is involved in adopting the budget proposal jointly with the Council of the European Union.

The EP also has a creative function; it approves the President of the European Commission proposed by the European Council and then all members of the Commission. The MEPs may vote on a motion of censure of the Commission and dismiss it by a two-thirds majority of the votes cast, with a quorum constituting a majority of the members.

The Parliament is also consulted by the Council in the event of election of judges to the Court of Auditors; it also chooses the Ombudsman (whose term of office is 5 years), who examines complaints from the citizens or residents of the EU on irregularities in the execution of tasks of EU institutions and bodies (with the exception of the Court of the European Union).

The European Parliament also has prerogatives in the international sphere, takes part in the process of concluding international agreements between the Communities and other subjects of international relations, plays an especially important role in finalising accession agreements, which require its consent.

1.5. The Court of Justice of the European Union

The Lisbon Treaty defines the Court of Justice of the European Union as an institution of the EU dedicated to the judicial dimension of the organisation. The Court of Justice of the European Union consists of: The Court of Justice (formerly the European Court of Justice – ECJ), the General Court (former Court of First Instance), and specialised courts (the former judicial panels).

The Court of Justice

The seat of the Court of Justice is in Luxembourg City. According to the Treaty of Lisbon, there is a judge from each Member State sitting in the Court – therefore, the Court currently has 28 members. The judges are appointed by consensus between the governments of the Member States, after consultation with a panel appointed by the Council. The panel comprises seven persons chosen from among former members of the Court of Justice and former members of national supreme courts.

The judges are supported in their work by eight Advocates-General, of whom five come from the largest Member States, and the remaining three are elected rotationally by the other countries. If necessary, the Council may, by an unanimous decision, increase the number of members of the Court, if requested by the Court.

The Court's term of office is six years (there is no restriction in the number of terms of office), but every three years, half of the judges are replaced (to avoid abrupt personnel changes in the body).

The Court of Justice is an independent body, the Judges and Advocates-General are European officials, and they take an oath at the time of election, declaring that they will have in mind only the common interest and respect for EU law and that they will not accept any instructions from their countries of origin. This highlights the supranational character of this body.

The Court always sits in compositions comprising an odd number of judges, at plenary sessions or in smaller panels. Plenary sessions are convened in the most important matters, such as the dismissal of the Ombudsman (at the request of the Parliament), decision on dismissal of a Commission Member, sanctions against a member of the Court of Auditors. In the case of other contentious issues, the Court of Justice sits in chambers of five or three judges. The deliberations of the Court of Justice are secret and the rulings are agreed upon by way of voting. The Advocates-General assist the judges by thoroughly analysing the case and preparing an objective opinion, which basically contains a suggested decision.

Competences

The Court of Justice is the judicial body of the European Union, whose main task is to ensure that Community law is observed and that this law has primacy over the national laws of the Member States.

The most important powers of the Court of Justice include: controlling the legality of legislative acts, examining complaints against EU institutions on refraining from action or on inaction (for instance, on failure of the Commission to prepare a legislative proposal necessary to implement the provisions of the Treaties), controlling the activities of the Member States (in carrying out their obligations under the Treaties), handling claims for damages (for instance, actions brought by EU citizens on compensation for losses incurred as the result of mistakes made by EU officials).

The Court of Justice has an extremely important function in relation to international agreements. This is mainly an advisory role, involving the preparation of an opinion on compliance with the Treaty. The Court of Justice is also authorised to issue preliminary rulings (in response to questions referred to the Court by national courts of the Member States) on the interpretation of the Treaties, legislative acts of EU institutions and the European Central Bank, by-laws and rules of procedure of bodies established by the Council.

The Court of Justice also rules as the court of second instance in appeals against the decisions of the General Court.

To sum up, we can say that the Court of Justice acts as an administrative, international, constitutional, and labour court.

The General Court

The General Court (formerly the Court of First Instance) was founded in 1989 by a Council decision adopted under the Single European Act.

The seat of the General Court is in Luxembourg City. Its composition, method of selection, and character is analogous to the solution in the Court of Justice (currently there are 28 judges, it is presently not assisted by Advocates-General, although the Lisbon Treaty does not preclude their appointment, if needed.

Competences

The main competence of the General Court includes first-instance jurisdiction in the following fields:

- complaints by individuals (with the exception of EU officials, who are subject to the Civil Service Tribunal),
- claims for compensation for damage caused to legal and natural persons resulting from the activity of EU officials and bodies (except for actions against the Parliament and the Council, which are subject to the jurisdiction of the Court of Justice),
- actions for annulment of a legislative act, actions against legislative inaction, actions for damage against the EU.

In addition, the General Court is competent to resolve labour disputes and to rule on the basis of arbitration clauses (with the exception of those assigned to the Civil Service Tribunal or the Court of Justice). The General Court also has a limited power to prepare preliminary rulings, and is the court of appeal for appeals against decisions of the Civil Service Tribunal.

Specialised courts

The Treaty of Nice introduced a new element to the judicial branch of the European Communities – the judicial panels, which were renamed by the Lisbon Treaty to specialised courts operating at the General Court (formerly Court of First Instance). The specialised courts may be established by the Council and the Parliament through the ordinary legislative procedure. The members of these courts – persons of unquestionable independence – are appointed unanimously by the Council.

The only specialised court established so far is the European Union Civil Service Tribunal. It was founded in 2005 and deals in the first instance with disputes between the EU and its officials. The court of appeal is the Court of Justice. The term of office is six years. The seat of the Tribunal is located at the General Court in Luxembourg City. It now consists of seven judges, this number may however be increased by decision of the Council, at the request of the Court of Justice.

1.6. The Court of Auditors

The Court of Auditors was established in 1975 under an intergovernmental agreement concluded in 1975 in connection with the budgetary reform of the Community.

The seat of the Court of Auditors is in Luxembourg City. It is composed of 28 judges representing each Member State. The Court's term of office is six years. Its members are called judges, although this body is not a judicial, but a control organ. They are elected by the Council of the European Union, after an earlier opinion from the European Parliament. The Court is a supranational body, composed of independent officials representing the interests of the European Union, and not the interests of their country of origin.

Competences

The Court of Auditors task is to control revenue and expenditure of the Communities and their organs. The object of control is primarily the general budget of the Communities and the activity of EU institutions in the area of loans and credits (it monitors the budgets of all agencies created by the Communities).

The Court of Auditors also controls the activities of the European Central Bank, but only as regards the effectiveness of management, and the financial sphere of the so-called European Schools and of the Europol.

At the end of each EU financial year, the Court of Auditors compiles an annual report, which is distributed to all EU institutions and is published in the "Official Journal of the European Union". The report is the basis for the discharge of the European Commission by the Parliament in respect of the implementation of the budget, which emphasizes the crucial role of the Court in the institutional system of the EU. In addition to annual reports, the Court also prepares special reports and opinions prepared upon special request of individual institutions.

1.7. European Central Bank

The European Central Bank was founded in 1998, and replaced the European Monetary Institute. The Treaty of Lisbon quotes it as one of the institutions of the European Union; however, it should be underlined that it is essentially an institution of the Economic and Monetary Union, which is only a component of the EU, comprising only 17 Member States of the 28 (Latvia will join EMU in 2014).

The seat of the ECB is Frankfurt am Main. Its bodies are: the Governing Council, the Executive Board and the General Council. The Governing Council of the European Central Bank comprises the members of the Executive Board and the governors of the national central banks of the eurozone countries. The Executive Board comprises the President, the Vice-President and four other members. They are appointed by the European Council, acting by a qualified majority, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the European Central Bank. The candidates are people of high esteem and experience in the field of finance and banking.

The General Council of the ECB is composed of the President and Vice-President together with the governors of national central banks of all EU Member States. The main functions of the European Central Bank are:

- coordinating and monitoring the monetary policy operations,
- adopting laws,
- making decisions on issuing of bank notes,
- defining monetary policy,
- interventionism in currency markets,
- international relations,
- creating a statistical database for the needs of the ECB.

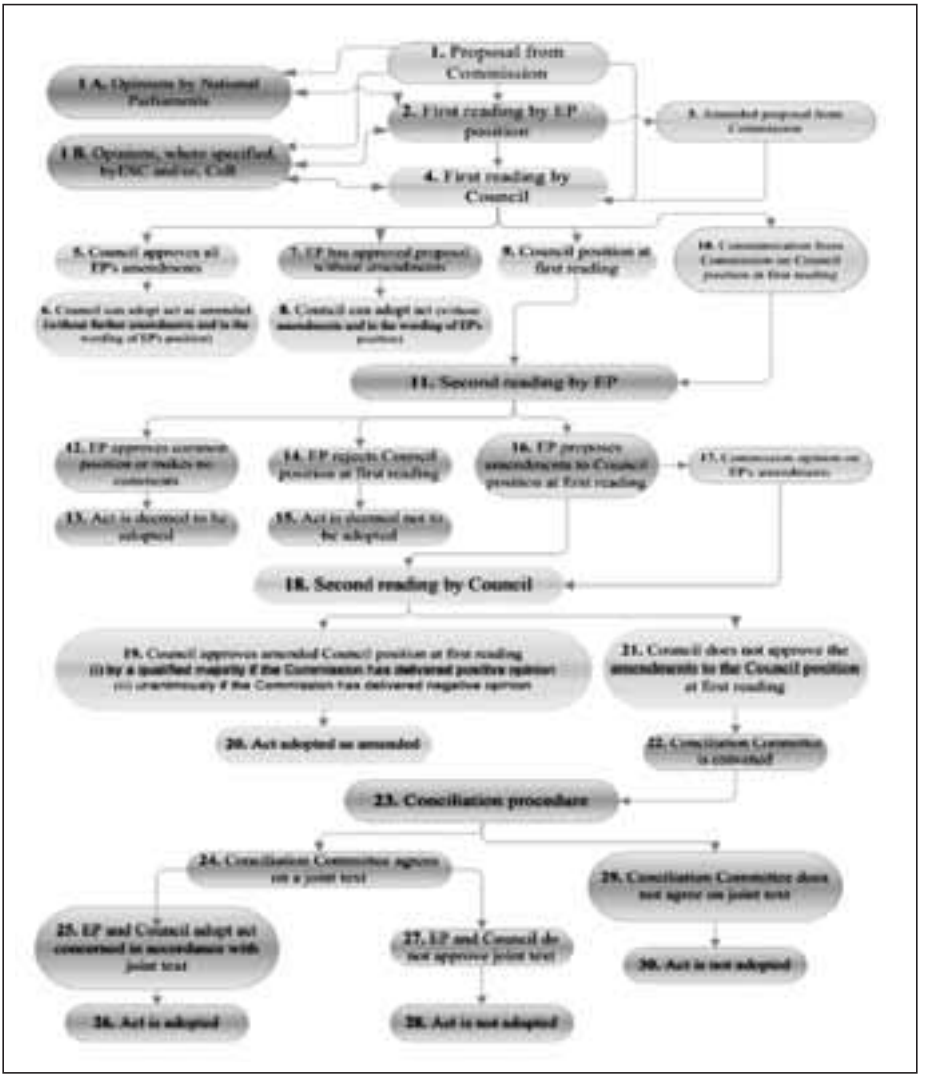
2. Decision-making process in the European Union

The institutions which play the most important part in the decision-making process of the European Union are: the Council of the European Union, the European Parliament and the European Commission, in which, under its legislative initiative, the legislative process starts.

Ordinary legislative procedure

The Lisbon Treaty contains a significant modification concerning the legislative procedure. It has been decided that a substantial majority of EU legal acts will be adopted under the codecision procedure. Consequently, the procedure has been renamed the 'ordinary legislative procedure'. An important element thereof is the requirement for the Council of the European Union and the European Parliament to reach an agreement (there are as many as three opportunities for this in this

Chart 4. Ordinary legislative procedure



Source: http://ec.europa.eu (last visited 14.08.2012).

procedure). If no common position can be found, the legal act in question will not be adopted. The ordinary legislative procedure covers 85 areas of cooperation within the European Union.[22]

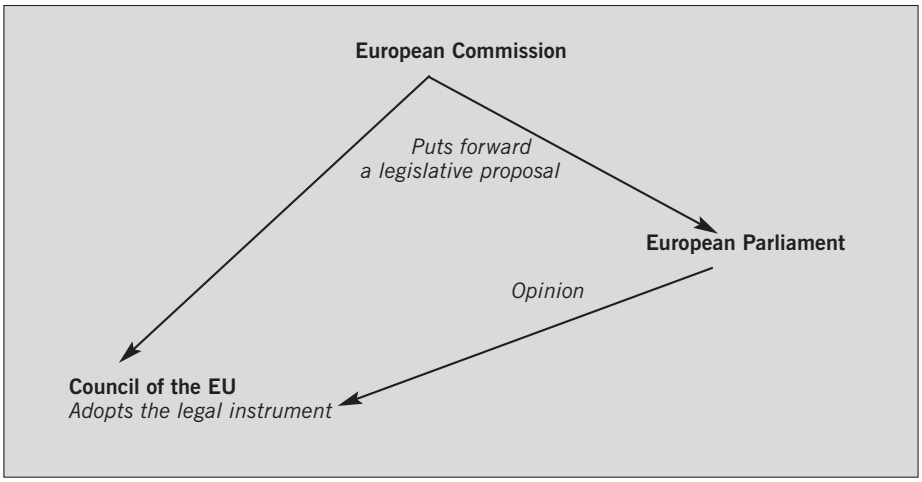
Consultation procedure

In contrast to the ordinary legislative procedure, the Parliament's role in the consultation procedure is very small. The most important part belongs to the Council of the European Union, which asks the Parliament for an opinion but does not have to take it into account. Therefore, the final decision in this procedure belongs to the Council.

This means that legal acts adopted as part of this procedure concern matters in which the Member States would like to reserve the possibility of shaping their content to themselves, without the MEPs' involvement. The procedure is applied, for example, in the following fields:

- voting rights of EU citizens,
- social security or social protection,
- diplomatic and consulate protection,
- measures concerning passports, identity cards and residential documents,
- measures concerning family law with cross-border impact,
- operational cooperation between law enforcement bodies,
- rules of competition,
- social security and social protection of workers.

Chart 5. Consultation procedure



Source: Own compilation.

[22] *Proces decyzyjny w Unii Europejskiej*..., op.cit., pp. 328–332.

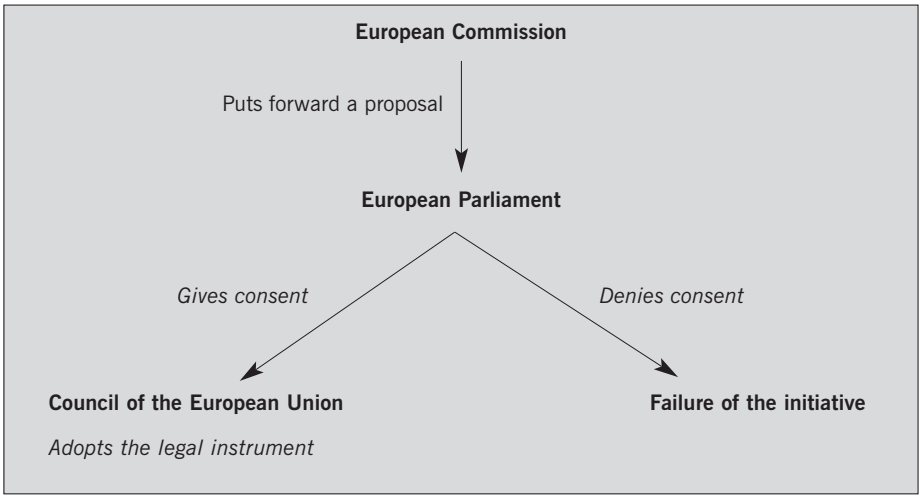
Consent procedure

Just as the ordinary legislative procedure, the consent procedure requires an agreement between the Council of the European Union and the European Parliament (there is only one reading in the Parliament – and thus only one chance for an agreement). If the European Parliament does not accept the content of the -legislative proposal put forward by the Commission, the proposal does not enter into force. As a result, the Council's decision depends on the Parliament's consent.[21]

This procedure is applied, for example, in:

– agreements with non-Member States (accession treaties),
– some aspects of judicial cooperation,
– multi-annual financial Framework for the EU budget.[22]

Chart 6. Consent procedure



Source: Own compilation.

Conclusions

The institutional reform contained in the Treaty of Lisbon is undoubtedly a milestone in the progress of integration in the European Union. We should notice that the Treaty was negotiated by the representatives of 27 countries, often having various national interests, fearing the loss of national identity and pilloried by their own national public. The Treaty of Lisbon is definitely not the final one, and further amendments will follow, but taking into account how difficult it was to prepare

[21] It is unofficially known that before starting the official legislative initiative procedure, the European Commission consults the content of the proposal with the Council and the Parliament in order to propose a text which will be accepted by both these institutions.

[22] I. Bache, S. George, S. Bulmer, *Politics in the European Union*, op.cit., p. 243.

it, it will most probably remain in force for quite a long time. However, what is the most important in the Treaty is the rule of qualified majority voting in the Council (with some exceptions) and the ordinary legislative procedure (formerly codecision of the Council and the Parliament) in adopting EU laws.

Without doubt, the EU is heading towards federal solutions; it is hard to imagine effective operation of an organism composed of so many states without supranational solutions. However, the Treaty of Lisbon has not solved many other issues, they still remain open and will surely be tackled by the European Council at its summits in the future. These unsolved problems became especially visible during the economic crisis, which the European Union still hasn't managed to overcome.

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Part IV

European Economic Integration

Alojzy Z. Nowak

The Economic and Monetary Union – The Basis of European Economic Integration

Introduction

The modern process of European integration originates from a long tradition of plans and aspirations for unification in European politics. After the cataclysm of World War II, there was a particularly favourable climate for the establishment of a supranational European structure.

On 18 April 1951, Belgium, France, the Netherlands, Luxembourg, Germany and Italy signed the Paris Treaty, that is the Treaty establishing the European Coal and Steel Community (ECSC), in the wake of the Schuman Declaration, constituting a proposal to establish a supranational community in Western Europe. On 27 March 1957, the said six states signed the Treaty of Rome, establishing the European Economic Community (EEC), and the Euroatom Treaty, establishing the European Atomic Energy Community (Euratom). Setting a new framework for regional integration, the Treaty of Rome constituted an important stage on the path to ever more advanced forms of economic cooperation of the EEC states.

Beginnings of economic and monetary integration

The Treaty of Rome treated monetary cooperation of the Member States as an important but not key element of deepening the European integration. It also provided for a certain form of coordination of the internal and external monetary policy of the Community states. The provisions concerning the objectives of the monetary policy were enshrined in several articles of the Treaty.[1] The task of the Monetary Committee established under the Treaty was to coordinate the monetary policy of the Member States, but it was up to each state to conduct economic policy so as to ensure the balance of payments, monitor the policy of non-inflationary economic growth and look after the confidence in their own currency.

[1] See: Treaties Establishing the European Communities, Brussels 1978, p. 299.

At the same time, the dominant view among the leading European politicians was that the functioning of the Bretton Woods system, established in July 1944, should guarantee the stability of currencies, so they did not, in fact, believe there was any pressing need to strengthen cooperation in this regard. The Bretton Woods system imposed the obligation on every country to conduct monetary policy, one of the objectives of which was to maintain the exchange rates within a margin of oscillation of one per cent. In order for the provisions to be observed and monitored, two institutions were established: the International Bank for Reconstruction and Development (IBRD) and the International Monetary Fund (IMF). The Bretton Woods system survived until 1971, when it finally collapsed upon ending the exchangeability of the dollar for gold by the United States.

An important impulse for the development of European integration was the commencement of work on the creation of the common market, the legal basis for which was provided by the Treaty of Rome. The initial goal of the common market was the lowering of prices of produced goods, easier access to them, improving competitiveness of manufactured goods and services, removing all and any barriers, including legal barriers, hampering the economic development. All these activities were to contribute to the improvement of the living conditions of the citizens of the Member States. The rules in effect in the free trade area between the Member States (six at that time) came into force together with the Treaty establishing the European Economic Community (1958).

In principle, the common market was designed as an economic area characterised by the freedom of movement of:

- goods,
- services,
- persons,
- capital.

Presently, a large majority of economists agree that the single market, created in consequence of the evolution of the concept of the free market and encompassing 28 Member States (including Croatia, which formally became an EU Member State in mid-2013), is a great achievement of the process of European integration. It constitutes one of the pillars of the European Union, an important stimulus for the economic growth and the creation of new jobs. However, the potential of the common market has not yet been fully used. Some countries have still not implemented correctly all the provisions, or have not sufficiently limited the administrative barriers. This concerns especially the field of services. However, the experience of European integration has taught us that it is a process in which progress is achieved through difficult compromises between the members of the Community.

Historically, the event that was of crucial importance on the path to eliminating many economic barriers was the establishment of the customs union in 1968. The free trade area, in which there were no internal customs duties, was complemented with the common external customs tariff. Consequently, trade within the

EEC was conducted in a market which, from now on, covered the entire area of the Community with no internal borders. This stage also led to the development of integration processes in the institutional dimension of the EEC. Moreover, it was becoming more and more obvious that the dynamics of European integration inevitably leads to monetary cooperation. The progressing development in the real sphere implied the need to establish supranational solutions in the monetary field by specific organs and institutions. The collapse of the international monetary system of Bretton Woods in the early 1970s caused a devaluation of the dollar in the United States, broke apart the established system of fixed currency parity, creating an additional threat to the process of integration of the countries with the common market and the need to flexibly react to this new situation.

On 1–2 December 1969, at a conference in The Hague, the heads of governments of the Community Member States decided to establish a monetary union in the European Economic Community. At that time, there were two concepts of arriving at a monetary union in Western Europe, reflecting two schools of economic thought: the German and Netherlands school on the one hand and the French and Belgian on the other. According to the plan by the Minister of Finance of the Federal Republic of Germany, Prof. Karl August Schiller, monetary integration was related to the need to deepen the cooperation between the members of the Community based on free trade, eliminating customs limitations and gradually approximating the structures of their economies. The key role in achieving this economic convergence was to be played by medium-term economic programmes, coordinated by the Commission of the European Communities. According to Schiller, the interested governments of the Member States should also actively support the process of converging of their economies.

On the other hand, a representative of the other school, the French Minister of Finance Raymond Barre proposed the introduction of fixed exchange rates, harmonisation of national tax policies, monitoring of cash flow, as well as close coordination of the budget policy. He believed that discipline in the economic policy will result from the responsibility to maintain fixed exchange rates and that this will be the field in which economic convergence will take place.[2]

In 1970, the Council of Ministers of the European Communities appointed a group of experts headed by the Minister of Finance Pierre Werner with the aim of devising the concept and executing the monetary union. The Werner Plan, a compromise between the views of the economists from the two aforementioned schools, called for coordination of the budget policy in the Community, capital account liberalisation, harmonisation of taxes, and coordination of the regional policy. One important element of the concept was the limiting of the exchange

[2] H. Tietmeyer, *Währungsstabilität für Europa: Beiträge, Reden und Dokumente zur europäischen Währungsintegration aus vier Jahrzehnten*, Baden-Baden 1996.

rate fluctuation of the EC Member States' currencies up to their complete fixing, and later introducing a common currency into circulation. The Werner Plan involved the unification of the banking systems. The coordination of medium-term economic policies was to take place under five-year economic programmes executed in the states of the Community. The plan was to be implemented gradually during a period of ten years.

In 1971–73, the so called currency snake was established, a structure aimed at protecting the exchange rate policy of the EEC states. The system consisted in narrowing down the margins of fluctuation of the exchange rates of the members' currencies against each other to ±1.125 per cent. At the same time, the currencies within the currency snake moved in the international market within a margin of 4.5 per cent, that is +2.25 and −2.25 from the established central exchange rate. The national central banks were undertaking interventions in order to maintain the desired gap between the Community currencies. This was a way to limit the transfer of disturbance by the exchange rates to the financial markets and the Community economy. As a matter of fact, the main objective was to set the top and bottom intervention levels in relation to the US dollar. In total, ten EEC states participated in the currency snake system.

It turned out rather soon that while remaining within the currency snake, not all Community currencies were able to withstand the pressure resulting mainly from the pressure exerted on the dollar by the risk capital of strong currencies. In June 1972, the British government decided to float the pound sterling.

However, the event which proved decisive for the preservation of the currency snake was the oil crisis of 1973–74, when the OPEC countries introduced an embargo on the supply of oil to certain capitalist countries or raised the oil price and limited its output. At the same time, a new mechanism of setting oil prices was agreed upon; it was to guarantee higher profits. The countries to suffer the most from these changes were those which were the most dependent on the supply of Arab oil, that is the USA, Japan. At the same time, it ended the era of cheap purchases of this strategic resource. Even though the oil crisis hit the United States the hardest, as the price of oil there increased six times, in fact all the developed countries that suffered its effects. The oil embargo caused a considerable shock in the global markets and was the direct reason for many turbulences in prices and payments.

In the EEC, the oil crisis resulted in increased inflation and unemployment. The disparities between the exchange rates increased dramatically, which induced many countries whose currencies were becoming weaker to leave the currency snake. First to do it was the Italian government, with the lira, followed a year later by France. The crisis in the market of strategic resources, such as oil, combined with the final collapse of the Bretton Woods system, led to a drop in the value of the dollar. The increase of the value of strong European currencies in comparison to the American dollar resulted in the introduction of floating exchange rates of these currencies to the dollar.

Now they could fluctuate within the margin of more than ± 4.5 per cent. However, in the end, the central banks of the EEC states did not have large reserves to stabilise the exchange rates of their currencies and the confidence in the currency snake mechanism was eroding. In consequence, in 1974 the implementation of the Werner Plan was suspended, but the idea of a monetary union was not abandoned. The problem of crises in financial markets and the ability of the economy to cope with them became the centre of attention of many political, economic and scientific centres.

Optimum currency area

How to protect the EEC currency zone from the consequences of the negative phenomena taking place within the Community and, what is even more important, in the international financial markets? One attempt to respond to these threats was the theory of the optimum currency area, which emerged already in 1961 from the discussion on the consequences of floating and fixed currency exchange rates. The theory was formulated by the Canadian economist and future Nobel Prize winner in the field of economy, Robert Mundell.[3] The discussion concerning the theory of the optimum currency area in the 1960s and 1970s led to the development of the fundamental criteria which should be met so that the countries of the common monetary area can function without any greater disturbance and constitute a stable economic area.

Mundell defined the optimum currency area as a region in which one or more currencies with exchange rates fixed to each other are circulating. Other economists understood the currency area's optimum aspect as the ability of the region to better meet the needs of the populace after joining the area with the common currency, which means that using the common currency in the given region increases its prosperity. The higher level of prosperity is related to the positive effects of the monetary union, e.g. the elimination of transaction costs and transaction risk, the lowering of interest rates, or lower costs of maintaining reserves.

On the other hand, in the theory of optimum currency area, the most significant macroeconomic cost of fixing the currency exchange rate in the monetary union is the loss of control over the monetary (exchange-rate) policy, which can constitute an effective mechanism for absorbing external shocks. Leaving the exchange-rate policy in the hands of national institutions would help lower the value of the national currency in order to improve the international competitiveness of national goods and services.

According to the traditional theory of optimum currency areas, the cost of abandoning the monetary and exchange-rate policy is lower when the economy is susceptible to shocks only to a small degree and has the ability to absorb them.

[3] P. De Grauwe, *The Political Economy of the Monetary Union*, Cheltenham 2001, pp. 3–98.

It is susceptible to shocks to only a small degree when the following phenomena occur in the monetary union:[4]

- Correlation of business cycles
  The greater the extent of the cycles' correlation, the more useful is the common monetary policy created for the benefit of the entire monetary union and the lower is the risk of asymmetric shocks.
- Similar rates of inflation
  The differences in the growth rate of prices in the different states can lead to a loss of competitiveness by the countries allowing excessive inflation growth.
- Diversification of production
  Countries with a diversified structure of exports are less susceptible to sudden slumps in external demand which could affect employment and the GDP, for the risk of a sudden collapse in demand in several or all export sectors is lower.

It is able to absorb shocks when the following phenomena occur in the monetary union:

- Flexibility of wages and prices
  Workers in the sector suffering a shock in the form of lower demand for their products should lower their expectations regarding wages. This should result in lowered wages and prices and in the improvement of the competitiveness of the sector.
- Mobility of the factors of production
  The effects of an asymmetric shock should be lower when the workers in the sector suffering the shock are able to quickly retrain themselves (cross-sector/functional mobility) or find jobs in a different place (geographical mobility).
- Integration of the financial markets
  Diversification of investments and locating capital in the entire monetary union are favourable conditions for the stability of income and can constitute a buffer protecting from the negative consequences of asymmetric shocks.
- Fiscal integration
  Fiscal integration, understood as the common budget, should favour the transfer of revenue to countries suffering the asymmetric shock.

In time, yet another important criterion for the optimum currency area appeared – namely the degree of openness of the economy. On the one hand, considerable openness to international trade and foreign investments can create favourable conditions for the transmission of shocks to the given economy. But

[4] G. Tchorek, *Teoretyczne podstawy integracji walutowej (The Theoretical Basis for Monetary Integration)* in: *Mechanizmy funkcjonowania strefy euro (Mechanisms of Functioning of the Euro Area)*, P. Kowalewski, G. Tchorek (eds.), Warszawa 2010.

on the other hand, the greater the degree of openness, the less useful the exchange rate in restoring balance and the greater the savings from its fixing.

The discussions concerning the theory of optimum currency area were of key importance in the process of monetary integration in the EEC and, ultimately, in the European Union. There was a more and more widespread opinion that the common currency area can be called optimal only when the introduction of a common currency in the countries being the members of this area does not constitute a barrier to the achievement of the three fundamental objectives of economic policy: a satisfactory level of employment, external balance and stability of prices. At the same time, the theory of the optimum currency area has been subject to much criticism. Some experts believe that in the contemporary globalised economy, with an almost unlimited freedom of movement of the factors of production, and especially capital, the recommendations and criteria formulated by the theory do not constitute a sufficient tool for analysis. However, the latest global financial and economic crisis of 2007–2009 seems to have justified the opinion that stabilisation of the economy through controlling the currency exchange rate is, in fact, an important instrument of the economic policy.

European Monetary System as a stage in the creation of the monetary union

Meanwhile, before the principles of the Economic and Monetary Union were crystallized in the 1990s, politicians of the European Economic Community decided to create the European Monetary System, which drew mainly on the experience from the previous mechanism for stabilising exchange rates, including the experience from the currency snake. However, first of all, it was meant as an answer to the growing fluctuations in the exchange rates of the currencies of the Member States. Initially, the European Monetary System, established under the Council Regulation (EEC) No 3181/78 of 18 December 1978 relating to the European monetary system, included the following countries: Belgium, Denmark, France, Italy, Ireland, Luxemburg, Netherlands and West Germany. Spain joined the group in 1989, the United Kingdom in 1990, Portugal in 1992, Austria in 1995, and Finland another year later. The Swedish krona and the Greek drachma were not included in the system. In principle, the European Monetary System was to be an area of stable currencies in the EEC.

Within the framework of this system, the Exchange-Rate Mechanism (ERM) was introduced, by means of which currency exchange rates were set between the countries. They could change only within a set fluctuation range, called the currency snake and amounting to not more than ± 2.25 per cent (for weaker currencies ± 6 per cent). The extended margins allowed the weaker currencies to operate within a 'broader' currency snake within a transition period, by the time they become stronger, which in practice meant the elimination of their excessive fluctuation in

comparison to the other currencies. After the stabilisation, the strengthened currency would return to the 'snake' with a narrower fluctuation range. It should be noted that, for example, the Italian lire benefited from the 6 per cent margin up until January 1990, which allowed Italy to conduct a more flexible exchange-rate policy, especially in the periods of currency speculation. In 1992, due to temporary problems, the United Kingdom and Italy withdrew their currencies from the European Monetary System, but the Italian lire returned to it in 1996.

The second key pillar of the European Monetary System was the establishment of the European Currency Unit (ECU). The ECU was preceded by the European Unit of Account (EUA), established in 1975 with the aim to streamline the settlements within the EEC in a time when the member states used floating exchange rates. A common feature of the ECU and the EUA was the manner of defining their values by means of the basket standard. The ECU was an international cashless currency, the value of which was calculated on the basis of the basket of currencies of the member states. The significance of the individual currencies in the basket depended on several parameters, including the GDP of the given country and its hare in the trade within the EEC. In other words, the ECU was the weighted average of all the currencies participating in the European Monetary System and constituted a reference unit for determining the degree of fluctuation of the individual currencies. The ECU served as the accounting unit for the provision of loans and intervention financing, as well as an instrument of balancing the accounts of the Community member states' banks.

The third pillar, in the form of a loan mechanism, allowed the member states to quickly acquire funds which could be used for intervening in the currency market or for overcoming the difficulties in the balance of payments.

Single European Act – a step towards the Economic and Monetary Union

The Exchange-Rate Mechanism (ERM), by means of which currency exchange rates were set between the countries, the establishment of the currency unit, as well as the deepening process of economic, political and social integration, were becoming more and more inadequate to the development-related needs of the Community, which on 1 November 1993, under the Treaty of Maastricht, formally changed its name to the European Union.

What proved to be the milestone in the process of economic and monetary integration was the Single European Act (SEA), signed in February 1986 in Luxembourg. The Act entered into force on 1 July 1987. The delay was caused by the fact that its ratification in Ireland required an change in the Irish constitution, which could be done only by a referendum. The referendum was held on 26 May 1987. The Single European Act was the first treaty amending the treaties establishing the European Communities.

Even though initially the necessity for a reform of the functioning of the Communities resulted from the belief that their institutional structures needed strengthening and their political position in the international arena needed improvement, in time it were the economical reasons that came to the foreground. The Single European Act provided for, among others, the establishment (by the end of 1992) of an area of free movement of goods, services, persons and capital, that is the establishment of an 'integral market' – the Single Market. Thus it was a natural and much desired consequence of the fundamental principles of the Common Market, which has constituted the core of European integration. After goods and persons, the freedom of movement of services and capital were an increasingly important and ever more significant component of Community integration.

In the 1980s and the 1990s, the process of integration of capital markets was progressing. The financial sector was gradually liberalised. The regulation on the free movement of capital ensured a progress in increasing convergence of the monetary policy of the Member States. The free movement of capital led to the transfer of assets to other Member States by means of different types of financial instruments.

The unlimited movement of capital provided a dynamic impetus for the emergence of direct investments, purchase and sale of real estate in the Member States. The elimination of most of the barriers at the internal borders within the Community, the progress in the harmonisation of the fiscal policy and budget expenses, the unification of many procedures concerning public procurement, indirect taxes – all this led to a new stage and a new quality in the integration of Community members.

Therefore, with the Single European Act, yet another step was made towards the completion of the process of European monetary integration. At the same time, in the area of economy, progress in integration implied strengthening of the Community's commercial, agricultural, environmental and telecommunications policies. It was a great success that the legislation in the Community was gradually and consistently unified.

Treaty of Maastricht – a new quality in monetary integration

The Single European Act of 1986 directly led to another important event in the history of European integration, that is the Treaty of Maastricht of 1992.

The history of the unifying Europe has always been heavily influenced by great politicians, visionaries, the 'founding fathers' of the present European Union, such as: Robert Schuman, Jean Monnet, Konrad Adenauer, Alcide De Gasperi, Paul-Henri Spaak, Altiero Spinelli.

Among these great statesmen, we should also mention Jacques Delors, an economist and politician, who at the summit in Madrid in 1989, was appointed head of a committee dedicated to devising a report on the possibilities for a more complete implementation of an economic and monetary union in the EEC.

It is also during the term of the Delors Commission that the treaty reforming the primary legislation of the Communities and establishing the European Union (Treaty on European Union, also known as the Treaty of Maastricht) was adopted – a document which undeniably constitutes a new quality in European integration.

The Treaty's major provisions concerning the Economic and Monetary Union, which was supposed to emerge in several stages, were:

- specification of the macroeconomic criteria, according to which the Member States aspiring to the monetary union would be evaluated (convergence criteria); these criteria were later included in the Stability and Growth Pact;
- establishment of the European Monetary Institute (EMI), responsible for deepening the cooperation between independent central banks of the Member States, an institution coordinating the EU states' preparations for the adoption of the monetary union;
- determining the regime of the new common currency – the euro;
- establishment of a framework for the implementation of an exchange rate mechanism for states not being part of the Economic and Monetary Union – the ERM II;
- establishment of the legal basis for the creation of a single European banking institution – the European Central Bank, and later the European System of Central Banks.

In order to be allowed to fully participate in the in the Economic and Monetary Union, Member States had to meet the convergence criteria. Among these, the most important were the monetary and the fiscal criteria.

Monetary criteria:

– criterion of price stability (inflation stability) concerned the admissible rate of inflation. The annual inflation rate was not allowed to exceed the average inflation rate of the three best-performing Member States by more than 1.5 percentage points. Inflation was to be measured with comparable indexes of consumer prices covering the period of one year directly preceding the examination of the situation in the given Member State;
– criterion of interest rate stipulated that in the year preceding the examination, the long-term interest rate must not exceed by more than 2 percentage points the average interest rate of the three best-performing Member States in terms of price stability;
– criterion of exchange rate concerned the currency of the country aspiring to the EMU. The Member States must have participated in the exchange-rate mechanism (ERM II) for at least two years preceding the examination and the margin of exchange rate fluctuation could not exceed ± 2.25 per cent. However, after several years, even ± 15 per cent fluctuations were admissible;

Fiscal criteria:
- at the moment of examination the Member State could not be subject to the Excessive Deficit Procedure and the admissible level of government debt was 60 per cent GDP;
- the ratio of government deficit to the GDP could not exceed 3 per cent at the end of the preceding financial year.

As mentioned previously, the establishment of the Economic and Monetary Union took place in several stages. On 3 May 1998, it was decided that upon the beginning of 1999, 11 states would officially create the Economic and Monetary Union. In June 1998 the European Central Bank was established, followed by the European System of Central Banks (ESCB), which took over the competences of the European Monetary System and the responsibility for the monetary policy of the European Union.

European System of Central Banks

The key stage in the establishment of the Economic and Monetary Union was the transformation of the European Monetary Institute (EMI) into the European Central Bank (ECB) on 1 January 1999, which along with the central banks of the Member States constitutes the European System of Central Banks (ESCB). The Governors of the Member States' central banks and the Executive Board of the European Central Bank constitute the General Council of the ESCB.

The ECB Executive Board comprises a president, a vice-president and four other executive members appointed under an agreement between the heads of states or governments of the euro area countries. Only citizens of the countries which have adopted the common currency may be appointed to the Executive Board. Consequently, the Eurosystem covers the Member States of the European Union which have introduced the euro. In early 2011, the euro area comprised 17 countries. In order to join it, the countries had to meet demanding economic and political requirements, called the Maastricht criteria or convergence criteria. The key to the Eurosystem is the European Central Bank. Its main tasks include:
- maintaining a stable level of prices in the area;
- setting and implementing the common monetary policy;
- conducting monetary operations and managing the euro area's foreign exchange reserves, authorising central banks of the euro area to issue euro banknotes, supervision of payment systems.

The instruments allowing the Bank to fulfil these tasks include:
- reserve requirement ratio;
- open market operations;
- refinancing operations, that is, in fact, interest rates set by the Bank for loans and deposits.

The representatives of the European Union are not allowed to interfere with or influence the decisions of the ECB organs. Its statute may not be changed

unless by amending the Treaty of Maastricht. Its financial independence consists in separation of the finance of the ECB from the finance of the European Community. The ECB has its own budget. The capital at the disposal of the ECB comprises funds put in by the euro area's national central banks. The seat of the European Central Bank is located in Frankfurt am Main.

Euro area – challenges for the European Union

On 1 January 1999, the euro was introduced in the form of non-cash transactions in 11 Member States of the EU, and on 1 January 2002 in cash form. The euro area comprised states with different levels of economic development, macroeconomic situation and political stability. On the one hand, it included Germany, France, the Netherlands, or Luxembourg, and on the other hand Italy, Portugal, and later Greece.

What were the economic reasons for adopting a single currency in such a large and diverse area of Europe and joining the Economic and Monetary Union?

The principal benefits include:

- lower currency risk (what remains is the currency risk in trade exchange outside the area) and the elimination of problems caused by sudden fluctuation of exchange rates;
- elimination of the costs of currency exchange – business entities and natural persons are freed from often disadvantageous transactions of purchase and sale of foreign currencies;
- lower interest rates, resulting in monetary expansion, increased demand, investments, increase of the GDP;
- lower political and currency risk for foreign investors, resulting in increased inflow of capital;
- greater pressure on lowering unit labour costs and increasing labour productivity, resulting from increased transparency of prices and leading to improved competition and innovation;
- the emergence of external stimuli for increasing budget discipline.

The possible risks were related to:

- the occurrence of inflation resulting from the effect of rounding up prices;
- higher inflation in the long term, if the exchange rate of the national currency to the euro is set on too low a level;
- decreased influence on the creation of the monetary policy by the autonomous central bank (these competences have been transferred to the ECB) and, consequently, a limitation of the sovereignty of the state in monetary terms;
- low interest rates and a possible increase of mortgage prices, an increase of real estate prices and the possibility of a speculative bubble in the real estate market;
- costs resulting from the adjustment to the new currency.

No less important was the point of view of the average citizens, for whom the common currency implied:

- elimination of the barriers in the movement of cash between states, easier foreign travel;
- smooth transfer of loans in euro;
- comparability of prices and services.

Many potential initial risks to the euro area did, in fact, not turn into real threats – for instance, the inflation which occurred due to rounding up of prices was only short-lived. The expected direct benefits – that is the lowering of interest rates, elimination of currency risk, elimination of transaction costs, etc. – were visible in the relevant states shortly after the introduction of the euro. Indirect benefits, connected with the long-term effect of the membership in the euro area, occurred as well. These were, among others, increased macroeconomic stability, increased of the rate of investment, improved trade exchange, increased competition.

All in all, in the period directly following the adoption of the euro, much has changed for the Member States and their citizens. The initial decisions on moving from a single market to a single currency were, in fact, very practical in nature. At the same time, the Economic and Monetary Union was deep inside a project of a thoroughly political character. Upon joining the euro area, a state became a part of the 'heart of Europe'.

Moreover, already in the first stages of the establishment of the euro area, public opinion surveys in most EU Member States were showing that economic and monetary integration was not the ultimate goal. The surveys conducted among students of the Faculty of Management, University of Warsaw, concerning the kind of Union in which they would like to live in, yielded the following answers.[5]

- open, tolerant, in which correct interpersonal relations dominate;
- fair, based on ethical principles, equal chances, human rights;
- responsible, caring for every human being, regardless of their wealth;
- preserving string social ties, caring for the family;
- having roots in the European cultural heritage and the values contributed by the states;
- promoting the ideas of civil dialogue and European unity expressed by the catchphrase 'Europe for Citizens';
- innovative, with new technologies serving better social communication;
- understanding the environmental challenges and the security of citizens.

The opinions in this survey are to a large extent in line with similar surveys conducted in the other Member States, but the evaluation of the Economic and Monetary Union has been evolving and is much more diverse. Why is it like this?

It should be once again noted that the common monetary area in the European Union was preceded by the Stability and Growth Pact established earlier, in 1997.

[5] The survey was held in 2012 at the Faculty of Management, University of Warsaw; 150 students participated.

Its fundamental provisions referred to the Maastricht criteria, which set the main principles of the establishment and functioning of the euro area.

These fundamental criteria had not been observed even at the moment of the establishment of the common monetary area – no wonder then that they were not obeyed later either. We can therefore say that the decision on the participation of many states in the area was largely conditioned by political determinants.

It has also turned out that the European Central Bank – the most important institution of the euro area – was designed for a time of prosperity. Its principal task was to set the monetary policy and monetary stability. The ECB has been performing this task has been outstandingly well. The annual inflation amounting to 1.97 per cent in the first twelve years of the euro was compliant with the ECB objective (set at 2 per cent).

Therefore, we should not confuse the crisis in the euro area with a crisis of the euro as a currency. However, during the crisis in the euro area, the role of the European Central Bank became the subject of a discussion whether to extend its prerogatives. This would most probably require amending the Treaty of Lisbon, which entered into force on 1 December 2009.

There are several reasons for the disturbances in the euro area, starting with the non-observance of the aforementioned Maastricht criteria. It turned out that several Member States, mainly from Southern Europe, such as Greece, Portugal, Spain, Ireland and Italy (the so called PIIGS), were conducting irresponsible debt policies and failed to undertake the necessary sanative actions in time. After joining the euro area, therse countries started a kind of 'euro-feast'.

One special case in this group is Greece, where subsequent governments brought the public finance to the brink of bankruptcy. Life beyond means became a mark of Greece. However, at the same time, the Greek example has revealed the institutional weaknesses of the euro area, as only when the financial markets pronounced a harsh sentence on the said countries, e.g. drastically raising the interest rates on their bonds used for debt servicing, the leaders of the EU and the governments of the euro area raised the alarm. EU institutions and their governance proved adequate in times of prosperity and relative stabilisation in the international markets, but faced with the current challenge, they seemed helpless for a rather long time.

What is even worse, we're also dealing with a severe and, unfortunately, growing crisis of confidence in the European Union, European institutions and politicians. There is also a progressing fall of confidence in the idea of European solidarity, which has been developed since the end of World War II and which was a milestone of European integration. Moreover, national egoisms are becoming ever deeper, squandering the achievements of integration. Yet another disturbing phenomenon is the increased popularity of nationalist and xenophobic political parties.

However, it should also be noted that it is not only the governments of many countries that were running up debts irrespective of future consequences. Enter-

prises, companies, and especially banks were also conducting a rather risky policy leading to many bankruptcies. This was particularly frequent in Ireland and Spain. The possibilities of increasing consumption and investments were provided by relatively low interest rates in the euro area. The European Union could no longer keep functioning like this.

Perhaps there is need for a new vision of the European Union and for new solutions protecting it from recurrence of bad practice. Surely, reforming the euro area must be a priority for the EU leadership. One of the key problems is the issue of comprehensive diagnosis of the origins of the crisis in the euro area. The threats to the functioning of the area are much more serious than the ones mentioned before.

An eminent expert in financial issues[6] has presented a rather convincing thesis that from the very beginning the euro area had exhibited considerable differences in the levels of economic development between the central regions and the Mediterranean and Atlantic fringes. In the expert's opinion, these disparities usually go hand in hand with differences in the structure of production. Development usually implies a reduction of the share of traditional sectors and an increase in the share of the processing industry, and then services. The differences between the structures connected with the differences in the levels of development result in the fact that the stages of the cycle in the two regions do not coincide. And this is the most serious threat to the common currency. It involves the possibility of disturbances and shocks, which would affect these economies differently, depending on the economy's stage in the cycle. The ECB will not be able to indulge everyone, as it has to conduct a policy of a single interest rate, aimed at preserving a certain low average inflation for the entire euro area.

The problem will become less pronounced only when the differences in levels of development are reduced and the structures of production become similar and intra-sector specialisation becomes more important. This is called 'real convergence'. It has a better chance of quick realisation in a large area of the common market, free from currency risk, i.e. in a single currency system. Until this process is completed, the common currency is at risk of collapse.

This point of view should be taken into account during the works on further reforms of the euro area. This is not to say that the steps already taken are of no significance, such as the fiscal compact or the solving of the current problems with financial liquidity by the European Financial Stabilisation Mechanism and the actions of the European Central Bank.

On the other hand, there are prospects for strengthening the second pillar of solving the situation in the euro area, apart from fiscal discipline, that is greater involvement of governments in encouraging and supporting economic growth. But also through greater involvement in this field of the European Investment

[6] K. Lutkowski, *Co się stało w strefie euro (What Happened in the Euro Area)*, "Rzeczpospolita", 15.06.2012.

Bank. The formal barriers to its functioning should also be removed as quickly as possible. For instance, even though its loans do not increase the debt, they require government guarantees.

However, it would seem that apart from strictly economic activities, the integrating Europe and its 'heart', the Economic and Monetary Union, are in need of structural and political reforms.

Many believe that in response to the current crisis the European integration should be deepened in political terms. The President of the European Commission, Jose Manuel Barroso, is a proponent of an extensive debate concerning the creation of a European 'federation of nation states'.[7] According to Barroso, in the modern world, constantly subject to globalisation and changes, the EU has to face new challenges. In the 21st century, Europe faces problems connected with such issues as globalisation of the economy, demographic development, climate change, energy supply, or unique threats to security. Such problems, and the citizen's insecurity concerning the future, should be cured only by common efforts undertaken on the European scale. Barroso believes that in order to handle this task well, Europe must be modern. It has to have at its disposal effective and coherent tools adapted both to the requirements regarding the functioning of the EU, in which the number of Member States has risen in a relatively short time from 15 to 28, and to the constant changes characteristic of the contemporary world. Therefore, the principles of cooperation enshrined in the treaties of the European Union need reforming. At the same time, Barroso stresses that there is no doubt about the irreversibility of the euro; and the strong states of the EU should undertake joint actions aimed at overcoming the crisis in the euro area.

Conclusions

Most economists and politicians agree with Barroso that the scenarios concerning the future of the European Union will surely be determined be the course of events in the euro area. Many American economists, including the Nobel Prize winner in economy, Joseph Stiglitz, are rather sceptical about whether the euro area can be saved. He believes that *'it's hard to unscramble a scrambled egg'*, the euro area will never be as integrated as it used to be. The question is what will be less costly – salvaging or dissolving the euro area.[8]

However, this point of view is not commonly shared in Europe. On the contrary, it is a fact that faced with a crisis the European Union has always found good solutions for itself and – as it turned out – for the world as well. In difficult times it managed to communicate and strengthen its position in the international arena. The Polish Prime Minister, Donald Tusk, believes that 'more of

[7] Speech delivered by Jose Manuel Barroso in the European Parliament, 12.09.2012.
[8] Joseph Stiglitz, "New York Times", 30.03.2012.

Europe' is the best cure for the crisis – that is wise spending of EU funds and wise decisions of EU institutions, but also, in the individual dimension, more freedom and security.[9]

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[9] Donald Tusk, from a speech delivered in the European Parliament, 6.07.2011.

Grzegorz Tchorek

Moving Towards Better Economic Governance in the Euro Zone

Introduction

The financial and economic crisis emphasised the broadly discussed weaknesses of the euro area functioning connected with the excessive borrowing in private sector, a non-optimal monetary policy due to the lack of real convergence and different dynamics of economic growth, loss of competitiveness in peripheral countries and low financial markets discipline in relation to countries which do not care about the stability of public finances, which was accompanied by ineffective implementation of the Treaties.

One of the fundamental problems which contributed to the abovementioned dysfunctions of the common monetary system was the lack of a sufficiently effective coordination of macroeconomic policies, and particularly fiscal policies. Therefore, a centralised monetary policy should be accompanied by a coordinated economic and fiscal policy, and ultimately a fiscal union. However, the lack of will on the part of societies and politicians resulted in replacing actions towards deeper economic and political integration by standards of macroeconomic coordination under the Maastricht Treaty and the Stability and Growth Pact (SGP). These have proven insufficient.

The main aim of this text is to evaluate the fundamental institutional solutions regarding fiscal policy and economic governance introduced in the euro area in response to the financial crisis which began in 2007. The lack of sufficient fiscal discipline of the Member States is considered to be one of the major sources of the crisis and its severity. The inability of the institutional system to ensure a countercyclical fiscal policy resulted from the ineffectiveness of the fiscal rules defined at the EU and national levels.

Nevertheless, the instable fiscal policy is not the fundamental source of the crisis, but instead, in many cases, rather its consequence (e.g. Ireland and Spain). In light of the risk of bankruptcy of financial institutions, the accumulated imbalances in the euro area economies in the form of excessive private debt have been transferred to the public sector, since government debts of many EU Member

States have been rising sharply during the crisis due to the need to grant financial support and guarantees to financial institutions. Therefore, the proposed reforms go beyond the field of fiscal policy and strive to establish a new model of economic governance in the EU and in the euro area.

This is the most comprehensive set of reforms since the introduction of the single currency. However, its effectiveness depends on factors related to the implementation of the adopted solutions. Moreover action taken in economic governance and stability mechanism should be complemented in the area of financial stability with some kind of banking union for the euro area.

Weaknesses of the fiscal policy and economic governance before the crisis

Effectiveness of the Stability and Growth Pact

On the path towards the euro area, meeting the convergence criteria, including the fiscal criterion of a 3 per cent deficit and a 60 per cent government debt as a percentage of the GDP, was the requirement for being qualified to the monetary union. Countries wanted to belong to the elite group of monetary union members, so they made efforts to introduce reforms; as a result, the average budget deficit of the euro area states, which amounted to approx. 5 per cent in 1992, was lowered to slightly above 2 per cent in 1998. Despite often justified accusations that some countries have met the fiscal criterion by resorting to creative accounting, by one-time actions such as privatisation, or thanks to quick economic growth favouring increased budgetary revenue, the Maastricht criteria had a relatively disciplining effect. The prospect of being a member of the monetary union had a positive effect on the implementation of structural reforms connected with, among others, reducing the extent of regulation in the economies, including the increase in flexibility of job markets,[1] as the states were preparing to function in a more competitive economic environment deprived of the possibility to use an autonomous monetary and exchange rate policy to regulate economic activity.

After a particular country joined the monetary union in 1999, the disciplining role with regard to the fiscal policy was taken over by the Stability and Growth Pact, adopted in Amsterdam in 1997. The establishment of the SGP resulted from the need to improve the possibilities of disciplining the fiscal policy under the so-called Excessive Deficit Procedure, established in the Treaty of Maastricht.

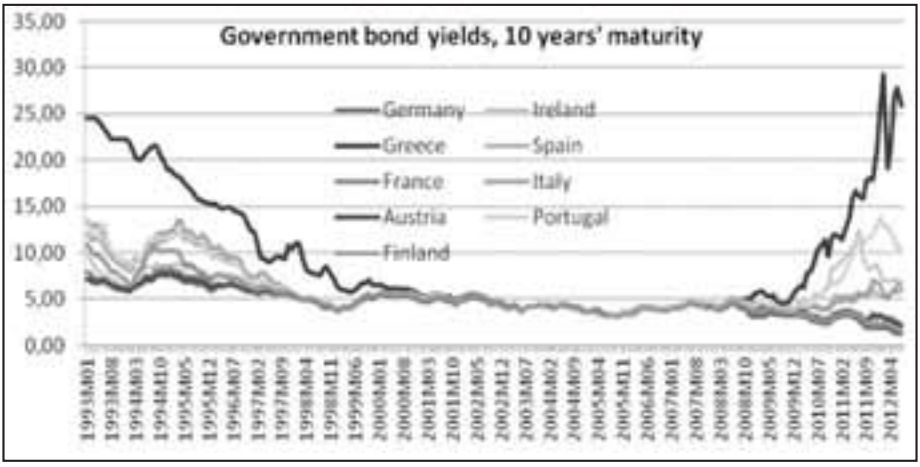
The economic reason for the introduction of fiscal rules in the euro area was the improvement of the stability of government finance after a period of expansion of the fiscal policy in the 1970s and 1980s. On the one hand, this was supposed to reduce high national debts and on the other hand, create favourable conditions for counter-cyclicality of fiscal policy to dampen economic fluctuations. In the

[1] A. Alesina, S. Ardagan, V. Galasso, *The Euro and Structural Reforms*, "Harvard Institute of Economic Research Discussion Paper" no. 2169/2008.

monetary union, the significance of fiscal policy as an economic policy instrument rises because there is no autonomous national fiscal policy. Furthermore, the need to introduce fiscal rules for member states resulted from the attempts to reduce the risk of moral hazard, the so-called 'free ride'. With a decentralised fiscal policy, some countries might want to abuse the credibility of the monetary union by excessive borrowing. In case of loss of control over the debt value (Greece), all the members have to pay it back in order to save the credibility of their single currency.

The non-bail out clause was supposed to provide protection from such risk, as the Treaty stipulates that the EU is not liable (Article 125 TFEU) for either government or private debts of its Member States. Nonetheless, the instrument proved to be ineffective. The weaknesses of European institutions in implementation of the existing rules were accompanied by the weakening of the disciplining role of the financial markets (interest free ride), which were providing capital to all the euro area members at the same price, regardless of their fiscal policy quality. This is illustrated by the diminishing diversification of the yields of Greece and Portugal as compared to those of Germany in the market of government bonds. Portugal was the first state to be subject to the Excessive Deficit Procedure (already in 2001) and Greece did not manage to meet the criterion of 3 per cent deficit in any year between 2000 and 2008 – see Chart 1. The financial markets were not paying much attention to the risk of a given state and commonly assumed that if any country indeed went bankrupt, the non-bail out clause would not be applied.[2]

Chart 1. Government bond yields of selected states of the euro area



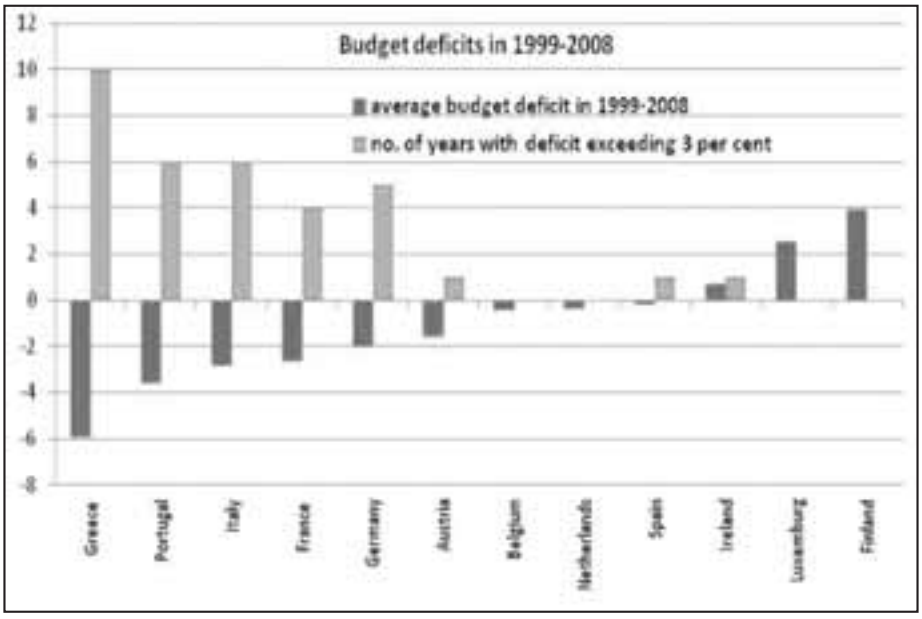
Source: Eurostat data, http://www.epp.eurostat.ec.europa.eu (last visited 10.12.2012).

[2] F. Gianviti, A.O. Krueger, J. Pisani-Fery, A. Sapir, J. von Hagen, *A European Mechanism for Sovereign Debt Crisis Resolution: A Proposal*, Bruegel 2010.

The functioning of the SGP was based on two principles: prevention and repression. The former consisted in control and evaluation of the budget objectives, namely medium-term objectives (MTO – medium term budgetary objective), which required the states to have structural balance close to zero. In turn, the repression mechanism involved the possibility of imposing a fine on a state failing to meet the 3 per cent GDP nominal deficit criterion.

The effectiveness of the SGP in disciplining the fiscal policy proved lower than that of the Maastricht criteria. On the one hand, after becoming a member of the euro area, the euro area states eased the pressure on reforms. On the other hand, the introduction of the SGP coincided with weakening of the global economic growth in 2000–2002, which turned into a significant economic slowdown in the EU member states' economies. This explained the appearance of deficits, but in many cases they exceeded the crucial 3 per cent limit and, what is even more important, were not sufficiently reduced once the economic situation improved after 2002. In academic publications, this period is referred to as the *'wasted good times'*,[3] which points out that the relatively good economic growth was not used to introduce necessary adjustments in the form of amassing budget surplus or at least significantly lowering the deficit – see Chart 2.

Chart 2. Budget deficits in the euro area



Source: Eurostat data, http://www.epp.eurostat.ec.europa.eu (last visited 10.12.2012).

[3] See: L. Schunknecht, P. Moutot, P. Rother, J. Stark, *The Stability and Growth Pact*, *Crisis and Reform*, "ECB Occasional Paper" 2011.

The SGP's inability to ensure a stable fiscal policy resulted mainly from the weakness of European institutions in terms of enforcement of preventive and repressive provisions. The attitude of Germany and France, the two most important Member States, towards the SGP requirements negatively affected SGP's credibility.[4] Even though in the mid-1990s the German government insisted on the introduction of the SGP, in the years 2000–2008, it failed to meet the criteria of a 3 per cent budget deficit five times. The situation is quite similar for France, the second largest state of the euro area – in the years 1999–2008, it exceeded this threshold four times.[5]

The political acceptance of non-compliance with the SGP became visible in 2003, when the Council of the European Union rejected the Commission's recommendation calling on Germany and France to limit their budget deficits, while the two states had not been respecting the 3 per cent limit since 2001 and 2002 respectively. As the political coalition created by the states in question rejected the draft decision, the Council failed to adopt this declaration, which was the last step before applying financial sanctions. This reduced the credibility of the Pact, as the Commissions' failure proved the ineffectiveness of European institutions in the conflict with the political coalition of states.

At the same time, in 2005, the position of Germany and France resulted in mitigation of the Pact provisions. Several exceptions were specified to justify the non-implementation of the Excessive Deficit Procedure, such as a recession or a long period of GDP growth significantly below its potential growth.[6]

Macroeconomic imbalances

Despite the fact that in the euro area the economic crisis is mainly equated with domestic fiscal problems, its origins can also be found in the real problems of the individual economies and sectors. These were related to at least three groups of interrelated factors which became particularly visible after the introduction of the euro: the significant increase of private debt which led to boom and bust cycle, the loss of international competitiveness of the economies as well as the resultant divergences between the euro area countries instead of the expected convergence. Those inefficiencies mainly appeared in peripheral countries: Greece, Ireland, Italy, Portugal and Spain – see Chart 3.

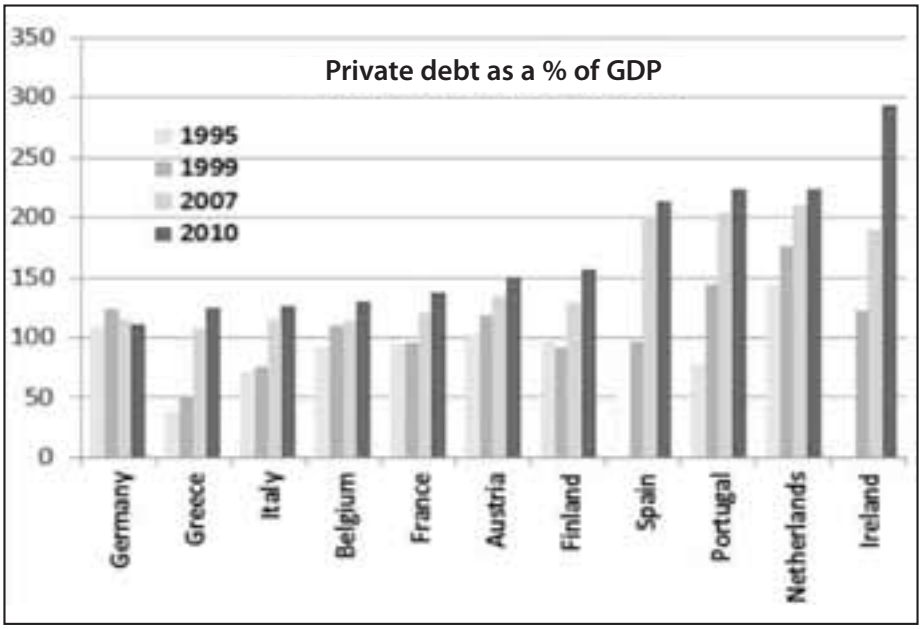
After the establishment of the euro area, the elimination of foreign exchange rate risk, the introduction of a common monetary policy, the increased competition between financial institutions, and the increase of

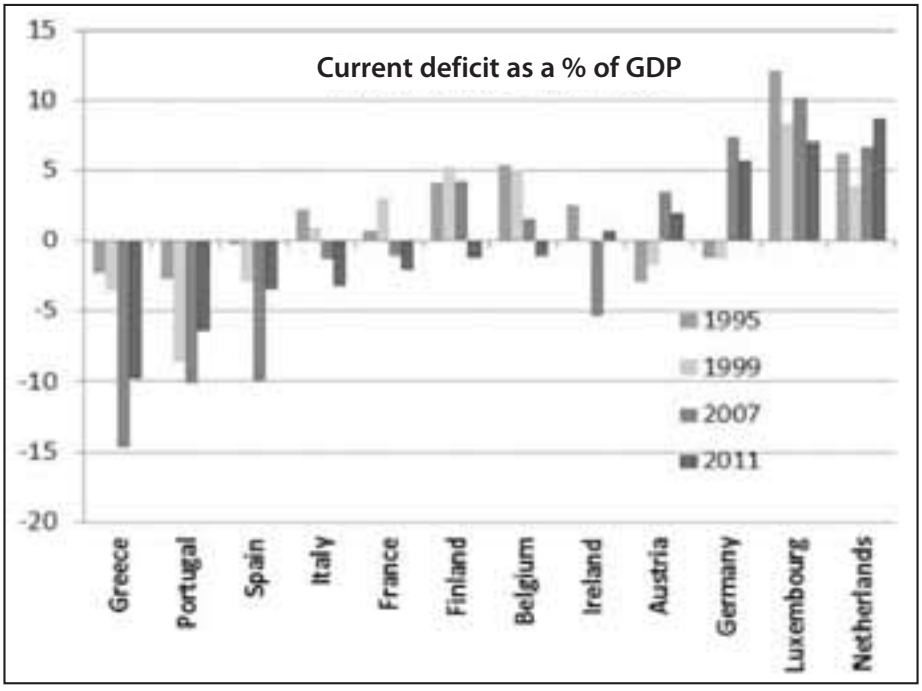
[4] K. Laski, L. Podkaminer, *The Basic Paradigms of EU Economic Policy-Making Need to be Manager*, "Cambridge Journal of Economics" 2012.

[5] M. Dunin-Wąsowicz, A. Darska, G. Tchorek, *Integracja europejska i nowy ład gospodarczy*, *(The European Integration and the New Economic Order)*, Warszawa 2012.

[6] I. Begg, *Economic Governance in an Enlarged Euro Area*, "European Economy. Economic Papers" no. 311/2008.

Chart 3. Private debt and current deficit in the euro area





Source: Eurostat data, http://www.epp.eurostat.ec.europa.eu (last visited 10.12.2012).

cross-border mobility of capital have contributed to the integration of financial markets and increased availability of funds. The raised level of liquidity in the economies was leading to inflation pressure, manifesting itself in various forms, such as, for example, significant inflation in financial assets or real estates. As a consequence of persistent inflation differences between the states of the euro area, the common monetary policy led to a significant divergence of real interest rates. Countries with high inflation were experiencing low (often negative) real interest rates, which stimulated economic growth and further price increase. It led to wage increase which was not accompanied by productivity growth and caused the loss of international price competitiveness. At the same time due to access to cheap money import soared. This processes was reflected in deepening external imbalances in the form of high current account deficits and a quickly accumulating negative investment position.[7] Another reason for worsening competitive advantage in foreign markets was the structure of production focusing on low-tech goods which were also exported on a mass scale by the countries – Brazil, Russia, India, China and South Africa (BRICS) – rapidly entering the global markets.[8]

As a consequence of the abovementioned factors, instead of the expected convergence of the economies of the euro area, divergences appeared.[9] Before the establishment of the euro area, it was assumed that the problem of structural differences between the states – including the different levels of wealth and the economic cycles – would gradually disappear with the progress of real convergence due to the introduction of the euro. As a result of growing trade exchange (Endogeneity of the Optimum Currency Area Criteria), the income levels were supposed to even out, which should be facilitated by the integrated financial markets. However, the expectations concerning the influence of the euro on trade and the correlation of economic cycles proved too high. Moreover, the integration of financial markets, which was supposed to act as a shock buffer, became the source of the shock, since the crisis began in the financial markets and was spreading to other sectors and countries owing to financial ties.

Studies confirm that the introduction of the euro could lead to structural changes reflected in ever stronger north–south divisions manifesting themselves in the current account position. Lewhad studied the changes in production, investment and consumption using the Bayesian dynamic factor model in two subperiods: 1991–1998 and 1999–2010, with a division into the 'core' countries

[7] K. Laski, L. Podkaminer, *The Basic Paradigms of EU Economic Policy-Making Need to be Manager*, "Cambridge Journal of Economics" 2012.

[8] F. Di Mauro, K. Forster, *Globalization and the Competitiveness of the Euro Area*, Ministry of Economy and Finance, "Working Papers" no. 5/2010, http://www.dt.tesoro.it/export/sites/sitodt/modules/documenti_it/analisi_progammazione/working_papers/Dimauro-Forster.pdf (last visited 10.12.2012).

[9] W. Miles, Ch. Vijverberg, *The Exogeneity (at best) of the Optimum Currency Area Criteria for the Euro Zone*, Wichita State University, 2011.

(Belgium, France, Germany, Italy, Finland, the Netherlands) and the 'peripheral' countries of the area (Greece, Ireland, Portugal and Spain). He points out that in the first subperiod, synchronisation of cycles in all countries of the euro area increased, but upon the introduction of the common currency it increased only in the core countries, while in the peripheral ones it weakened. The author explains the increased ties between the states in the central group by the increasing significance of the global factor – the commercial and capital ties, which are much more important for the central countries than for the peripheral ones.

Proposed reforms

The 'six-pack'

One of the first projects of reforming the economic part of the EMU was prepared by the Task Force on Economic Governance, established by Herman van Rompuy, President of the Council of the EU. The legislative work aimed at eliminating the weaknesses resulted in the so-called 'six-pack', adopted by the European Parliament in September 2011 and in force since 13 December 2011. The aim of this package of six new legislative acts is to reform the SGP, ensure coordination and surveillance of budgets and structural policies of the EU Member States, as well as to allow for the identification and correction of macroeconomic imbalances. The new principles of economic governance provide for synergy of objectives and effects of structural and budgetary policy reforms. Both policies will be controlled *ex ante*, instead of the previous *ex post* assessment – see Table 1.

The European Semester

As noted above, the legislative reforms adopted in the six-pack increased the role of coordination of the fiscal policy, as well as the remaining economic policies previously coordinated under the Broad Economic Policy Guidelines (BEPG). In contrast to the SGP, which provided for sanctions for breaking the set rules, the BEPG, introduced in 1993 by the Treaty of Maastricht, did not provide for penalties for conducting an economic policy at variance with the recommendations included in the BEPG. The six-pack codifies the process of political and economic consultations under the European Semester and is meant to control three aspects of the economic policy: 1. the structural reforms (defined in the Integrated Guidelines for Growth and Jobs and the Europe 2020 Strategy); 2. the budgetary policy according to the principles of the revised SGP; 3. the surveillance of macroeconomic imbalances – see Chart 4.

The main objective of the new method of fiscal and economic policy coordination is to create the possibility of reviewing national budgets and structural policies at the draft stage. The Semester allows to detect possible imbalances even before making the final decisions on the budget in the first 6 months of every year. The cycle is supposed to start in March with the European Council presenting the economic priorities, and end in July, before the Member States

Table 1. Main elements of the 'six-pack'

Division of the six-pack projects		Type of legal act in the framework of the six-pack	Objectives and instruments
New Stability and Growth Pact	European Semester	• Amendment of Regulation 1466/97 (the Stability and Growth Pact) – strengthening of budgetary surveillance and coordination of economic policies, • Amendment of Regulation 1467/97 (Stability and Growth Pact) – speeding up and clarifying the implementation of the EDP,	• Strengthening of the Stability and Growth Pact through introducing semi-automatic sanctions for conducting a fiscal policy non-compliant with Treaty provisions • Extending the catalogue of offences which trigger sanctions: excessive deficit, too slow reduction of deficit if it exceeds 60% of GDP, failing to reach the MTOs). • Fines amounting to 0.2% of GDP
Correction of excessive imbalances (including the Excessive Imbalance Procedure)		• New regulation – effective enforcement of budgetary surveillance in the euro area. • New regulation – prevention and correction of macroeconomic imbalances, • New regulation – enforcement measures to correct excessive macroeconomic imbalances in the euro area	• Internal imbalance indicators • Indicators of imbalances in the internal market. • Fines amounting to 0.1% of GDP
New directive on reporting and budget accounting		• Directive – requirements for the fiscal framework of the Member States	Standardisation of budget and reporting rules.

Source: Own compilation.

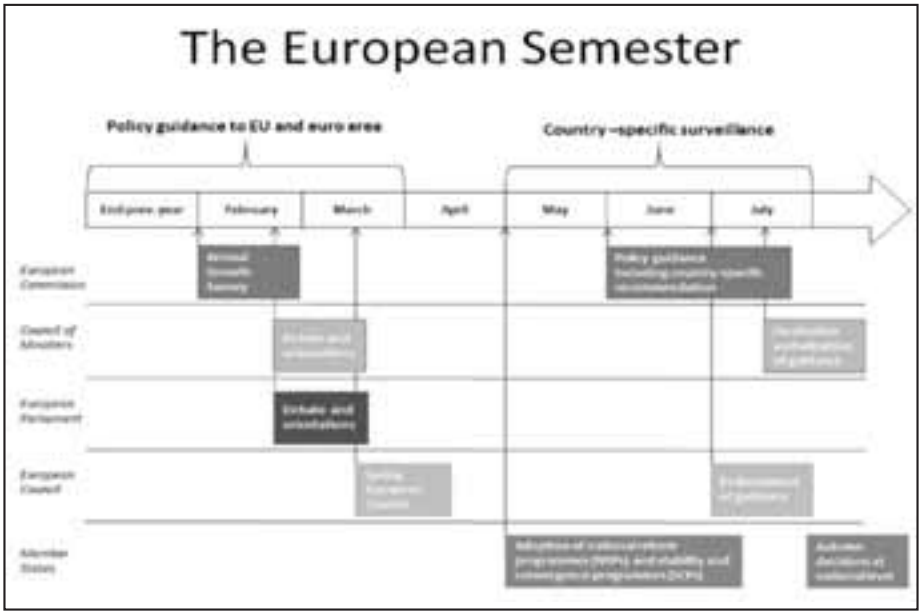
Chart 4. The European Semester and the instruments of economic governance in the EU

Source: M. Hallerberg, B. Marzinotto, G. Wolf, *How Effective and Legitimate is the European Semester? Increasing the Role of the European Parliament*, European Parliament, ECON 2011.

decide on the final budgets for the following year – see Chart 5. The introduction of *ex ante* procedures in the place of the previous *ex post* evaluation will increase the chances for identifying macroeconomic problems and imbalances and using appropriate solutions even before making the final decisions on the budget.[10] The combination of coordination of structural and budgetary policy reforms under the European Semester is considered to be innovative. The structure is meant to generate synergy effects and mutually strengthen these two aspects of economic policy.

The first 'full' European Semester began in early 2011. The initial experience indicates certain problems related to the non-compliance of the national documents with the objectives of the Europe 2020 Strategy, the unavailability of necessary data in the right time, and low legitimisation of the Semester at the national level.[11] Regardless of these deficiencies, the Semester instrument constitutes a potentially important element for improving the dialogue regarding joint identification of economic challenges and problems, as well as jointly deciding which instruments to use to address them.

Chart 5. The European Semester Procedure



Source: European Commission, http://ec.europa.eu (last visited 10.12.2012).

[10] J. Delors, S. Fernandes, E. Mermet, *The European Semester: Only a First Step*, "Notre Europe, Policy Brief" no. 22/2011.

[11] M. Hallerberg, B. Marzinotto, G. Wolf, *How Effective and Legitimate is the European Semester? Increasing the Role of the European Parliament*, European Parliament, ECON 2011.

The Euro Plus Pact

Another instrument with the aim to improve the coordination of economic policies was adopted in March 2003, at the summit held on 25 March 2011 in Brussels, and called the Competitiveness Pact, or the Euro Plus Pact. It is supposed to strengthen the existing mechanisms of economic cooperation mainly in the policy areas which have the most stimulating effect on competitiveness and convergence of the euro area countries. The principles of the Euro Plus Pact correspond with the objectives included in the Europe 2020 Strategy (they concern actions aimed at improving competitiveness, employment, as well as strengthening the stability of government finance and financial stability). Every year, the heads of states or governments will be taking on concrete commitments regarding their own economies and the evaluation of the fulfilment of these commitments will be monitored on the basis of a report prepared by the European Commission.

However, the power of this instrument as an effective economic governance mechanism is potentially low. While the objectives are ambitious, it is not equipped with any mechanism of surveillance or sanctioning. Furthermore, it suffers from the lack of a clearly specified aim and a rather broad discretion of the Member States in making decisions on the declared actions and their implementation.[12] For the above reasons, the Euro Plus Pact should rather be treated as an additional forum for exchanging views and exerting possible political pressure in the framework of activities aimed at improved coordination of the economic policies of the euro area members.

Improving the effectiveness of fiscal rules

SGP reform

Amended under the six-pack, the SGP is supposed to be more effective than in the years 2000–2007 in motivating states to conduct a cautious fiscal policy. The SGP reform implemented in 2011 is responsible, to a certain extent, for its critical perception as an ineffective mechanism for creating a safe financial buffer in the form of budget surplus to be used in the time of recession. The improved effectiveness of the revised SGP is to result from a few factors. As for prevention, the process of designing national budgets was subjected to more consultations at the EU level under the European Semester. Furthermore, under the reform the Council could impose an obligation to pay a deposit of 0.2 per cent of GDP on a state which fails to implement the Council's recommendations regarding the MTOs. As regards repression, the reform introduced semi-automatism in imposing sanctions, which limited the possibilities of using political influence to prevent the penalties for exceeding the 3 per cent budget deficit, as despite frequent violation of this rule the relevant financial penalties had never been

[12] Commerzbank, *Research Note*, Economic Research, 25 March 2011.

enforced.[13] At the same time, the list of situations in which sanctions can be imposed has been expanded. Before the crisis, excessive budget deficit was the trigger, but now sanctions can be imposed also for an insufficient rate of government debt reduction (it is supposed to be reduced annually by 1/20 of the difference between the level of 60 per cent GDP and the excess over this level), for an insufficient rate of improvement of the MTO structural balance, as well as for an excessive rate of increase in budget expenses. Furthermore, the reformed SGP has also introduced common requirements for the national budgetary framework and the requirement to introduce them in the national legalisation.

Despite the fact that actions generally undertaken with the aim to improve the SGP are considered a step in the right direction, it is believed that the scope of changes might not be sufficient. The risks for the reformed SGP result primarily from the too extensive administrative and political discretion, an insufficient role of the European Commission, complicated and prolonged processes of procedures monitoring and implementation procedures, as well as a still insufficient automaticity in imposing penalties.[14]

The Fiscal Compact

One instrument meant to improve the efficiency of the reformed SGP and rebuild the confidence in the EU fiscal rules is the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, signed on 2 March 2012 by 25 EU Member States (the Czech Republic and the United Kingdom have not signed it). Apart from confirming the fundamental principles of the SGP, like the need to maintain fiscal stability and comply with the limits of 3 per cent deficit and 60 per cent debt in relation to the GDP, the Compact introduces several additional elements. First of all, it contains a requirement to introduce the so-called 'golden rule' in the national legislations of the Member States. It forbids the maintaining of structural balance deficit of more than 0.5 per cent of GDP. At the same time, it establishes greater automatism in imposing penalties for non-compliance with the fiscal stability rules. The penalties, of up to 0.1 per cent of GDP, will be adjudicated by the Court of Justice of the European Union, which helps further depoliticise the decision-making.

The changes proposed in the Fiscal Compact are considered to be an important step towards creating a comprehensive body of new SGP regulations. The main advantage is the increased responsibility of the individual Member States

[13] Before 2011, the SGP allowed the ECOFIN Council to reject recommendations proposals on imposing sanctions, as a qualified majority was required to adopt a Commission proposal. This implied that it was fairly easy to create a coalition of states to prevent the recommendation/proposal from gaining the qualified majority support. Under the six-pack, imposing sanctions will be much simpler, as a Commission proposal will be considered adopted if it is not rejected by a qualified majority (so called 'semi-automatism'). Thus, organising a coalition to block the proposal will now be much more difficult.

[14] L. Schunknecht, P. Moutot, P. Rother, J. Stark, op.cit.

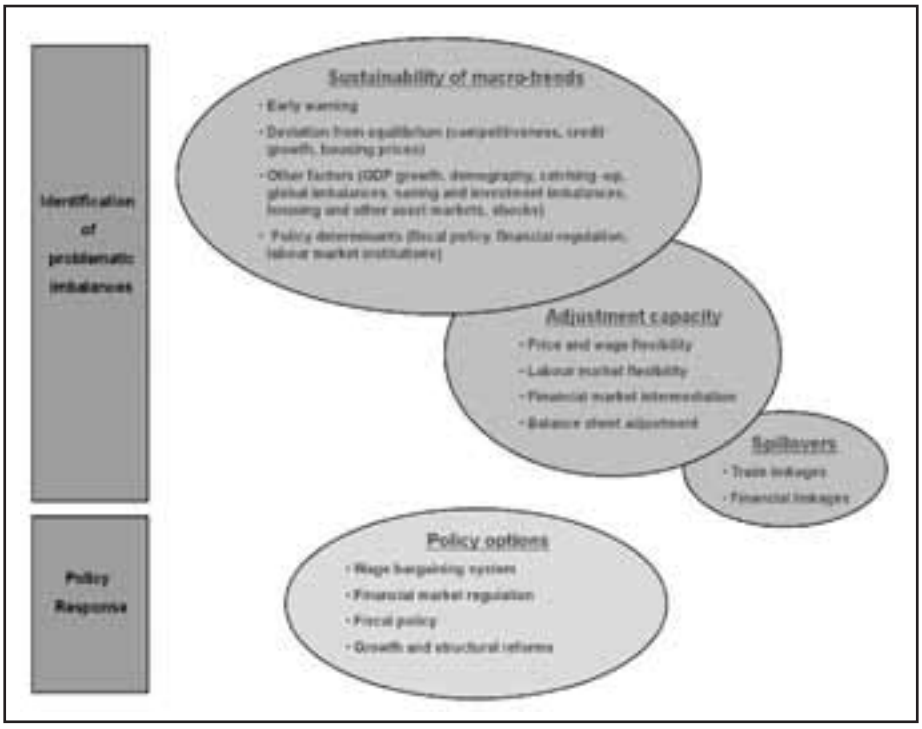
for ensuring the quality of their fiscal policies. The main drawback is that this instrument, concluded in the form of an intergovernmental agreement, has to be ratified by at least 12 out of 17 members of the euro area by 2013.

The Excessive Imbalance Procedure

The Excessive Imbalance Procedure (EIP) is a new instrument of economic governance, its main objective being the early detection and prevention of macroeconomic imbalances. As previously mentioned, these imbalances had significant influence on the outbreak and course of the crisis in Europe and the euro area.

As it was in the case of the SGP, the means used to prevent and correct the excessive imbalances have been divided into parts devoted to prevention and repression.[15] The system of preventing excessive imbalances comprises a warning mechanism and a regular assessment of the risk of imbalances, as well as

Chart 6. Detection and correction of macroeconomic imbalances



Source: European Commission, http://ec.europa.eu (last visited 10.12.2012).

[15] *The new Surveillance of competitiveness and macro macro-economic imbalances*, DG ECFIN, Brussels, 12 January 2011.

rules for correction of the identified balances[16] – see Chart 6. The early warning mechanism allows for the identification of the Member States at risk of macroeconomic imbalances. Its functioning is based on the evaluation of the indicators related to the situation of the Member States, regarding both the macroeconomic aspect and government finances.

Alert thresholds have been defined for each of these indicators and for some of them threshold values, specifying the range of permissible fluctuations of each value, have also been set – see Table 2. This helps identify both excessive and too low values of a variable.

Table 2. The set of the indicators of internal and external competitiveness under the EIP

Source: European Commission, http://ec.europa.eu (last visited 10.12.2012).

The detection of excessive imbalances initiates the corrective procedure, under which the state in question is required to present correction plans which are then either approved by the European Commission and the Council of the EU or dismissed as insufficient. Should a member of the euro area persist[17] in not presenting a satisfactory plan of corrective actions or in failing to imple-

[16] *Opinion of the European Economic and Social Committee on the Enforcement measures to correct excessive macroeconomic imbalances in the euro area/ Prevention and correction of macroeconomic imbalances*, European Economic and Social Committee, Information Memo (471st plenary session), Brussels, 20 April 2011.

[17] In the Commission proposal, persistence is understood as failing to follow the Council's recommendations or present a plan of corrective actions by the second deadline set in the procedure.

ment the Council's recommendations, it will be required to pay an annual fine amounting to 0.1 per cent of GDP. The decision on imposing the fine will be made by the Council in a reverse majority vote,[18] but only representatives of the Member States whose currency is the euro will be allowed to vote and the vote of the country in question will not be counted. What is more, insufficient implementation of the recommendations issued in relation to the imbalances may be considered as an aggravating factor in the assessment of the budgetary situation provided for in the SGP.

Taking into account the many-sided nature of the macroeconomic imbalances accumulation process and the negative experience with the SGP, there is a risk that the EIP will not be very effective, due to the extended procedural cycle, including long intervals between the periods of analysis, preparation of recommendations, the procedure itself, and imposition of sanctions.[19] Another problem is that comparing the macroeconomic situation with the indicators presented by the Commission means in fact carrying out an *ex post* control, with the focus on the processes which already happened in the economy, which reduces the preventive quality of indicators. In the opinion of the authors from the European Policy Centre (2011),[20] the ineffectiveness of the early warning mechanism could prove to be a weak spot of the EIP. It is usually very difficult to detect excessive imbalances in their early stages of development. Moreover, the European Economic and Social Committee (EESC) points out that the detection of imbalances and even the application of appropriate corrective measures do not guarantee quick balance restoration, for instance due to the lack of full control of the government over the macroeconomic conditions and the potential ineffectiveness of the sanctions imposed on the countries of the euro area.[21] The EESC also mentions the possible pro-cyclical nature of the policies and restrictive actions aimed at restoring balance. There is a risk that the EIP will share the fate of the EDP (Excessive Deficit Procedure) if the mechanisms of automatic sanctioning are not appropriately used. The fundamental weakness of the original version of the Stability and Growth Pact was that it lacked any effective enforcement mechanism. There are concerns that the EIP, due to absence of a clearly specified timeframe and requirements, might also prove ineffective.

[18] This means that the Commission's recommendation on imposing the fine will be considered adopted, provided that the Council does not reject it by a qualified majority of votes. Therefore, the voting is made 'against', not 'for'.

[19] *Macroeconomic Coordination. What Can a Scoreboard Approach Achieve?*, Deutsche Bank, 28.01.2011.

[20] *A Quantum Leap in Economic Governance – but Questions Remain*, European Policy Centre, 28.03.2011.

[21] *Opinion of the European Economic and Social Committee on the Enforcement*..., op.cit.

The European Stability Mechanism (ESM) as a permanent element of financial assistance

One of the factors which may have contributed to the deepening of the crisis in the euro area is the fact that the legal concept of the single currency did not foresee the risk of considerable crises which require highly coordinated activities at the EU level. In consequence, the formal response mechanisms were not functioning, also in a situation of potential insolvency of a Member State. However, the risk of going bankrupt can be much higher for a member of the euro area than for a state having its own currency because there is no possibility of monetisation of its debt, which had never been discussed before the introduction of the euro.[22] Losing liquidity and having problems with obtaining funds in the financial markets, Greece or Portugal did not have the possibility to issue their national currencies (as, for instance, the United Kingdom), for once they entered the euro area they were no longer conducting an autonomous monetary policy.

The lack of clear bail-out rules in case of a crisis increased the market risk and contributed to a significant rise of bond yields and, consequently, through growing costs of financing, was contributing to increased bankruptcy risk. Despite numerous meetings, negotiations and summits held in 2010 and 2011, the leaders of the EU Member States were not able to reach an agreement on the form and extent of assistance measures for the economies in need. As a result, the development of the situation in the EU and assistance to the economies in need became dependent on a political compromise, political and social feeling, and the cycle of elections in certain countries.[23] This led to even greater uncertainty and changeability in the financial markets, also due to the fact that the actions taken, indeed, often only consisted in declarations or temporary solutions.[24] Another factor influencing the increasing yields of bond in the euro area members was the transfer of risk from the banking sector to the public sector. With the lack of centralised financial supervision in the EU, the responsibility for the bankruptcy of individual banks falls on the governments and affected the risk reflected in government bond market.

The initial assessment of the origins and course of the crisis in the euro area confirms the occurrence of the abovementioned feedbacks. Arghyrou and Kontonikas demonstrate that apart from the worsening macroeconomic situation, the rising Greek bonds yields resulted from the changing perception of Greece's

[22] P. De Grauwe, *The European Central Bank: Lender of Last Resort in the Government Bond Market*?, "CESifo Working Paper" no. 3569/ 2012.

[23] A good example of this is the discussion on the possible role of the IMF in providing financial assistance, as well as the problems with ratifying the EFSF and the demands for guarantees of returning the contributions of certain countries under the second bailout package for Greece in 2010–2011 (Finland, Austria, the Netherlands, Slovenia and Slovakia).

[24] F. Gianviti, A.O. Krueger, J. Pisani-Fery, A. Sapir, J. von Hagen, op.cit. 7

future membership in the euro area by the financial markets. At the same time, the growing yields reflected – to a considerable extent – the problem of credibility loss for the entire monetary union, unable to ensure liquidity of one of its members.[25] Moreover, the authors point out that Greece's problems became the source of a contagion which has spread to the other countries of Southern Europe.

In the end, the risk of bankruptcy of peripheral states induced the members of the euro area to establish, in May 2010, a provisional European stability mechanism amounting to EUR 650 billion.[26] The package consists of three elements:

1) the European Financial Stabilisation Mechanism (EFSM), issuing bonds of a maximum value of EUR 60 bilion, guaranteed by the EU budget;
2) the European Financial Stability Facility (EFSF), issuing bonds guaranteed by the member states of the euro area proportionally to their share in the capital of the European Central Bank, of a maximum value of EUR 440 billion (however, the effective lending capacity of the EFSF amounted to only approx. EUR 255 billion due to the fact that this amount was guaranteed by the states with the highest AAA rating);
3) an additional package of the International Monetary Fund amounting to EUR 250 billion.

The capital at the disposal of these funds were largely spent on assistance provided to Ireland and Portugal. In the light of the increasing market risk and bond yields, concerns have arisen that Spain and Italy, that is the third and fourth largest economies in the euro area, might also ask for financial assistance. The total scale of the possible financial needs as regards helping Spain and Italy if they went bankrupt was estimated at approx. EUR 2–3 trillion.[27] This gave rise to additional concerns that the EFSF's financial capacity might be insufficient, which further contributed to a growing risk and negatively affected the stabilisation of government bond yields.

The instrument of stabilisation to take over the tasks of the EFSF and EFSM is the European Stability Mechanism. Under the ESM, the effective value of the package is to increase by approx. EUR 500 billion in comparison with the EFSF, with the total value of the fund reaching EUR 700 billion. However, taking into account the borrowing needs of such states as Spain or Italy, the ESM funds might be insufficient. Therefore, just as the EFSF, this instrument cannot constitute a guarantee of liquidity of the states in need of assistance.

[25] M.G. Arghyrou, A. Kontonikas, *The EMU Sovereign-Debt Crisis: Fundamentals, Expectation and Contagion*, "Europeany Economy. Economic Papers" no. 436/2011.

[26] Greece asked the EU and the IMF for financial assistance in April 2010, but the EUR 110 billion funds were granted from other sources, that is from the Greek Loan Facility, established on 2 May 2010.

[27] D. Gros, T. Mayer, *EFSF 2.0 or The European Monetary Found*, CESifo Report, 2011.

An increase of the financial capacity of the ESM could be achieved through joint issuance of euro bonds. The arguments for this solution are outlined below. Firstly, joint issuance of bonds by the euro area member states of would ultimately create the second – in terms of liquidity and safety – financial market after the US government bonds, which would limit the costs of financing due to liquidity premium reduction. As long as there is no a liquid market of common government bonds jointly and severally guaranteed by the governments of the euro area, the single currency cannot reap full benefits of being an international currency. Secondly, a joint debt issue would also create the possibility of a closer political union, as joint guarantees for debt instruments would encourage the states to coordinate their fiscal policies more closely and lead to increased interdependencies.[28] Thirdly, a joint bond issue would reduce the risk of bankruptcy resulting from, among others, a considerable increase in bond yields in peripheral states.

Nevertheless, the most significant argument against the establishment of a common bond issue mechanism is the moral hazard risk, which was the case before the crisis. Simply as a consequence of their membership in the euro area and regardless of their fiscal policy and ability to fulfil their commitments, the euro area countries were borrowing funds in the international markets at almost the same price as the most reliable economy of the euro area – Germany. With no internal disciplining mechanisms in place to ensure the stability of government finance, joint bond issuing might not bring the expected results.

Among several ideas for solving the dilemma of moral hazard, the proposal by Jacques Delpla and Jakob von Weizsäcker is the most relevant.[29] They believe that the euro area should issue two types of bonds – blue and red. Blue bonds would be issued jointly by the governments of the member states and would have a joint guarantee. Each country would be allowed to issue bonds for up to 60 per cent of its GDP. Should the debt amount exceed 60 per cent of GDP, further bonds would be issued by every state separately (red bonds). As a consequence of the higher risk, red bonds would have higher interest rates than blue bonds. The second essential difference between these is that, in contrast to blue bonds, there would be no possibility of using red bonds as collateral in ECB refinancing operations.

However, an essential prerequisite for the issuing of joint bonds will be an increased credibility of fiscal rules at the national and EU levels. Despite some recent legislative changes, the low credibility of the Stability and Growth Pact as an instrument enforcing fiscal discipline of the euro area before the crisis could lead to the conclusion that the risk ascribed to blue bonds is not that low.

[28] G. De la Dehesa, *Eurobonds, Concepts and Implications*, European Parliament, Directorate General for Internal Policies, Brussels 2014.

[29] J. Delpla, J. Von Weizsäcker, *Eurobonds: The Blue Bond Concept and its Implications,* "Bruegel Policy Contribution" iss. 2011/02, March 2011.

This results mainly from the fact that the joint guarantees involve chiefly the responsibility of the largest countries (first of all Germany and France) for the repayment of the commitments. Thus, the market may consider political factors (the aversion to fiscal transfer between states, the unwillingness of societies and politicians to support countries weaker in terms of government finance) to be the basis for a higher risk pricing of such joint bonds in relation to the risk pricing of the countries with the AAA rating (primarily Germany). Ch. Kopf also points out that in an economic crisis, it is hard to imagine instruments which would allow states to make one or several other states repay their commitments.[30] This means that the liquidity premium could be offset by credit risk – the second essential element affecting yield of governments bond.

Conclusions

The actions in the field of fiscal policy and economic governance as well as stability mechanism taken in reaction to the crisis can contribute to the following results:

Firstly, the rebuilding of the confidence in EU fiscal rules. The solutions proposed in the new fiscal pact, leading to the introduction of fiscal rules at the national level (and making them subject to the enforcement by the Court of Justice of the EU), with the strengthening of the SGP under the six-pack, constitute a factor which could increase the stability of the fiscal policy. The consolidated fiscal rules established at the EU and national level will help develop a two-stage mechanism of motivation to accumulate savings in periods of good economic situation and safely increase expenses in 'bad times'. The inclusion of more acts of negligence as regards fiscal policy in the catalogue of financial penalties and greater automatism in imposing them should rebuild the trust in fiscal rules in the EU. The new SGP imposes penalties for, among others, a failure to meet medium-term budgetary objectives and ensures safeguards against excessive government spending through possible sanctions.

Secondly, greater care for the medium-term stability of the economy. Despite the rather unfavourable opinion on the functioning of the SGP, the fiscal policy of the EU Member States, except for Greece, was not excessively prodigal before the crisis. The considerable increase in deficits and debt resulted from the need to take rescue measures in the financial and private sectors due to the excessive risk accumulated there. Therefore, the regulations introduced under the six-pack along with SGP reforms, concerning external imbalances, potentially reduce the risk and the possible scale of the needs for stabilising the financial markets and the economy by the fiscal policy to the extent that was necessary during the present crisis. The aim of the mechanism of preventing, detecting and sanctioning for excessive macroeconomic imbalances is to limit the extent of the loss of

[30] Ch. Kopf, *Restoring Financial Stability in the Euro Area*, "CEPS Policy Brief" 2011.

competitiveness, excessive debt, the so-called speculation bubbles, etc. These factors should limit the risk of abrupt increases of debt in the euro area countries, which was the case in 2007–2010 (by approx. 20 percentage points to over 86 per cent of GDP of the entire euro area).

Thirdly, the increase of confidence in the anti-crisis actions through a permanent stabilisation mechanism. The third instrument which could have a stabilising effect in periods of disturbance in the markets is the European Stability Mechanism, which will take over the tasks of the EFSM and EFSF. This mechanism, with the effective capacity to grant loans of approx. EUR 500 billion, can be used in the case of a Member State's liquidity loss in the international markets and problems in the financial sector. However, for the mechanism to be effective, its lending capacity has to be increased, for example by joint debt issuing (euro bonds). Hedged with a suitably effective market discipline, it can constitute a mechanism of market and Community fiscal risk-sharing in the market of debt instruments, contributing to greater reliability of bonds and stability of their prices.

The existence of a stabilising mechanism seems justified even in periods of good economic situation. Even if the new SGP and the mechanism of restoring balance prove effective, the risk of a considerable external economic disturbance hitting relatively well prepared economies cannot be fully eliminated. In the face of global financial flows, which are often reversible, even a relatively sound economy might suffer from liquidity problems. To a certain extent, the establishment of this mechanism fills the gap in the EU's institutional order, which lacked procedures for quick and coordinated action during the crisis, which in turn undermined the reliability of EU institutions in the eyes of financial markets.

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Adam A. Ambroziak

New Challenges for the Free Movement of Goods within the Internal Market of the European Union

Introduction

It is generally accepted, after Béla Balassa, that the common market is the third stage of economic integration, preceded by the free trade area and the customs union. However, from the practical point of view, it should be stressed that these stages do not necessarily have to occur in order and that not all of them have to precede the common market. Nevertheless, all the barriers in exchange between the states constituting an economic organism that are eliminated as a consequence of the establishment of a free trade area and a customs union should also not exist under the common market, which leads to ensuring a free movement of goods, as well as the other freedoms connected with the provision of services, transfer of capital, as well as employment.

In order to ensure free movement of goods under the EU internal market (and not only the lack of traditional barriers to trade, as it is the case with a free trade area or a customs union), physical, technical and fiscal barriers have been additionally eliminated. The first group is related to the customs control at the border, which caused entrepreneurs and the EC Member States to incur significant costs. Exporters had to produce additional freight papers connected with the customs clearance, which de facto involved no customs duties as a result of the customs union established in 1968 between the EC Member States. The second group of barriers which were eliminated in relation to the establishment of the internal market concerned various technical requirements used by the Member States. As a result, an entrepreneur selling goods in different EC States was compelled to comply with technical requirements of various Member States and, sometimes, to obtain national safety certificates. This was both costly at the production stage and time-consuming at the sale stage. The third type of barriers concerned the different ways of calculating taxes, different tax bases and different tax rates in EC Member States, which caused problems for entrepreneurs conducting business activity in more than one country.

Halting of integration processes in the 1970s

The first stage of economic integration, which was to be completed by the end of 1969, was the customs union. Gradual reduction of customs duties and other traditional barriers in the trade between the Member States of the European Economic Community (EEC) of that time quickly started bringing positive results. In consequence, ongoing liberalisation was sped up twice, resulting in the creation of the customs union (with common customs duties) on 1 July 1968. Apart from the economic reasons, the political context of these decisions was important as well. It is worth noting that within the framework of the European Free Trade Association, established under the Stockholm Convention, there were plans of creating a free trade area by the end of the 1960s, but the works were expedited and the goal was achieved already on 1 January 1967.

Article 8 of the initial version of the Treaty establishing the European Economic Community (1958) provides for the creation of a common market in a transitory period within 12 years from the establishment of the EEC. It should be stressed, however, that even though the stages of making decisions by Community institutions regarding the creation of the common market were clearly specified in the initial version of the Treaty, it failed to provide an equally precise definition of, for instance, the scope of substantive law, which should be adopted in order to ensure the existence of the four freedoms.

Furthermore, the early 1970s saw two important events take place, which led to significant slowing of the pace of integration within the EEC. One of these was the collapse of the Bretton Woods System. In the 1960s, there were two growing phenomena in international monetary relations: the emergence of the so called economic liquidity problem and, due to the intervention in the London gold market, gradual depletion of American gold reserves. On 15 August 1971, the exchangeability of the USD for gold was suspended and most countries introduced more flexible or even completely fluid exchange rates for their currencies, resigning from the central exchange rate to the USD. In many cases this meant significant worsening of the commercial situation and the exporters' competitiveness, also within the EEC. The early 1970s is also when the so called oil crisis took place. It caused production to become more expensive and lowered the competitiveness of European commodities in international markets. As a result of the said phenomena, the individual Member States strived to increase their influence in the functioning of the market economies through granting public aid and supporting of individual entrepreneurs and certain branches.

The weakening of the rate of economic growth due to slowing down of the dynamics of exports as well as the stagnation of investments in Europe contributed to the widening of the technological gap and lowering of the international competition ability of the EEC in comparison to the USA and Japan. It is then that the set of phenomena which appeared in the 1970s and lasted until the mid-1980s gained the nickname 'Eurosclerosis'. These phenomena included:

- weakening of investments in the sectors generating the biggest demand,
- falling growth rate of jobs and supply of highly qualified human capital,
- widening of the technological gap and a decrease in competitiveness of the EC in the international arena.

It is also worth noting that the abovementioned time is also the period of gradual enlargement of the European Communities by new Member States – mainly countries with a lower degree of economic development – with simultaneous halting of integration within the organisation. This created many additional socio-regional problems, manifested by high unemployment.

Another essential impediment to the creation of the common market was the requirement of unanimity in making most decisions by the Council of Ministers of that time. This involved the need to obtain acceptance of all Member States for the new legal instruments which were to become the foundation of the common market.

Since the early 1980s, we have observed gradually growing political support for the next stage of economic integration. During the meeting of the heads of states and governments in Copenhagen in December 1982, the European Council placed the Council of Ministers under an obligation to adopt priority legal acts regulating the internal market by March 1983. During the subsequent meetings, the European Council (June 1984) pointed out the necessity to identify all police and customs-related barriers in the movement of persons between the Member States and to implement (December 1984) European standards. The essence of these political recommendations was the European Council's decision of March 1985, when it pointed out the need to take actions by 1992 in order to create more friendly conditions for stimulating the development of enterprises, competition and trade under the single market. In accordance with this decision, the European Council recommended the Commission to present a detailed programme containing the schedule of legislative works before the next meeting of the European Council, that is by June 1985.

It is also worth stressing that it is already in the 1980s that, in order to confirm its integrity, the term 'internal market' became commonly used, while the Treaty establishing the EEC and the documents of Community institutions were still referring to the 'common market'.

Legal bases of the creation of the EU Internal Market

In response to the European Council's motion, in 1985 the European Commission presented the White Paper on Completing the Internal Market.[1] It included suggestions and proposals for further legislative work, so that within 7 years the said internal market could be created. At the same time, three funda-

[1] Completing the Internal Market: White Paper from the Commission to the European Council (Milan, 28–29 June 1985), Brussels, 14.06.1985, COM(85) 310 final.

mental barriers hindering the functioning of entrepreneurs within the framework of free movement of goods, services, persons and capital were identified: physical, technical and fiscal barriers.

On the basis of the proposals included in the said document, the Single European Act (SEA) was adopted and entered into force on 1 July 1987. It belongs to the so called primary legislation, on the basis of which the provisions of the three treaties establishing each of the European Communities were amended. The political consensus it contains was to prevent further fragmentation of the Community's markets and, as a result, lead to the achievement of the goals contained in, among others, the Treaty establishing the EEC. Article 13 of the SEA added the Article 8a to the Treaty establishing the EEC, which stipulated that the Community would take actions aimed at gradual introduction of the internal market by 31 December 1992. This means that primary legislation provided for certain actions, the effect of which was to be immediate, and not declarative decisions with unspecified date of implementation. Furthermore, it was specified that the internal market was an area without internal borders in which free movement of goods, persons, services and capital was ensured (Article 26 Section 2 TFEU).

In order to achieve this goal, the SEA provided for changes in the decision-making process of Community institutions. The 1958 version of the Treaty establishing the European Economic Community stipulated that, after a transitional period, qualified majority of votes shall be applied in issues such as: the common agricultural policy and the transport policy. It meant that the members of the Council were assigned votes of different weight. On the basis of further institutional reforms of the EC, the range of issues in which decisions were made by a qualified majority of votes was expanded. In consequence of the entry into force of the Single European Act, this system was also applied to most decisions concerning the newly established internal market, excluding the fiscal policy, movement of employees and the social policy (where the need for unanimity in the Council was ensured).[2]

The recent changes in the treaties, introduced by the Treaty of Lisbon, stipulate (Article 26 of the Treaty on the Functioning of the European Union – TFEU) that the Union adopts measures in order to establish or ensure the functioning of the internal market and the Council, at the Commission's proposal, sets the guidelines and conditions necessary for ensuring sustainable progress in all the relevant sectors. It is also worth stressing that in the subsequent Article 27 TFEU it has been indicated that when drawing up proposals aimed at achieving the aforementioned objectives, the Commission shall *'take into account the extent of the effort*

[2] For more see: A.A. Ambroziak, *Instytucje Wspólnot Europejskich po Traktacie z Nicei. Implikacje dla Polski (The Institutions of the European Communities after the Treaty of Nice. Implications for Poland)* in: *Stosunki Polski z Unii Europejskiej (The Polish Relations with the European Union)*, E. Kawecka-Wyrzykowska (ed.), Warszawa 2001, p. 206.

that certain economies showing differences in development will have to sustain for the establishment of the internal market'.

Elimination of tariff-related barriers in the movement of goods between the Members of the EEC

The process of creating a free trade area and/or a customs union involves the elimination of the traditional barriers to trade: that is customs duties, quantitative restrictions, measures equivalent in effect to customs duties and those equivalent to quantitative restrictions. While the two former categories of barriers are relatively well defined, for the two latter it is difficult to provide an unambiguous and clear interpretation, since they include all the activities of the local and regional authorities of the Member States and of interest groups (entrepreneurs), resulting in hampering the trade exchange between states. This hampering can be felt when a commodity is crossing the border, but also, with the ongoing process of integration, it is more and more often encountered as, for instance, a ban on advertising or an order to conduct sales in specified places.

In the Treaty establishing the EEC, the Member States undertook, in relation to mutual trade, to observe the standstill principle, i.e. to raising the existing barriers to trade (including customs duties) and to abstain from introducing new ones, as well as to introduce liberalisation through eliminating export duties and charges having equivalent effect (Article 30 TFEU), quantitative restrictions on imports and all measures having equivalent effect (Article 35 TFEU). In fact, customs and export duties were reduced to zero and all export restrictions (with a few exceptions for agricultural products) were removed by 31 December 1961. Import duties were to be eliminated by the end of 1969, but the positive effects of trade exchange and the speeding up of liberalisation in another European integration group (the European Free Trade Association – EFTA) resulted in two decisions which quickened this process in the EEC. In the end, the customs union in the EEC started functioning on 1 July 1968 – one and a half year earlier than stipulated in the Treaty. This means that all restrictions in trade between the Member States were eliminated and common customs duties were introduced.

However, there are still some instances when the Member States may employ restrictions in trade justified by issues related to public morality, public order, public safety, protection of health and life of people and animals or plant protection, protection of national cultural heritage with artistic, historical or archaeological value, or protection of industrial and commercial property. These bans and restrictions should not constitute an instrument of arbitrary discrimination or hidden limitations in the trade between the Member States. However, it is worth stressing that the Member States are often using this clause to actually protect their entrepreneurs and the domestic market through discrimination in the form of additional requirements or limitations imposed on goods imported from other parts of the EU.

Elimination of physical barriers in the EU Internal Market

As previously mentioned, physical barriers consisted in the existence, at the borders between the Member States, of controls, such as: veterinary control, fitosanitary control, control of toxicity of waste, safety of transported goods, control of transport licences. They were causing an increase in the costs incurred by experts and, in the end, by the consumers. Higher costs resulted from hold-ups at the borders and the resulting delayed introduction of the goods to the market, as well as from the need to fill in additional documents required for the crossing of the border. Significant costs were also incurred by the administrations of the Member States, which still had to maintain customs services, even though under the customs union they were not collecting duties any more. It is also worth noting that with border controls in place, every exporter had to produce the appropriate documents in exports to different Member States.

On the other hand, we should also consider the costs incurred by state authorities and resulting from maintaining the border. Both the customs services and the border guards performing controls at the borders were a financial encumbrance for the budgets of the EC states. Ultimately the taxpayers had to cover the costs in their taxes paid to the state budget.

In the second half of the 1980s, the costs of physical barriers incurred by the entrepreneurs were estimated at ECU 7.9–8.3 billion and the costs incurred by the Member States at ECU 0.5–1.0 billion.[3] This meant that goods imported within the EEC were always less competitive in terms of price as compared to national products, as exports always resulted in increased costs and, consequently, increased price.

The elimination of physical formalities began with the introduction of the Single Administrative Document on 1 January 1988. It constituted a facilitation, as its format, scope and means of providing data were made fully uniform.

The existence of border controls was not suppressing the illegal movement of goods or persons, but rather constituted a hindrance in the movement of legal commodities. The consumers and taxpayers incurred costs resulting from the maintenance of the border, which constituted a barrier to the development of trade. Border controls were particularly burdensome for small and medium entrepreneurs, who would often have to participate in them personally. As a result, the queues at the borders caused by customs clearance were discouraging SMEs from conducting foreign trade in the EEC.

Bearing in mind the above, on 1 January 1993, burdensome border control was abandoned. However, this does not imply that there is no border control at all or that it cannot be conducted in justified cases. The goal was to eliminate the long

[3] *The Economics of 1992. The Assessment of the Potential Economic Effects of Completing the Internal Market of the European Community*, "European Economy" no. 35/1988, p. 48.

queues at borders, which was in fact fully accomplished. Sometimes, however, especially in respect to the existing limits in the transport of goods subject to excise duty (alcohol, cigarettes), random customs controls are held several kilometres from the border.

It should be stressed that the elimination of customs clearances rendered customs documents obsolete and that, since then, the information of turnover has been conveyed in tax declarations presented by tradesmen selling goods to the end recipient (within the so called Intrastat).

Elimination of technical barriers in the EU Internal Market

Technical barriers in the trade between the EEC Member States consisted in the existence of many different technical requirements, under which domestic and imported goods were admitted to sale in the given country. As a result, every EEC or non-EEC producer or distributor was required to observe the technical requirements of the state in which they were selling their goods to the final recipients. The process of obtaining the relevant certificates confirming the compliance with the requirements of the target country was often very long, which, combined with the additional costs of the examinations, clearly constituted a barrier to trade. The goods were introduced to the given market with a significant delay and with a higher price, compensating for the costs of additional examinations and certificates. In consequence, producers manufactured their goods in many variants adapted to the technical requirements of the various Member States, which generated additional costs and, ultimately, hampered the free movement of goods.

In order to reduce these costs, the EEC decided to unify the technical requirements (including standards) to be met by products introduced to the markets of all the EEC States (a practice which is nowadays called the 'old' approach to technical harmonisation). In the 1960s and 1970s, the Communities started to develop directives containing uniform technical standards, valid in all the Member States. As at that time unanimity was required in adopting most EEC laws, technical standards also required the consent of all the members of the Council. As a result, the process of creating final versions of technical standards was delayed due to conflicting interests and positions of the various states. During the decision-making process in Community institutions, their representatives were trying to introduce national solutions – often completely contradictory to each other – to the laws unifying the technical requirements in each field.

The uniform technical standards which were finally adopted, were in force in the whole EEC. They contained detailed information on the design, pattern, method of conformity assessment. Consequently, the producers' activities came down to comparative verification of the parameters of a given product with the specification contained in the directives. Thanks to the directives, Community producers and suppliers from outside the EEC were certain that the products they offered, compliant with the unified standards, could be introduced to the markets

in all the Member States. However, it should also be noted that the unification of standards constituted a limitation to innovative entrepreneurs. The long process of adopting them and the lack of flexibility in accepting new technical solutions, not taken into account in the said standards, resulted in the fact that new solutions were appearing in the European market with a significant delay. As a result, this period saw the formation of a widening gap in the levels of innovativeness and, consequently, often also competitiveness, between Europe and the United States and Japan.

It is often pointed out that the rules referring to the introduction of goods to the market can be based on the judgement in the case *Casis de Dijon*,[4] in which the Court has ruled that goods admitted to trade in one Member State should be admitted in every other Member State as well. Without prejudice to the judgement of 1979, it is worth pointing out the practical aspect of this rule. Entrepreneurs offering their goods in various markets of the EEC Member States had to obtain certificates of compliance with national requirements anyway, as wholesalers and retailers did not want to offer goods without the appropriate documents considered obligatory by their national law. Naturally, the suppliers of goods could always quote the aforementioned judgement, but in relations with the local offices functioning under national law they would be fighting a lost battle. Of course, there was also the possibility of going to court, but, firstly, the entrepreneurs' main task is to conduct business activity and not drag cases through courts, and secondly, a salesman is not required to accept every good offered by producers.

In the mid-1980s, due to the necessity to make the system more flexible, a decision was made to introduce the 'New Approach' to technical harmonisation.[5] It was made clear that the main, most important type of legislation is the New Approach Directive, the aim of which is harmonisation, i.e. the elimination of significant divergences, hindering the introduction of goods to the market, and not the introduction of uniform requirements. The new technique and strategy of regulation introduced a rule according to which harmonisation was limited to the basic requirements to be met by products introduced to the EU market if it was to benefit from free movement of goods.[6]

The New Approach Directives concern either specific groups of products or types of risk and phenomena occurring in relation to using certain products. This

[4] Case 120/78, *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein* [1979] ECR.

[5] Council Decision of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonization directives, OJ L 220, 30.08.1993, p. 23. At present, this system is subject to change under the Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC, OJ L 218, 13.08.2008, p. 82.

[6] For more information see: *Guide to the Implementation of Directives Based on the New Approach and the Global Approach*, European Commission, Luxembourg 2000, pp. 7–8.

means that a product can be subject to several directives and, in consequence, has to comply with the requirements in all of them. The directives regulate the introduction of goods to the market after their production through its transfer or offered transfer with the intention of distributing or using it in the EU market.

It is the producers' responsibility to ensure that the products they produce comply with the basic requirements contained in the relevant New Approach Directives. The said requirements concern threats that products could pose during their normal use and, consequently, indicate what should be achieved during the production of the wares. They do not contain any detailed technical specifications, which allows producers to freely choose the components, the process of production and the final shape or functional properties of the wares.

On the other hand, technical specifications of products meeting the basic requirements contained in the relevant directives are specified in harmonised standards. These standards are authored by three standardisation bodies: the CEN (European Committee for Standardisation), the CENELEC (European Committee for Electrotechnical Standardization), the ETSI (European Telecommunications Standards Institute). These standards constitute the basis for producing and introducing goods to the market. They contain detailed and particular technical solutions or parameters to be met by the wares or the components used in their production. One standard does not necessarily regulate all the aspects of a given ware: for instance, it can specify only the requirements concerning its flammability, which means that a second standard has to be applied regarding its mechanical resistance. The application of harmonised standards is voluntary. This allows the producers to use other technical specifications, which results in the elimination of the barrier in introducing innovative processes of production and technologically new products. Goods produced in compliance with the harmonised standards enjoy the presumption of conformity with the basic requirements specified in the relevant directives.

Furthermore, each New Approach Directive defines the procedure to be followed by the producers (modules) regarding conformity assessment of their products with the basic requirements included in the said directives. These modules (eight basic and eight additional) concern the stage of designing and/or producing the goods. They specify the tasks of the producers and, where applicable, of the organ issuing the certifications in the process of designing, producing and introducing goods into the market. The aforementioned evaluation of conformity concerns new products manufactured in the EU, as well as new and used products from outside the EU.

Depending on the risk level, complexity and the degree of standardization of the products, the producers may conduct the evaluation of conformity of their products with the basic requirements in several ways, including:

- on their own, under internal design and production control;
- with the assistance of notified bodies, issuing relevant confirmations after conducting a type examination combined with internal production control or

a type or project examination combined with the approval by the aforementioned bodies of the product or system of ensuring quality production;
- basing it on the verification of the project and production by a notified body.

Every Member State has formed and appointed an accreditation authority, which grants accreditations to notified bodies for examining products in terms of conformity with specified New Approach Directives, as it is the Member States who bear the ultimate responsibility towards other members of the EU and the EU institutions regarding the competences of the notified bodies. The said bodies are required to meet the following requirements:
- independence from the public administration,
- independence from the interest group,
- impartiality,
- high professional qualifications,
- high level of technical expertise,
- civil liability insurance.

After the conclusion of the examination procedure, the producer or importer performs the labelling, thus taking responsibility for the goods introduced. The next step is, usually, the drawing up of the so called 'declaration of conformity' of the goods with the relevant New Approach Directive. This document should contain information concerning the product, producer, the certifying organ (if it participated in the evaluation of conformity), as well as on the directive and, possibly, on the harmonised standards applied.

Together with the declaration of conformity (if it is required by the relevant directive), the producer (or their authorized representative in the EU) labels their product with the CE marking, which means that they declare the given good to be produced in compliance with the basic requirements contained in the New Approach Directive. This marking may be affixed directly to the product, or placed on a plaque or tag, and in special cases on the packaging containing the given product. This marking may not be affixed to products which are not subject to the New Approach Directives. It does also not specify the origin or quality of the offered products.

In order to eliminate malpractice and to monitor the goods introduced, a system of market surveillance and control of conformity of products with the basic requirements under the New Approach Directives has been created.[7] Market surveillance protects not only the consumers and users of goods, but also the entrepreneurs, by providing them with identical conditions for introducing goods to the market. The control can concern both the product and the correctness of marking or technical documentation of the product introduced to the market (which should be kept for at least 10 years from the date of producing the last product). Should

[7] Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, OJ L 218, 13.08.2008.

any irregularities be revealed, the relevant organ may order the producer to eliminate them, inform the consumers or users of the product of the irregularities, and even order the product to be withdrawn from the market, repurchased from the users and destroyed.

The introduction of the new approach to technical harmonisation resulted in a loosening of the legislative strait jacket, restricting innovativeness of, mainly, European entrepreneurs. In a period of rapid technological changes, the introduction of binding legislation and obligatory technical specifications would cause delays in the implementation of modern solutions in the offered goods. Due to the flexibility of the legislation presently in force there is no need to amend it frequently in view of newly identified technical solutions, but instead only when new threats to consumers are discovered. The present system ensures easier access to the EU market to non-EU entrepreneurs, provided that their goods meet the basic requirements specified in the directives. For non-EU entrepreneurs, this means lower costs, as they do not need to adjust and examine their goods regarding conformity with 28 different legal regimes, but only with one harmonised legal system of the EU. However, in the long term, this results in the fact that with relatively low tariffs on industrial goods in exports to the EU market, increased external competition forces quicker changes and the introduction of innovative solutions by EU entrepreneurs.

Elimination of fiscal barriers in the EU Internal Market

Fiscal barriers consisted in the existence of different rates and systems of collecting indirect taxes: the value added tax and excise duty. The Treaty on the Functioning of the EU stipulates that:

- imported products may not be taxed higher than products produced in the given country, as this would constitute discrimination (Article 110 TFEU),
- when a product is exported, any repayment of internal taxation may not be higher than the internal taxation imposed on it, as this would mean subsidising of that product, which is prohibited in the case of industrial goods (Article 111 TFEU).

Value Added Tax

In the late 1960s and early 1970s, all the EEC Member States introduced the VAT, which replaced the multiphase sales tax existing in some countries. The sales tax was applied in all phases of production, which discouraged entrepreneurs from specialisation within intra-branch trade and encouraged them to engage in inter-branch trade with finished products. As part of the elimination of fiscal barriers, VAT was harmonised. The foundation of the harmonised fiscal policy is the principle that VAT taxation of goods takes place in the target country. This means that goods delivered to VAT-payers are taxed with 0 per cent VAT in the country of origin and the due tax is settled by the purchase of the products in the country to which they are delivered.

Regarding delivery performed by VAT-payers to final consumers (non VAT-payers), taxation takes place (consumers pay the VAT) in the country of the good's origin. One exception from this rule is the delivery of new means of transportation which are subject to taxation in the country where the vehicle is registered, as well as so called direct mail sales (VAT paid in the shipment origin country). It should be noted that special rules of taxation of intra-Community transactions are also applied to goods subject to taxation under harmonised excise duty (mineral oils, alcohol, alcoholic beverages and manufactured tobacco).

What was of crucial significance for the harmonisation of the VAT was the so called Sixth VAT Directive of 1977,[8] regulating the essential elements of this tax, that is the subject of taxation, the tax base, the establishment of tax obligation, the mechanism of deductions from the tax paid in the earlier phases of marketing. With the elimination of physical barriers, control was eliminated at the EU internal borders, which resulted in the replacement of the terms 'imports' and 'exports' in relation to trade in commodities within the EU with the new expressions: 'intra-Community acquisition' and 'intra-Community supply'.

Despite numerous attempts, tax rates have not been unified so far, due to the high sensitivity of this issue to the Member States and their national budgets. Only harmonisation was achieved, that is bringing the tax rates closer.[9] To this end, two VAT rates have been introduced in the EU: standard and reduced (although with the latter, the Member States may use one or two reduced rates). The standard rate may not be less than 15 per cent, while the minimum rate may not be less than 5 per cent. As a rule, all goods and services should be taxed under the standard rate, but there are many exceptions from this rule (see Table 1).

Firstly, several states apply super reduced rates (below 5 per cent) to selected goods, which should be subject to the reduced VAT rate. Furthermore, several states use the reduced (parking) rate instead of the standard rate. In both cases, this results from a consensus in the introduction of amendments to the VAT Directive, the passing of which requires unanimity, which in turn makes it easier, to a certain degree, to obtain consent for many exclusions from the remaining states. Thirdly, EU law provides for the possibility (but not obligation) of the Member States applying the reduced rate to groups of selected goods and services: including foodstuffs, water supply, pharmaceutical products, medical equipment, transport of persons, printing of books, entry to shows and performances (e.g. theatres, circuses), receiving of radio and television broadcasting services, provision of services by writers and composers, supply (sales in the primary market), construction and renovation of housing under social policy, supply of goods and services for agricultural production, accommodation in hotels, restaurant and catering services, entry

[8] Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (77/388/EEC), OJ L 145, 13.06.1977, p. 1.

[9] The presently applicable Council Directive 2006/112/EC of 28 November 2006 on the common system of Value Added Tax, OJ L 347, 11.12.2006, p. 1.

Table 1. VAT Rates Applied In the EU Member States (as of 1 July 2011)

Member States	Super Reduced Rate	Reduced Rate	Standard Rate	Parking Rate
Austria		10	20	
Belgium	–	6/12	21	12
Bulgaria		9	20	
Cyprus		5/8	15	
Czech Republic		10	20	
Denmark			25	
Estonia		9	20	
Finland		9/13	23	
France	2.1	5.5	19.6	
Germany		7	19	
Greece		6.5/13	23	
Hungary		5/18	25	
Ireland	4.8	9/13.5	21	13.5
Italy	4	10	20	
Latvia		12	22	
Lithuania		5/9	21	
Luxembourg	3	6/12	15	12
Malta		5/7	18	
Netherlands		6	19	
Poland		5/8	23	
Portugal		6/13	23	13
Romania		5/9	24	
Slovakia		10	20	
Slovenia		8.5	20	
Spain	4	8	18	
Sweden		6/12	25	
United Kingdom		5	20	

Source: European Commission, Taxation and Customs Union, VAT Rates Applied In the Member States of the European Union, taxud.c.1(2011)759291 – EN.

to sports events, usage of sports facilities, supply of goods and services to social organisations, funeral and cremation services, healthcare, street cleaning. In 2009, after several years of trial application of the reduced rates, the list was enlarged by labour-intensive services (i.e., among others, small repair services of bicycles, shoes, clothing, home aid services and hairdressing).

Despite the harmonisation, entrepreneurs still consider the varying rates and methods of calculating the Value Added Tax as barriers to conducting business activity in the EU internal market. During the consultations conducted by the Commission on the revival of the internal market, entrepreneurs mentioned problems with the VAT on the sixth place among the greatest barriers to effective

conducting of business activity in the EU.[10] The Commission has found out that one of the chief barriers in this regard are the enterprises' reporting obligations and the manner of collecting VAT, which favours fraud, leading to the loss for state budgets amounting to approx. 12 per cent of the revenue from VAT.[11]

Within the framework of the programme of reviving the internal market, the European Commission presented the strategy "Single Market Act",[12] in which it signalled the need to take further harmonisation actions, especially in relation to cross-border transactions. However, in the end the European Commission has not presented detailed proposals in this regard, believing that in a period of crisis the Member States should have greater freedom in making autonomous decisions adapted to the needs of particular markets. In this context, it would seem reasonable to follow M. Monti's suggestion concerning the raising of standard VAT rates, or, what would be an even better solution, to limit the application of reduced VAT rates.[13] The crisis has forced some states to take quick actions to protect public finance in the form of raising VAT rates. This short-term solution has slightly improved the budget situation of some states, while not impairing the position of companies – which would have happened, if direct taxes had been changed.

Excise duty

Regarding excise duty, it is charged on the purchase of certain goods in order to develop the desired model of consumption, healthcare, as well as due to fiscal reasons. As in the case of the VAT, excise duty is collected when a good is sold to the final consumer. Due to significant differences in the structure and values of rates, only the rates on alcohol, manufactured tobacco and energy products have been harmonised to a certain extent.[14] Taxation of all the other non-harmonised excise goods is the sole competence of the EU Member States (e.g. the excise duty on cars).

[10] Commission Staff Working Paper, Overview of Responses to the Public Consultation on the Communication 'Towards a Single Market Act'. Accompanying document to the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, A Single Market Act. Twelve Levers to Boost Growth and Strengthen Confidence, 'Working Together to Create New Growth', Brussels, 13.4.2011, SEC (2011) 467 final, p. 14.

[11] Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Towards a Single Market Act For a Highly Competitive Social Market Economy 50 Proposals for Improving Our Work, Business and Exchanges with One Another, Brussels, 27.10.2010, COM(2010) 608 final, p. 18.

[12] Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Single Market Act Twelve Levers to Boost Growth and Strengthen Confidence. 'Working Together to Create New Growth', Brussels, 13.04.2011, COM(2011) 206 final.

[13] M. Monti, *A New Strategy for the Single Market. At the Service of Europe's Economy and Society*. Report to the President of the European Commission José Manuel Barroso, 9 May 2010, pp. 90–91.

[14] Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/1/EEC, OJ L 9, 14.01.2009, p. 12.

In trade between the Member States, the following procedures are employed:

- paid excise duty (in the case of tax already paid);
- suspension of the collection of excise duty, in the case of, among others, goods produced, processed and stored in a tax warehouse or transferred between tax warehouses in EU territory (under the condition of attaching an accompanying administrative document and making a deposit for excise duty in the relevant customs office).

EU regulations concerning the excise duty system require the Member States to use at least the minimal level of excise duty rates regarding the structure and value of excise duty rates on goods subject to fiscal harmonisation. Due to the exclusive competence of the Member States in this regard, they may set the levels of rates freely, which results in significant differences between them.

Regarding alcoholic products, harmonised excise rates concern, among others, beer, wine and ethyl alcohol.[15] In the case of beer, it is calculated per hectolitre in relation to the Plato degree (min. EUR 0.748) or the degree of alcohol (EUR 1.87) in the final product. In consequence, the Member States applied rates from EUR 1.87 to EUR 23.6 per degree of alcohol in 2011. There is also great diversity in the excise duties on wines, where the minimum rate for still and sparkling wines is EUR 0, while there were still wine rates in the EU ranging from EUR 0 to 283 per hectolitre and sparkling wine rates ranging from 0 to 524.5 per cent in 2011. A similar situation exists with the excise duty on ethyl alcohol, where the minimum rate amounts to EUR 550 per hectolitre of pure spirit, while some states were applying an excise duty of more than EUR 3 and 5 thousand in 2011.[16] It is worth noting that the states using the highest rates of excise duty on alcohol include Sweden, Finland, the United Kingdom, and Ireland (see Chart 1).

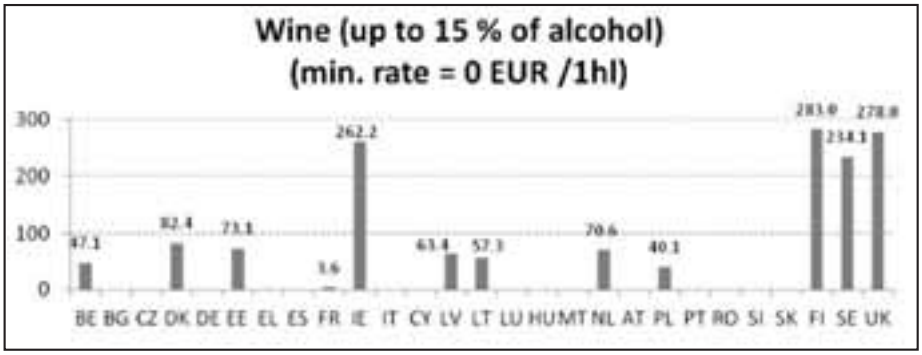
The harmonised excise duty rates on manufactured tobacco concern mainly cigarettes, cigars, cigarillos, but also cut tobacco.[17] Regarding cigarettes, EU regulations require that they are subject to proportional excise duty calculated according to the maximum retail selling price, including customs duties, as well as subject to a specific excise duty calculated per piece of the product. The share of the specific component of the excise duty in the total amount of tax due on cigarettes is set in relation to the weighted average of the retail selling price, that is the retail selling price of cigarettes including all taxes, divided by the total number of cigarettes admitted to consumption. Until 31 December 2013, the specific

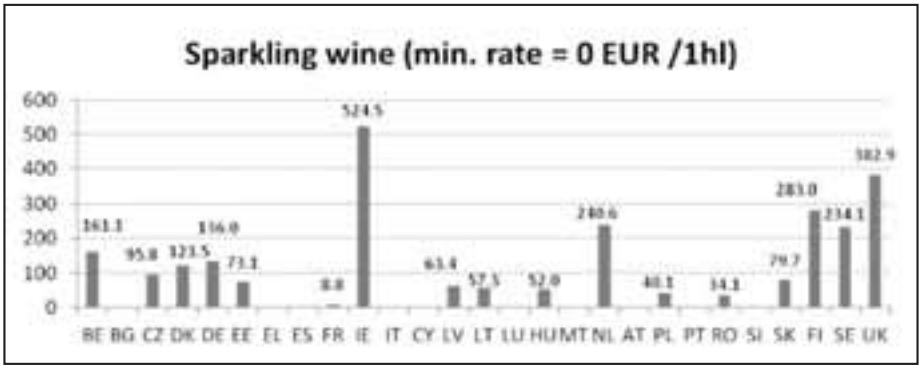
[15] Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages, OJ L 316, 31.10.1992, p. 21; Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages, OJ L 316, 31.10.1992, p. 29.

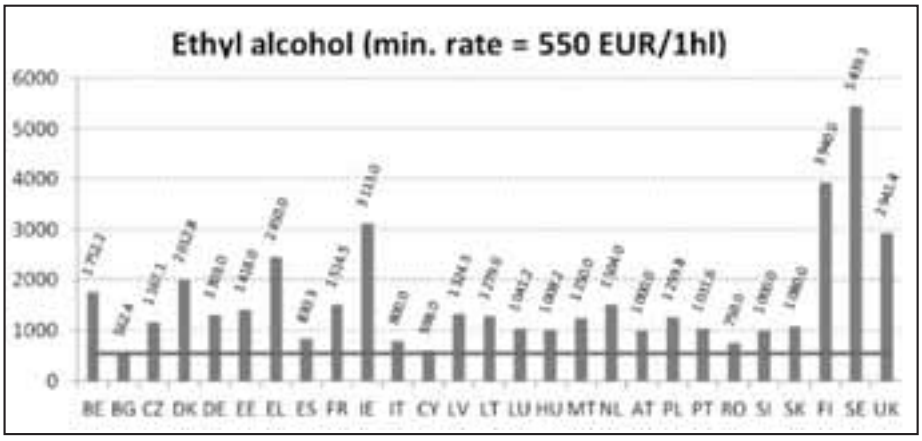
[16] See also: *Study analysing possible changes in the minimum rates and structures of excise duties on alcoholic beverages. Final Report to EC DG Taxation and Customs Union*, London School of Economics, May 2010.

[17] Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco, OJ L 176, 5.07.2011, p. 24.

Chart 1. Minimum excise duty on wine, sparkling wine and ethyl alcohol in the EU Member States (1 July 2011)

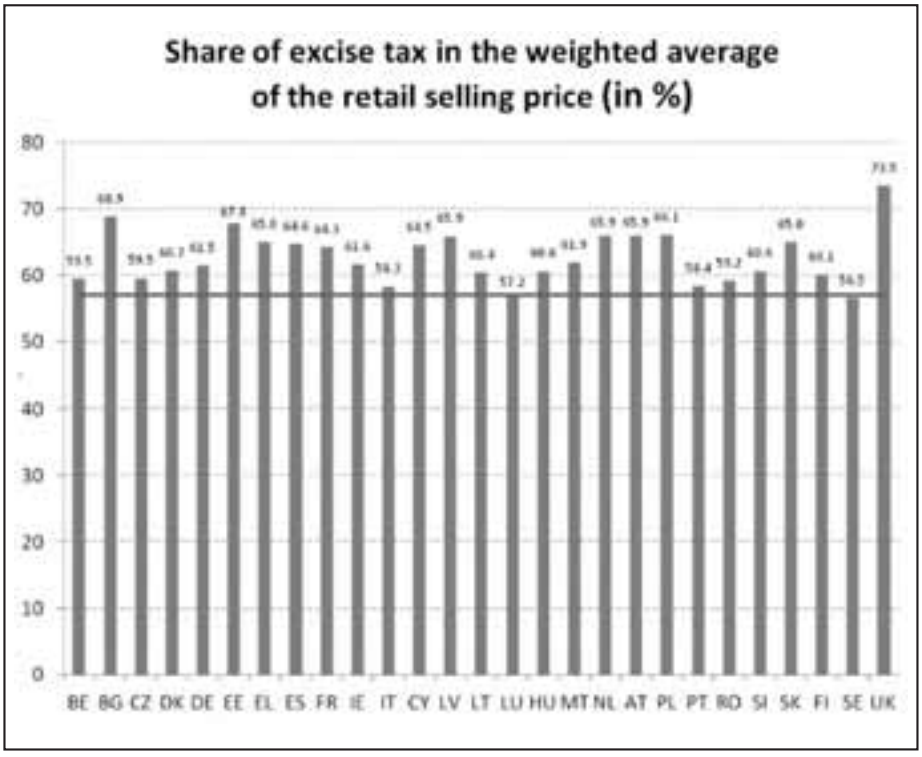






Source: *Excise Duty Tables, Part I – Alcoholic Beverages*, REF 1.033, European Commission, DG Taxation and Customs Union, Indirect Taxation and Tax Administration, Environment and other indirect taxes, July 2011.

Chart 2. Minimum excise duty on cigarettes in the EU Member States (min. in the EU = EUR 64 per 1000 cigarettes and 57 per cent of the weighted average of the retail selling price) (1 July 2011)



Source: *Excise Duty Tables, Part III – Manufactured Tobacco*, REF 1.033, rev. 3, European Commission, DG Taxation and Customs Union, Indirect Taxation and Tax Administration, Environment and Other Indirect Taxes, July 2011.

component of the excise duty may be no less than 5 per cent and no more than 76.5 per cent of the total tax due (the sum of the specific excise duty and VAT), and as of 1 January 2014, it should be between 7.5 and 76.5 per cent.

The total excise duty (specific tax and proportional tax excluding VAT) on cigarettes amounts now to at least 57 per cent of the weighted average of the retail selling price of cigarettes admitted to consumption and, at the same time, no less than EUR 64 per 1000 cigarettes. As of 1 January 2014, the total excise duty on cigarettes has to be increased to at least 60 per cent of the weighted average of the retail selling price of cigarettes and, at the same time, has to be no less than EUR 90 per 1000 cigarettes (see Chart 2). Just as it was in consequence of the accession negotiations, some Member States, i.e. Bulgaria, Estonia, Greece, Latvia, Lithuania, Hungary, Poland, and Romania, have now obtained a transition period for the adjustment to EU regulations until 31 December 2017. Separate derogations for preferential regions were granted to Portugal and Spain.

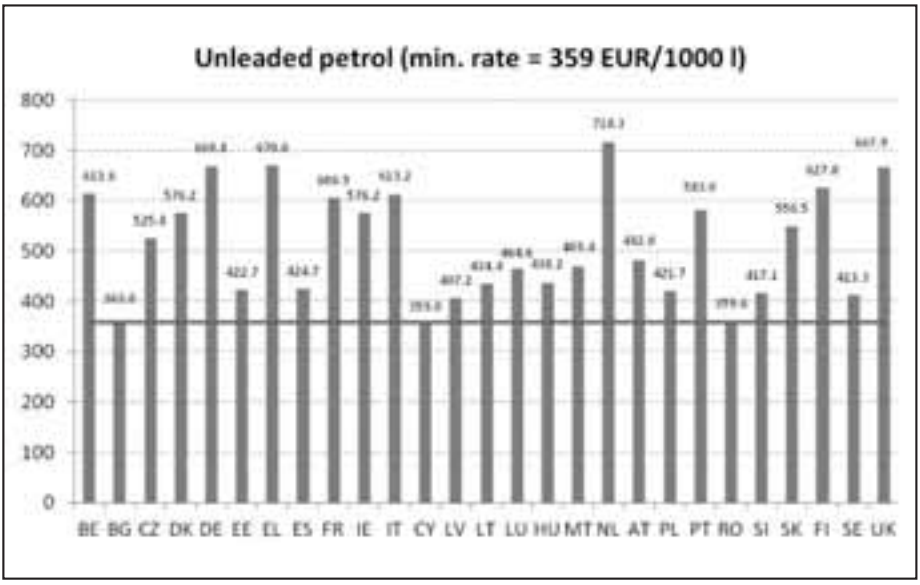
The significant differences between excise duty rates on alcohols and manufactured tobacco throughout the EU results in essential differences in the price of identical products and, in consequence, in trade tourism between the Member States. It is especially easy in regions bordering on other countries with significantly different excise duty rates (cf. Charts 2 and 3). In consequence, the state which maintains relatively higher excise duty rates often looses a part of income from indirect tax, as manufactured tobacco and alcohol purchased by the residents of this country in another country are not only subject to excise duty, but also to VAT. Such practices exist on a large scale not only between Poland and Germany, but also between Germany and Denmark, Germany and the Netherlands or Belgium, or the United Kingdom and Belgium.

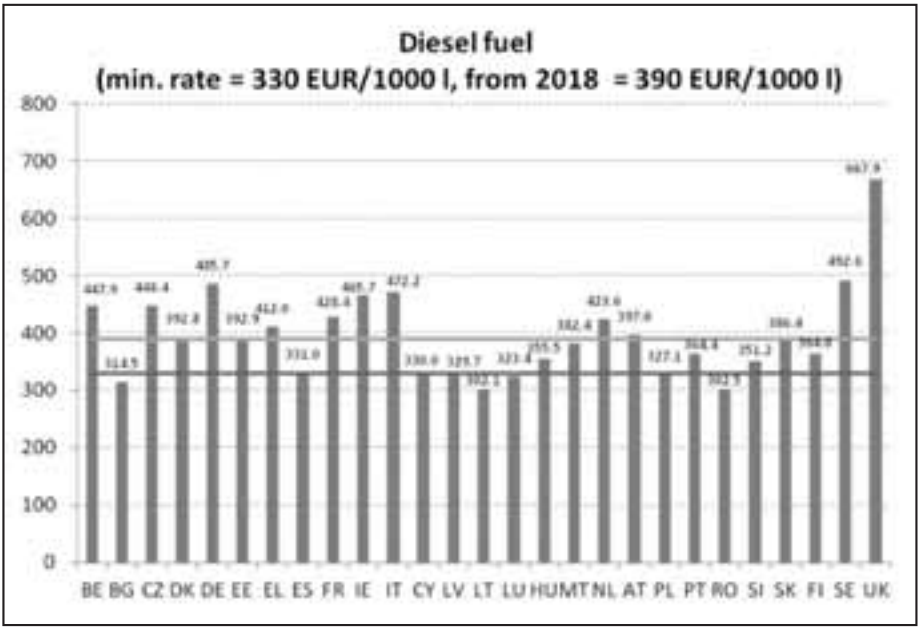
The excise duty on resources and energy products is also subject to harmonisation on EU level. This concerns mainly petrol, diesel, liquid gas, coal and coke, natural gas, burning oil, as well as electricity. The current regulations, which entered into force right before the 2004 enlargement, provide for minimum tax rates for energy products, the value of which refers to the level of use of energy products, but does not reflect the energy content or CO_2 emissions[18] (cf. Chart 3). This solution constitutes an incentive of sorts both for using coal (despite the high CO_2 emission ratio) as fuel for heating and for domination of diesel over petrol in the group of fuels for vehicles. Even more striking are the disproportions in relation to renewable energy sources, in the case of which, for instance, the E85 petrol is taxed much higher than petrol, which means that its lower energy value and better results with regard to CO_2 emissions are not taken into consideration.

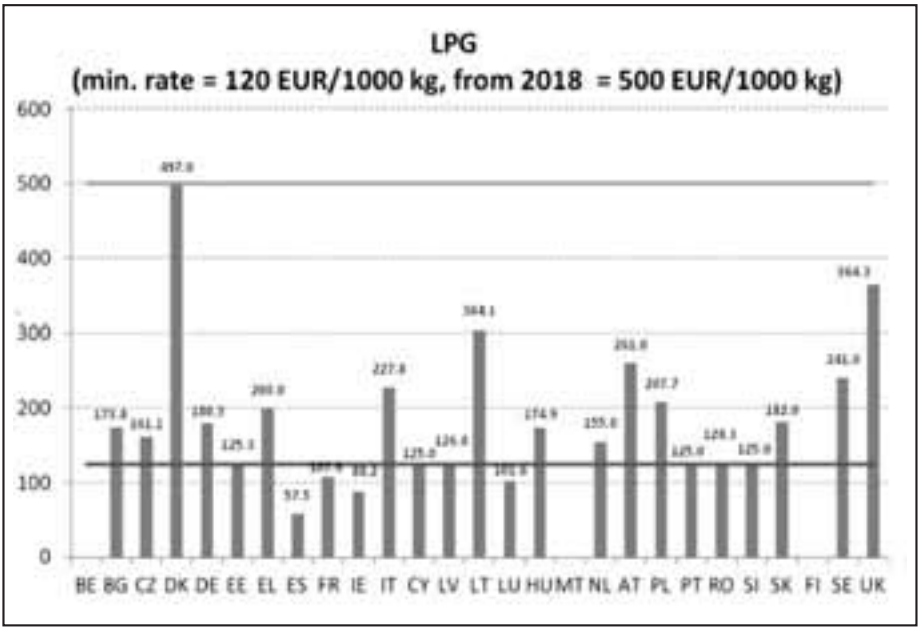
The excise duty rates on energy products have been harmonised on the minimum level, which means that the Member States have significant freedom in

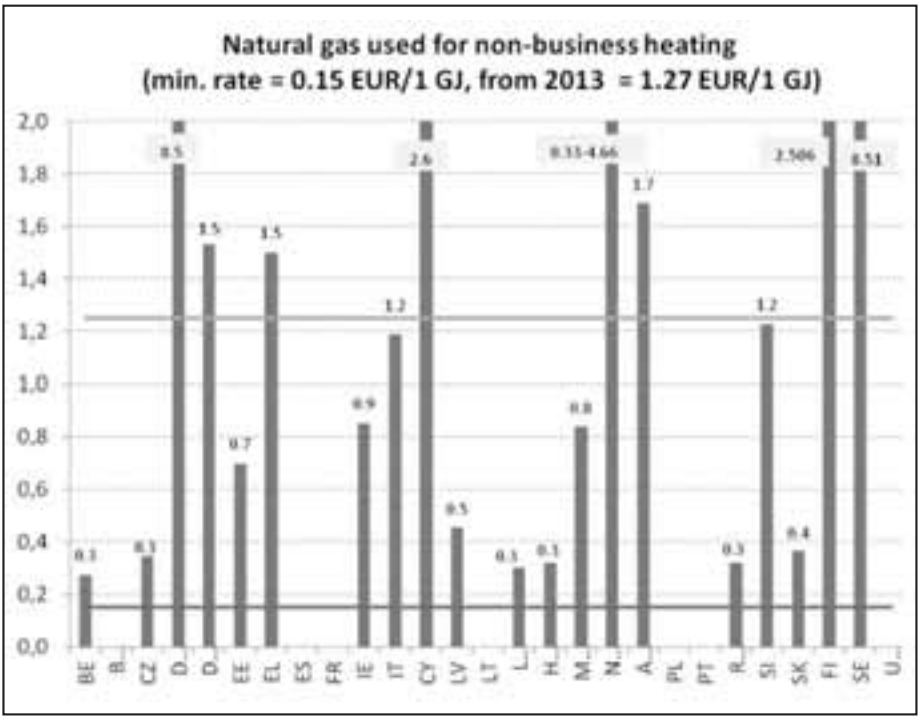
[18] Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, OJ L 283, 31.10.2003, p. 51.

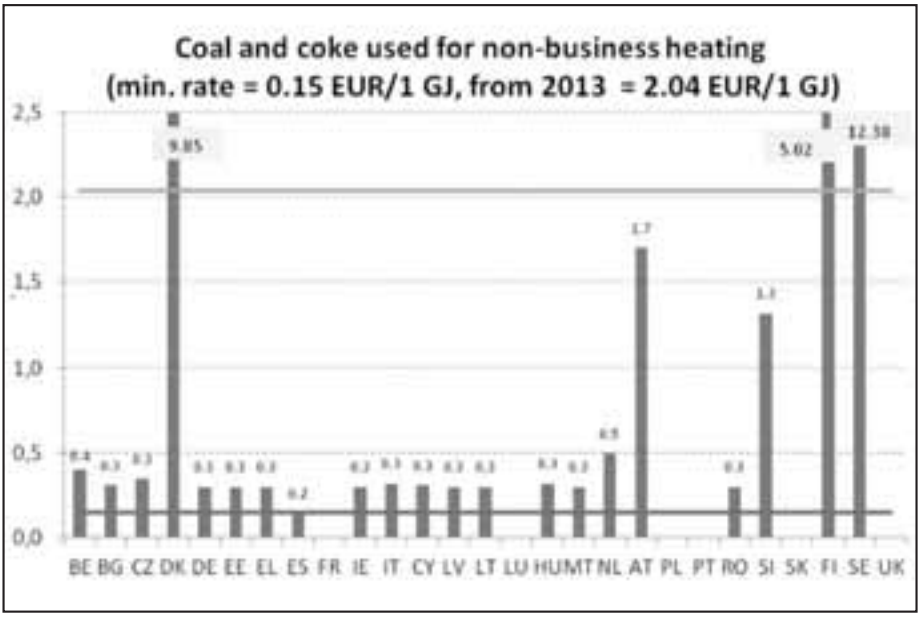
Chart 3. Minimum excise duty rates on selected energy carriers (1 July 2011)






LPG
(min. rate = 120 EUR/1000 kg, from 2018 = 500 EUR/1000 kg)
600
500
400
300
200
100
0
BE BG CZ DK DE EE EL ES FR IE IT CY LV LT LU HU MT NL AT PL PT RO SI SK FI SE UK


Natural gas used for non-business heating
(min. rate = 0.15 EUR/1 GJ, from 2013 = 1.27 EUR/1 GJ)
2,0
1,8
1,6
1,4
1,2
1,0
0,8
0,6
0,4
0,2
0,0
BE B CZ D D EE EL ES FR IE IT CY LV LT L H M N A PL PT R SI SK FI SE U



Reservation: Due to the fact that only the minimum excise rate is in force on the EU level, some Member States employ several excise rates on selected energy carriers, making their level dependent on the energy value and/or the usage and, therefore, the above charts should be considered as approximations, since they not necessarily represent the precise rates used in each EU Member State.

Source: *Environment and other indirect taxes, Excise Duty Tables, Part II – Energy products and Electricity*, REF 1.033, European Commission, DG Taxation and Customs Union, Indirect Taxation and Tax Administration, July 2011; Proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity, Brussels, 13.04.2011, COM(2011) 169 final.

setting the tax. In consequence, the lack of co-ordination between the directive on energy taxation and the EU ETS system can lead to double burden or – on the contrary – could allow for avoiding responsibility for emissions. Due o the functioning of the EU internal market, the Member States who would like to stimulate the reduction of greenhouse gas emissions through the application of an excise duty with rates dependent on the amount of CO_2 emissions, would be lowering the competitiveness of their entrepreneurs, while the consumers, selecting cheaper energy products, would be purchasing them in the states applying the relatively lower tax rates. Despite all this, the European Commission noticed that the climate commitments adopted by the European Council are gradually implemented by the Member States through drafts of new systems of various ecological taxes.

Conclusions

Presently, the EU is facing many global challenges, including the issue of climate change, the need to ensure energy security, increase energy saving and energy efficiency, while preserving competitiveness of EU economy. One of the answers to these challenges is the new taxation strategy of the European Commission, the aim of which is to further adjust energy taxation to EU goals concerning the energy and climate changes. According to the Commission, in fact energy use causes the most emissions of greenhouse gases and is responsible for 79 per cent of total gas emissions. Furthermore, from the ecological point of view, sectors not subject to the EU ETS, such as transportation, small industrial installations, agriculture and households, are responsible for of half the CO_2 emissions.[19]

This is why the European Commission has presented a draft directive with the main goal of harmonising the excise tax on energy products, the rate of which would depend on the effectiveness of the fuel and the CO_2 emission.[20] The proposed amendment of Directive 2003/96/EC includes:

- changing the taxes applied to various fuels, including renewable energy, on the basis of energy content and CO_2 emissions, as well as;
- providing a framework for taxation connected with CO_2 emissions in the internal market and, consequently, setting the prices of CO_2 emissions not subject to the EU system of greenhouse gas emission allowance trading.

The Commission's proposal contains a differentiation between two types of minimum tax rates on energy resources on the basis of:

- CO_2 emissions caused by the given energy product, established at the level of EUR 20 per tonne of CO_2 excluding biofuels, in the case of which the zero level has been set. Such taxation would ensure an advantage, regardless of the used technologies, of all low-emissions energy sources;
- energy content measured in GJ, regardless of the energy product, and consequently constituting an incentive for saving energy. In this case, the tax would reflect the energy actually generated by the product and energy saving would be automatically rewarded.

The drafted proposals, discussed by the Economic and Financial Affairs Council on 22 June 2012, should be considered negative from the point of view of the economies with dominant traditional industry. It is without doubt that raising the excise tax on traditional energy products lowers the competitiveness of

[19] Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, Smarter energy taxation for the EU: proposal for a revision of the Energy Taxation Directive, Brussels, 13.4.2011, COM(2011) 168 final, pp. 2–7.

[20] Proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity, Brussels, 13.04.2011, COM(2011) 169 final.

goods from, for instance, the Central and Eastern European countries, limits the development of modern energy plants using the so called clean coal and, consequently, constitutes a significant burden for the society.[21]

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Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC, OJ L 218, 13.08.2008.

[21] It is a very important and a very sensitive issue for many Member States. Based on Article 113 of the Treaty on the Functioning of the European Union, the directive requires unanimity in the Council in order to be adopted, following consultation of the European Parliament (special legislative procedure) See more: 3178th Council meeting Economic and Financial Affairs Luxembourg, 22 June 2012, PRES/12/281.

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Magdalena Drouet

European Labour Market – Overcoming Obstacles and Facing Challenges

Introduction

When the prospects for further dynamic economic growth of the European Union are rather bleak, investments in the human capital, the creation of new jobs, and the expects for the education or vocational adaptation of employees seem particularly important.

For many years, the European labour market has been suffering from insufficient spatial and occupational mobility of employees. The consequence of this has been ineffective allocation of resources and too slow absorption of demand shocks. What is more, the economic processes taking place in the ever more globalised world result in the fact that these problems are becoming ever greater.

Yet another weakness of the European economy and one of the reasons for the current lag in Europe's development is the social model of the labour market. The excessive attachment to the protective umbrella of the state results in an excessive financial burden and excessive spending on social objectives, such as various social benefits. Undeniably, this situation does not encourage the unemployed to become intensively active, neither does it encourage the potential employers to create new jobs. The European labour market is an extremely highly regulated market, generating a very high cost of employment and effectively discouraging potential employers from creating new jobs.

Nevertheless, it is hard to find any radical reforms liberalising the European labour market in the planned amendments or new strategies, which would provide at least a brief respite to entrepreneurs struggling with dwindling demand for their goods and services.

What is more, with progressing technological development, the Old Continent has to face ever greater jobless economic development and dropping fertility rate, population ageing, increasing life expectancy, as well as a transformation of the socioeconomic structure of the labour market: an ever greater share of women and the development of untypical forms of employment.

Principle of free movement of workers

Any discussion on the common European labour market should include an analysis of the framework, principles and mechanics of the European internal market, and particularly the benefits of the free movement of persons, which is one of the fundamental principles of the functioning of the EU Single Market. It creates favourable conditions for free migration of workers, allowing all the citizens of the European Union to move within its territory without the need for having visas, residence permits, work permits or business permits.

However, EU legislation liberalising the movement of persons has been introduced gradually. To a limited extent, the process of eliminating the barriers to free movement of persons started already in the Rome Treaty, which contained provisions concerning the movement of employed persons. Then, a directive of 1972 extended the freedom to include autonomous workers. It is only in 1990 that finally, under several directives, the category was extended to include students and persons who stopped working. The key instrument for the elimination of barriers in the free movement of persons was the Schengen Agreement. It introduced, among others, the principle of free movement of persons regardless of their nationality in the countries being parties to the Agreement.

With the enlargement of the European Union in 2004, some Member States, such as the United Kingdom, Ireland and Sweden, fully opened their labour markets to citizens of the new members. Other countries introduced transitional periods, of which the longest were in force in Germany, Austria and Luxembourg – they lasted until the end of 1 May 2011. With respect to Bulgaria and Romania, the majority of the old EU-15 states, as well as Hungary and Malta, introduced limited access to their labour markets. A welcome exception to this were Finland and Sweden, who completely liberalised the movement of workers from Bulgaria and Romania.

In accordance with the principle of free movement of persons, the citizens of the EU Member States are not only entitled to free movement in order to take up work, but also to stay in the host Member State after they stop working, e.g. due to retirement or inability to work.[1]

It is worth stressing that worker mobility involves not only regulations concerning the very fact of taking up work, but also issues related to, for instance, social benefits, the social conditions of children and spouses, the unification of the education systems, or healthcare.

Furthermore, all rules and privileges related to the free movement of persons pertain to the worker's family as well (spouse, children up to the age of 21, other dependants of the worker).

[1] J. Zombirt, *Mechanizmy rynku wewnętrznego Unii Europejskiej* (*Mechanisms of the EU Internal Market*), Warszawa 2011, p. 165.

Another important step towards the elimination of all barriers to the free movement of persons in the EU is the joint coordination of social security systems. However, we cannot speak of a unified EU system of social benefits, as long as there are disparities in the wealth and productivity of individual Member States. So far, the process of complete unification seems long and difficult.

For now, the national character of the regulations concerning social security has been preserved, but common standards were established as well, allowing for the effective coordination of this system in the Member States, which is particularly important for persons changing their place of residence and employment.

The system of coordinating the social security systems provides for equal treatment of all citizens of the Member States, for non-discrimination as regards the access to benefits under the national social security systems. What is more, the periods of employee insurance in the worker's own country and in other EU states, used for calculating the amount of benefit, are added together.[2]

The fundamental principles of EU coordination of social security stipulate that:

- Workers are subject to the laws of the country in which they are employed or in which they conduct their business activity (that is the laws of one country only).
- The relevant social security institutions decide which country's laws the person changing the place of residence and work is subject to.
- The principle of equal treatment concerning the rights and obligations under the social security system is to be observed.
- A worker applying for benefits in a given country does not forfeit the previous periods of work insurance in other countries.

Another important factor allowing for rightful and equal treatment of the citizens of all the Member States is the mutual recognition of professional qualifications. The European legal act regulating these issues is the Directive No. 2005/36/EC of the European Parliament and the Council of 7 September 2005 on the recognition of professional qualifications. It divides professions into two categories: regulated professions and other professions. While looking for work, the persons whose occupation belongs to the regulated professions category are required to validate their diplomas. In the other cases, employment of the worker is up to the employer, who individually evaluates the qualifications of the potential employee.

In June 2011, the European Commission published a Green Paper, which was supposed to modernise the provisions concerning professional qualifications, particularly the regulated professions. First of all, it proposed a simplification and harmonisation of the national legal frameworks concerning the regulated professions. The document states the following:

'*It has long been recognised that restrictive regulation of professional qualifications has the same stifling effect on mobility as discrimination on the grounds of nationality. Recognition of qualifications obtained in another Member State*

[2] Ibidem, p. 168.

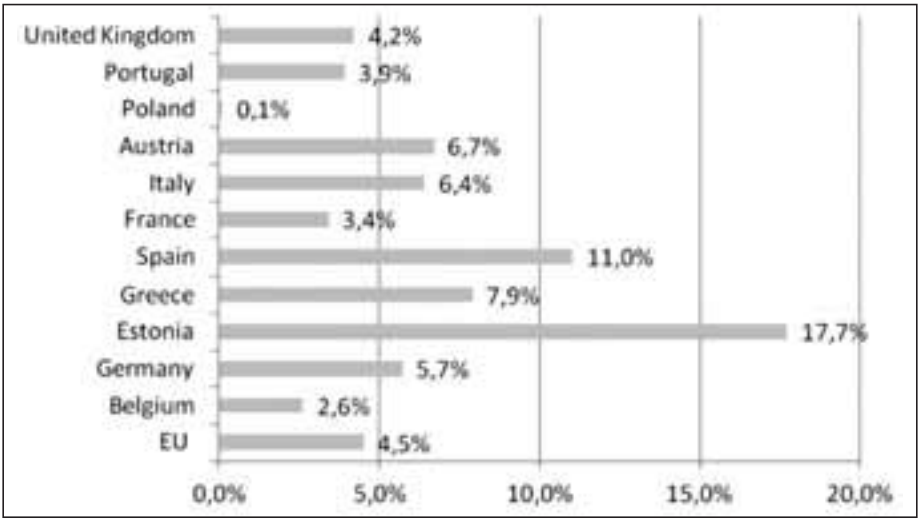
has thus become a fundamental building block of the Single Market. As highlighted in the Europe 2020 Strategy and the Single Market Act, professional mobility is a key element of Europe's competitiveness. Burdensome and unclear procedures for the recognition of professional qualifications were identified in the EU Citizenship Report 2010 as one of the main obstacles EU citizens still encounter in their daily lives when exercising their rights under EU law across national borders'.[3]

A simplification of the procedures of recognising qualifications would, first of all, increase the mobility of independent professionals, which, according to the authors of the Green Paper, is still very low within the European Union.

This has a negative impact on the services sector, a key sector of the European economy, which generates as much as 70 per cent of the EU GDP, but with the intra-community trade in services (including professional services) amounting to only approx. 25 per cent of the entire trade in the EU. According to the authors, this is mainly caused by the complicated and overly complex laws.

An interesting fact is that workers from outside the European Union, from countries which have signed relevant agreements with the EU, are entitled to working in the EU Member States and to equal working conditions as EU nationals.

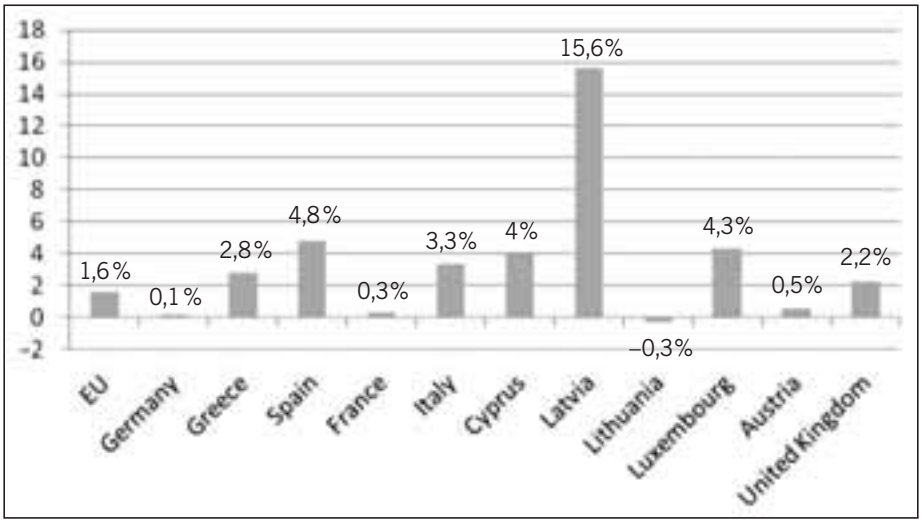
Chart 1. Workers from outside the EU as a percentage of the workforce in selected EU Member States in 2010



Source: Own compilation on the basis of Eurostat data, http://epp.eurostat.ec.europa.eu/ (last visited 15.12.2012).

[3] Green Paper. Modernising the Professional Qualifications Directive, Brussels, 22.6.2011, COM(2011) 367 final, p. 1.

Chart 2. The change in the share of foreign nationals in the workforce market in 2005–2009 in selected EU Member States



Source: Own compilation on the basis of Eurostat data, http://epp.eurostat.ec.europa.eu/ (last visited 15.12.2012).

The rights of the citizens of countries which have no such agreements with the EU are regulated by laws of the individual Member States, which can decide whether to grant a work permit or to deny it. However, one exception to this rule are the families of EU nationals.[4]

The Charts 1 and 2 presented show the situation in the employment of non-EU nationals in selected EU Member States.

In 2010, the proportion of foreign nationals in the workforce in the EU Member States was lowest in Poland and Bulgaria and amounted to as little as 0.1 per cent.

In 2005–2009, the highest change in the percentage share of foreign nationals was recorded in Latvia (15.6 percentage points), as well as Spain (4.8 percentage points) and Luxembourg (4.3 percentage points). In Poland, the change amounted to 0 percentage points.

European Employment Strategy

At the EU level, the process of granting priority status to the employment policy was initiated by the Treaty of Amsterdam, which included a whole chapter dedicated to employment-related issues and the European labour market. The common strategy was later presented in the "White Paper Growth, Competitive-

[4] http://www.ec.europa.eu/social/main.jsp?catId=470&langId=en (last visited 15.12.2012).

ness, Employment. The Challenges and Ways Forward into the 21st Century", published by the Commission of the European Communities in December 1993.

In order to motivate the authorities on the EU, national and local levels to take concrete actions aimed at increasing employment, in June 1996 the Commission issued the communication entitled: "Action for Employment in Europe – A Confidence Pact".

However, the document to constitute the real basis for the development of the Lisbon Strategy, in force until 2010, would be the European Employment Strategy, adopted at the EU Summit in Luxembourg in 1997.[5]

The main objective of the Lisbon Strategy was to make Europe the most dynamic and competitive economy in the world. The changes in question were to concern mainly the labour market.

What was considered one of the main sources of Europe's lag was the Europeans' excessive attachment to the protective umbrella of the state. It was noticed that excessive social expenditure of the EU Member States discourages potential workers from occupational activity. Furthermore, the disparities in the situation of women and men and the discrimination of the 50+ generation in the labour market were also deemed weaknesses of the European economy. Yet another reason named was insufficient activity in the field of research, science and implementation of innovative technologies.

The index values which were to bring the EU closer to the ideal labour market and assumed to be reached by 2010 were: employment rate at 70 per cent, employment rate of women at 60 per cent, employment rate of persons 50+ at 50 per cent.

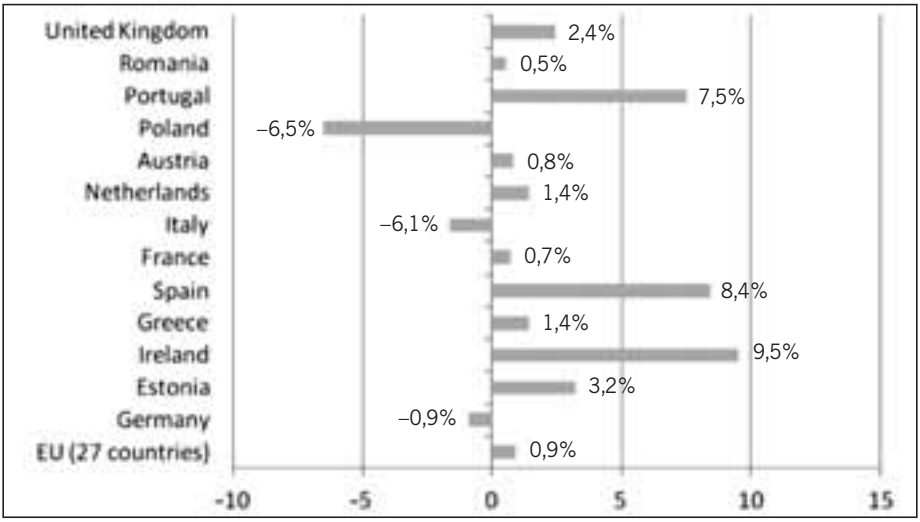
However, despite the ambitious premises and particularly good index values in 2008, the European Union as a whole failed to reach the aforementioned objectives.

The charts included below present the dynamics of the changes in the European labour market. In 2000–2010, when the Lisbon Strategy was in effect, the majority of EU Member States suffered an increase in the unemployment rate. In the entire EU, it amounted to 0.9 percentage points. The highest increase of the unemployment rate was recorded in Ireland (9.5 percentage points) and Spain (8.4 percentage points). In this context, Poland was a commendable exception, as the unemployment rate there fell by as much as 6.5 percentage points.

Since the beginning of 2012, the unemployment rate in the entire European Union has fallen by 0.3 percentage points. In the individual Member States the unemployment rate fell by as much as 0.6 (Germany) or 0.8 (Poland) percentage points, but this should not be considered a spectacular improvement. However, the countries of Southern Europe, such as Italy, Spain or Portugal, recorded a considerable increase of the unemployment rate since the beginning of the year, which constitutes a clear proof of the bad economic situation that these states have to struggle with.

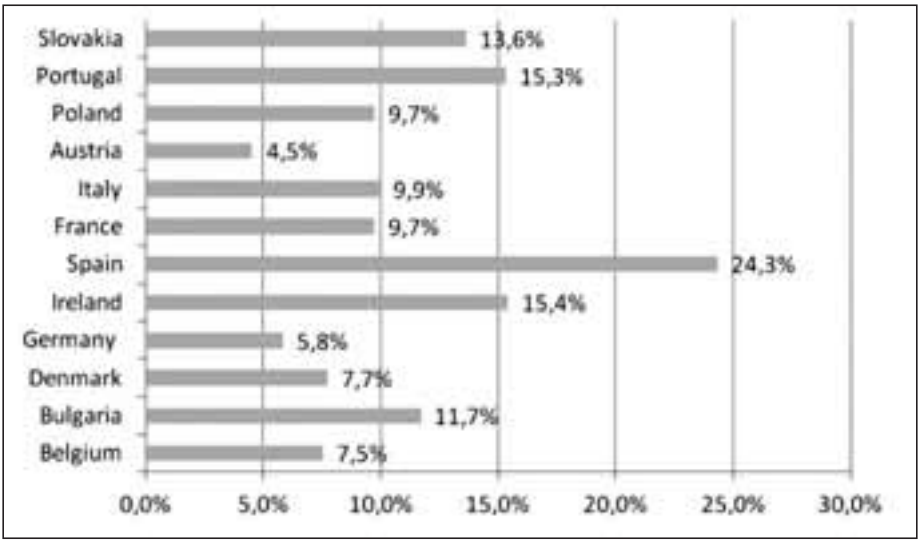
[5] M. Knapińska, *Wspólny Europejski Rynek Pracy. Geneza – rozwój – funkcjonowanie* (*The Common European Labour Market. Genesis – Development – Functioning*), Poznań 2012.

Chart 3. Dynamics of the annual unemployment rate in 2000–2010 in selected EU Member States



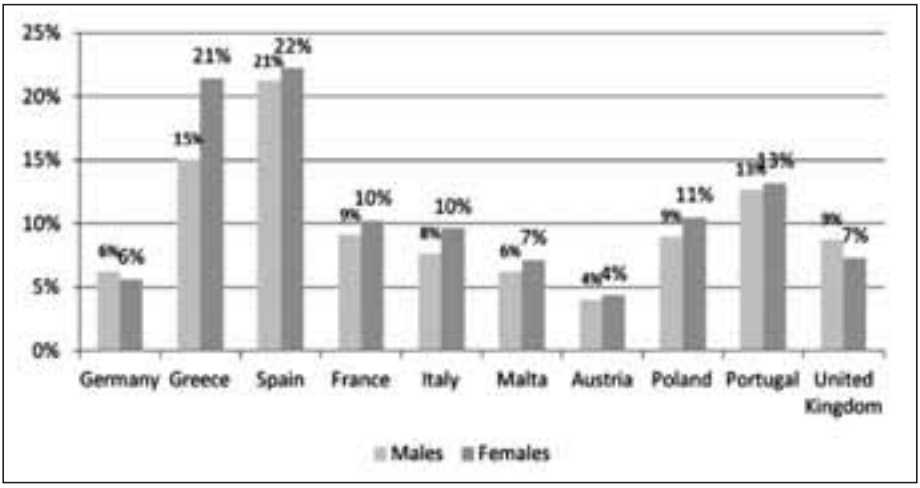
Source: Own compilation on the basis of Eurostat data, http://epp.eurostat.ec.europa.eu/ (last visited 15.12.2012).

Chart 4. Monthly unemployment rate in July 2012 in selected EU Member States



Source: Own compilation on the basis of Eurostat data, http://epp.eurostat.ec.europa.eu/ (last visited 15.12.2012).

Chart 5. Annual unemployment rate according to gender in 2011 in selected EU Member States



Source: Own compilation on the basis of Eurostat data, http://epp.eurostat.ec.europa.eu/ (last visited 15.12.2012).

The unemployment rate according to gender in the entire EU was 9.8 per cent in the case of women and 9.6 per cent in the case of men. In Poland, the difference was higher, as the rate was 9 per cent for men and 11 per cent for women, while in Greece, for instance, the difference was as much as 6 per cent in the favour of men (see Chart 5).

The Europe 2020 Strategy, published in 2010 and replacing the Lisbon Strategy implemented since 2000, is meant to be a new long-term programme of the socio-economic development of the European Union.

The new Europe 2020 Strategy enumerates five main objectives which are to be fulfilled by 2020, these being the raising of the employment rate among the population aged 20–64 from the current 69 per cent to 75 per cent in the target year and the achievement of the target investment in research and development at he level of 3 per cent GDP. Apart from that, the strategic goals include: increasing energy efficiency, lowering gas emission and greater use of renewable energy sources with benefit for the environment.

Yet another important element of the priority strategy is the particular focus on education realised by lowering the number of young people leaving school too early from 15 to 10 per cent and increasing the number of people with higher education from 31 to 40 per cent.

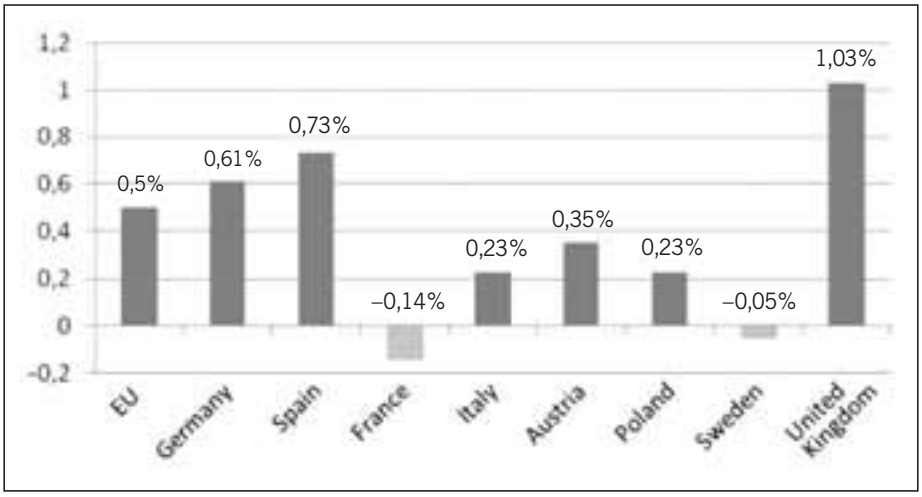
What is important, the Member States are required to devise their own national objectives in each of these areas, adapted to their particular needs and their internal situations.

As we can see, special attention is paid to education, for it is primarily highly qualified services that are to raise Europe from economic stagnation. One could get an impression that European policy makers are increasingly aware of the fact that the EU is losing its impetus and competitiveness in the other sectors of the economy to the new economic powers. This is why the investments in human capital and the increase in spending on education are considered of utmost importance.

In an age when productivity is so much more important than the amount of work, proper education and the right choice in terms of the education path are the factors which greatly increase the chances for quick employment. We could say that from the point of view of the state as a whole, higher productivity of work depends principally on the expenditures on education.

Meanwhile, the latest available data shows that in selected EU Member States, public expenditure does not give much reason for optimism (see Chart 6). In most of them the growth rate in public expenditure on education in 2000–2009 had positive values. In Poland it was 0.23 percentage points and in the entire EU it was 0.5 percentage points.

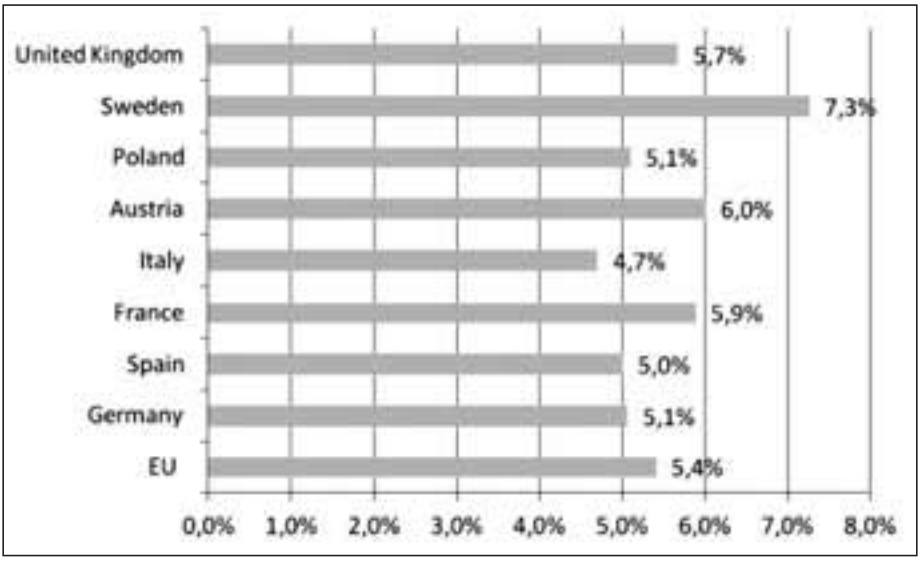
Chart 6. Growth rate of public expenditure on education in 2000–2009 in selected EU Member States



Source: Own compilation on the basis of Eurostat data, http://epp.eurostat.ec.europa.eu/ (last visited 15.12.2012).

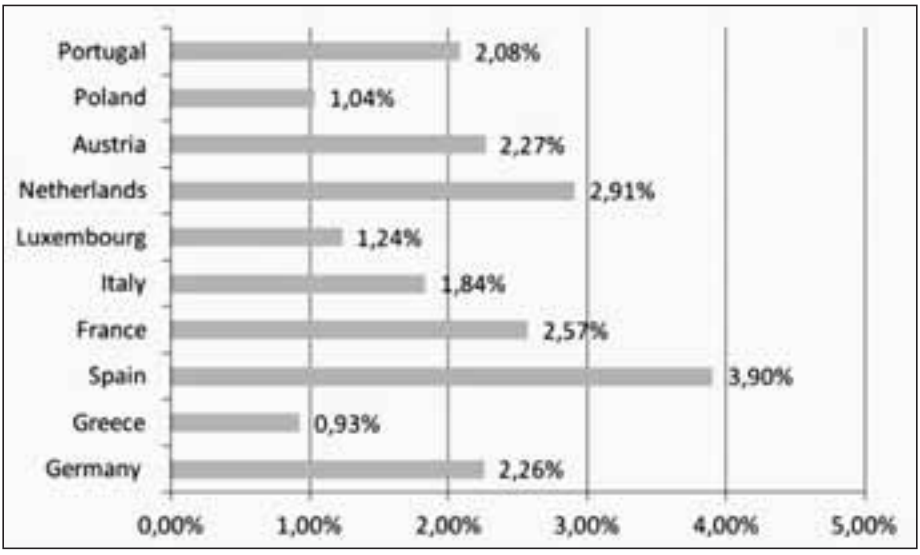
In 2009, the public expenditure on education in the entire European Union amounted to 5.4 percent GDP. In Poland this value was slightly lower and amounted to 5.1 per cent GDP. The country that allocated the largest amount of public funds to education in 2009 is Denmark (as much as 8.7 per cent GDP), while Slovakia allocated the smallest amount (4.09 per cent GDP).

Chart 7. Public expenditure on education as percentage of GDP in selected EU Member States in 2009



Source: Own compilation on the basis of Eurostat data, http://epp.eurostat.ec.europa.eu/ (last visited 15.12.2012).

Chart 8. Public expenditure on labour market policy interventions as percentage of GDP in 2010 in selected UE countries



Source: Own compilation on the basis of Eurostat data, http://epp.eurostat.ec.europa.eu/ (last visited 15.12.2012).

One of the priorities of the Europe 2020 Strategy is social cohesion, that is combating exclusion and poverty also in the territorial dimension, so as to avoid vast disparities in wealth. The strategy is also aimed at limiting excessive segmentation of the labour market, so that people cannot be assigned to the worse and the better segments; this also involves overcoming income-related barriers.

The level of expenditure on labour market policies in Poland in 2010 was 1.04 per cent GDP, while Spain had the highest level – 3.9 per cent GDP (see Chart 8).

In 2009, the total expenditure of the EU Member States on labour market policy amounted to EUR 255,849.736 million. In 2010, the countries spending the most were Germany (EUR 56,443.401 million) and France (EUR 50,136.279 million). However, if we examine the more relevant values, such as the percentage of these expenditures in the relevant GDPs, we will notice that these states were not at all in the lead, as their expenditures constituted 2.3 per cent GDP in Germany and 2.6 per cent GDP in France (see Chart 8).

Characteristics of the European labour market

The threat of economic slowdown, increased unemployment and falling demand provokes reflection on the sources of the problems which are plaguing the European labour market.

In July 2012, the unemployment rate in the euro area, taking into account seasonal factors, amounted to 11.3 per cent, which was the highest level since 1995.

Why is the European market, with all its potential and possibilities, not functioning as it should? The reasons for this are many: excessive dependence on the social protection provided by the state, excessive tax and administrative burdens to employers, or high employment costs. There are also reasons which are rather hard to change, but the negative effects of which can be mitigated: such as population ageing and longer life expectancy.

One of the biggest problems and challenges to the European labour market is structural unemployment. It results mainly from the spatial mismatch and mismatch in qualifications of potential workers, which originates with the divergence between the structure of supply and demand for labour in the various markets. However, in contrast to short-term unemployment, the lack of spatial mobility and of the opportunities and desire to change professional qualifications fitting the signals sent by the market has long-term consequences. In contrast to short-term unemployment, structural unemployment concerns more permanent and fundamental mismatches.

One of the reasons for long-term, structural unemployment is spatial mismatch. The economy usually does not develop exactly where there is a good supply of people with specific qualifications. Enterprises prefer to operate and develop in large industrialised areas, as this ensures a large selling market, no

transport costs and easier access to a broad range of qualifications of potential employees and contractors. In order for the economy to develop efficiently, people should migrate to the places where enterprises are most active. Unfortunately, in contrast to the United States, in Europe this is rather rare. People are reluctant to risk changing the place of work, and this does not only involve the costs of changing the place of residence, but also non-economic aspects such as family ties or local culture and tradition. In the supranational dimension, in contrast to the considerably spatially mobile United States, in Europe there is still a strong language barrier and the laws concerning free movement of workers are not always clear and unified.

Another reason for long-term unemployment is qualifications mismatch. Acquiring new qualifications requires time, and it is not infrequent that the dynamic development of economy and fast technological progress result in employers looking for workers with new qualifications. This requires unemployed people to acquire new skills and often to change profession as well. In Europe, the long cycle of education and the lack of a comprehensive education offer for adults result in the fact that employees rarely practice lifelong learning. Furthermore, only few European states can boast an individual approach to the unemployed and courses which suite their individual profiles.

Long-term unemployment can also result from wrong choices of young people regarding the education path, isolated from the signals sent by the market and the forecasts concerning future demand for particular professions.

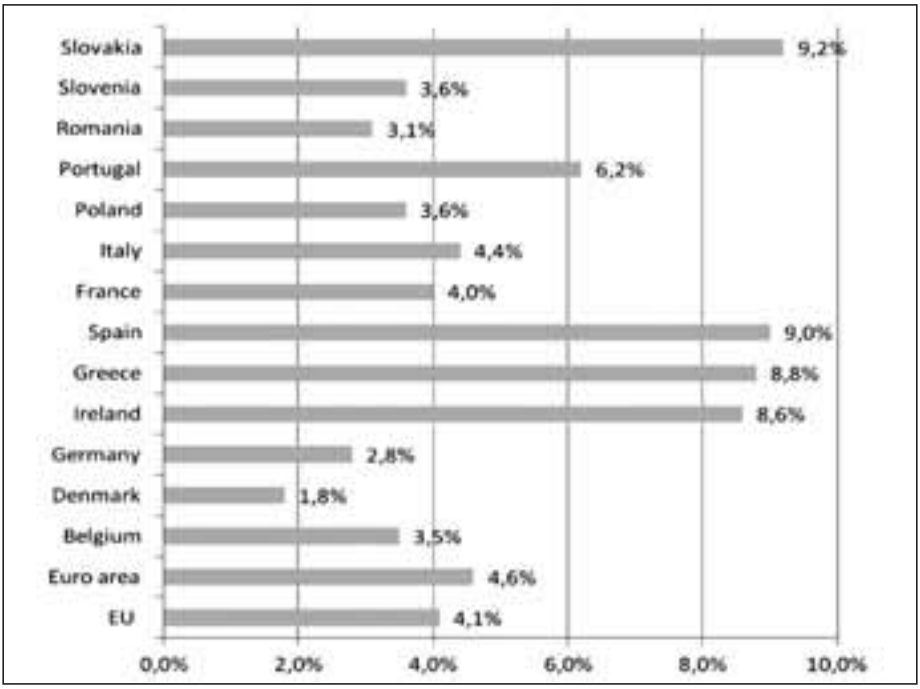
The chart below presents the rate of long-term unemployment in selected Member States of the European Union in 2011.

In 2011, the average long-term unemployment rate in the entire European Union was 4.1 per cent, while in the euro area it was slightly higher and amounted to 4.6 per cent. Among the EU Member States, the highest share of long-term unemployed persons was recorded in Slovakia (9.2 per cent) and Spain (9 per cent). In Poland, the situation was better, as the long-term unemployment rate was 3.6 per cent, while the lowest value, that is 1.1 per cent, was recorded in Austria (see Chart 9).

As presented in the Chart below, in the decade 2001–2011 the unemployment rate of long-term unemployed in countries such as Poland or Germany was clearly dropping. In Germany the decrease was 1.1 percentage points, while in Poland it was 5.6 percentage points. However, many EU Member States experienced a considerable increase in the number of people suffering long-term unemployment. Ireland was the one to suffer the most in this regard in the said decade, as the long-term unemployment rate there increased by as much as 7.3 percentage points (see Chart 10).

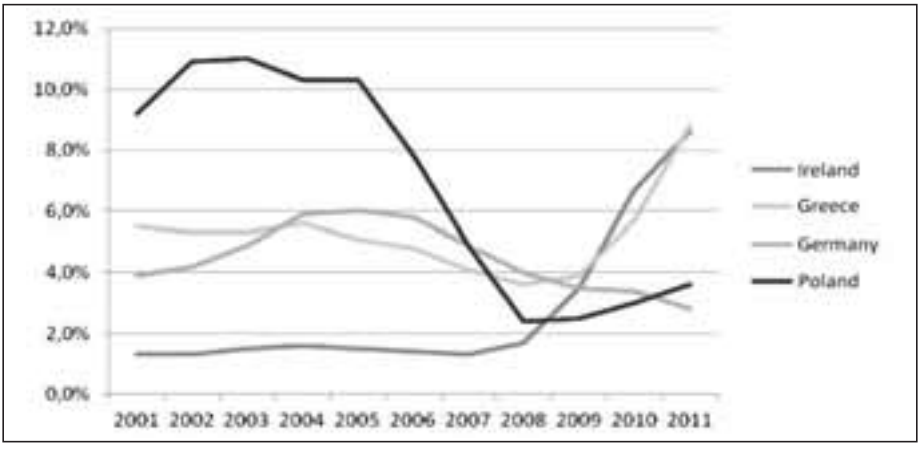
As already mentioned in the beginning of the article, the European labour market is an very strongly regulated market. Analysing the net height of wages compared with the amount that employers have to pay for the given work, we can clearly see that the European tax wedge is shockingly high, taking often as much

Chart 9. Long-term unemployment rate in 2011 in selected EU Member States



Source: Own compilation on the basis of Eurostat data, http://epp.eurostat.ec.europa.eu/ (last visited 15.12.2012).

Chart 10. Dynamics of changes of the long-term unemployment rate in selected EU Member States in 2001–2011

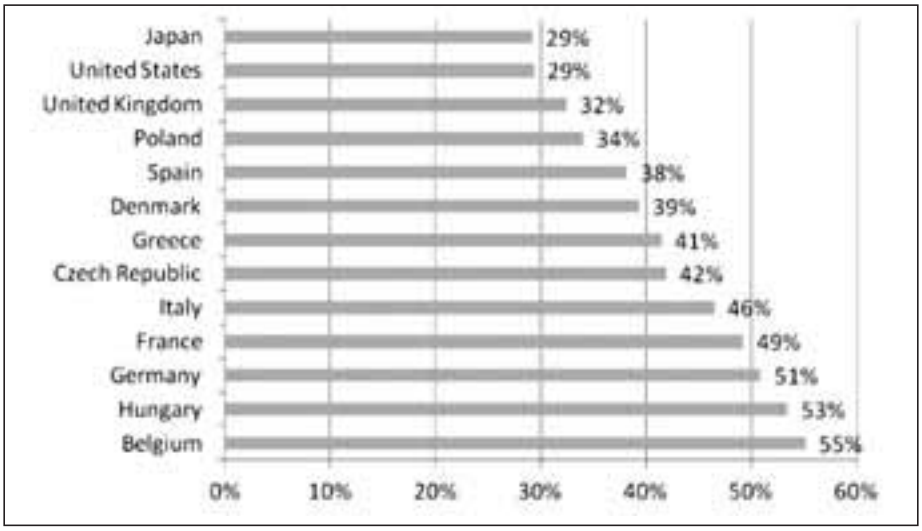


Source: Own compilation on the basis of Eurostat data, http://epp.eurostat.ec.europa.eu/ (last visited 15.12.2012).

as approx. 50 per cent of potential remuneration. Due to the tax wedge, the costs of employing workers incurred by employers exceed by far the real salaries. This index is very high in the so called welfare states.

In terms of high labour taxation, the leading countries are still such West-European states as Belgium, France or Germany. It is there that half of the amount spent by the employer on employee wages is consumed by taxes and social benefits (see Chart 11).

Chart 11. Labour taxation as percentage of labour costs in 2009



Source: Own compilation on the basis of OECD data, http://www.stats.oecd.org/ (last visited 15.12.2012).

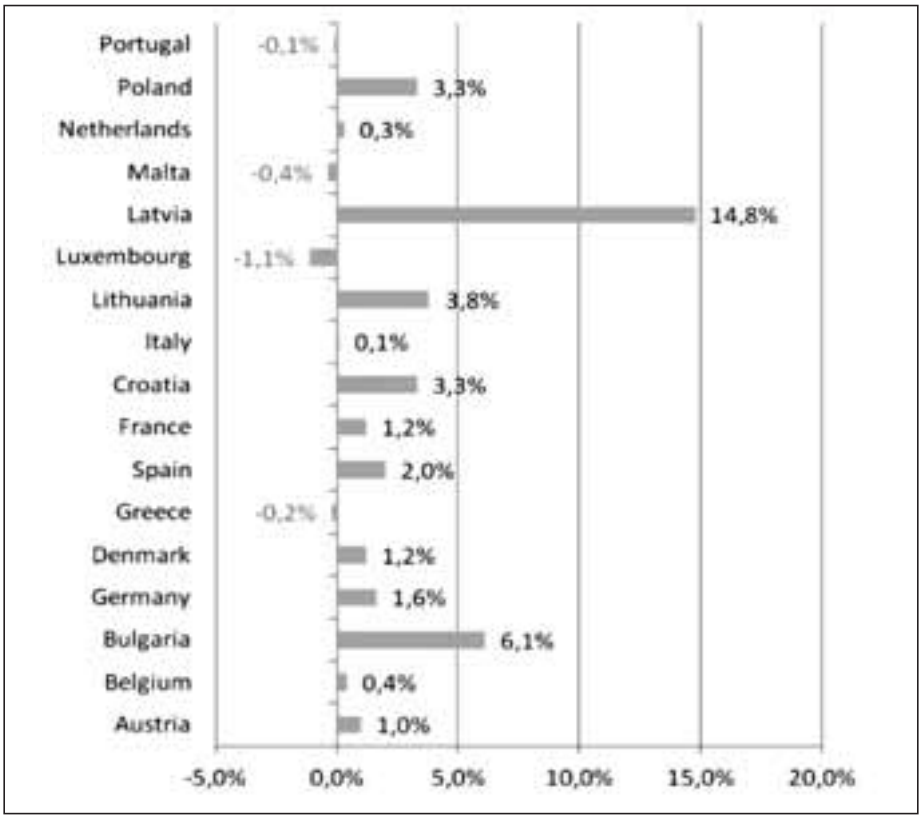
Excessive labour taxation most strongly affects the reduction of the number of job offers where jobs are most easily replaced by advanced technologies. It is considerably more possible in industry than in services.

Other factors influencing the relative tightness of the labour market include the minimum wage and the activity of labour unions. The minimum wage, set above the level of productivity of some workers, and the intensive activity of labour unions, calling for an increase of wages in isolation from an increase in productivity, have a negative impact on the increase of employment and contribute to lower flexibility of the European labour market and, in consequence, to higher unemployment.

As presented in the chart below, the increase of productivity in 2011 was not significant in the majority of EU Member States, while in some it was even negative. The index of labour productivity in 2011 for the entire European Union was only 1.3 per cent. Latvia had the highest increase, 14.8 per cent, but this is definitely an isolated case. Luxembourg, in turn, had the highest

decrease, –1.1 per cent. The countries of Southern Europe, such as Greece, Portugal, Cyprus or Malta also had a negative increase of labour productivity (see Chart 12).

Chart 12. Percentage change of labour productivity in 2011 in comparison to 2010 in selected EU Member States



Source: Own compilation on the basis of Eurostat data, http://www.epp.eurostat.ec.europa.eu/ (last visited 15.12.2012).

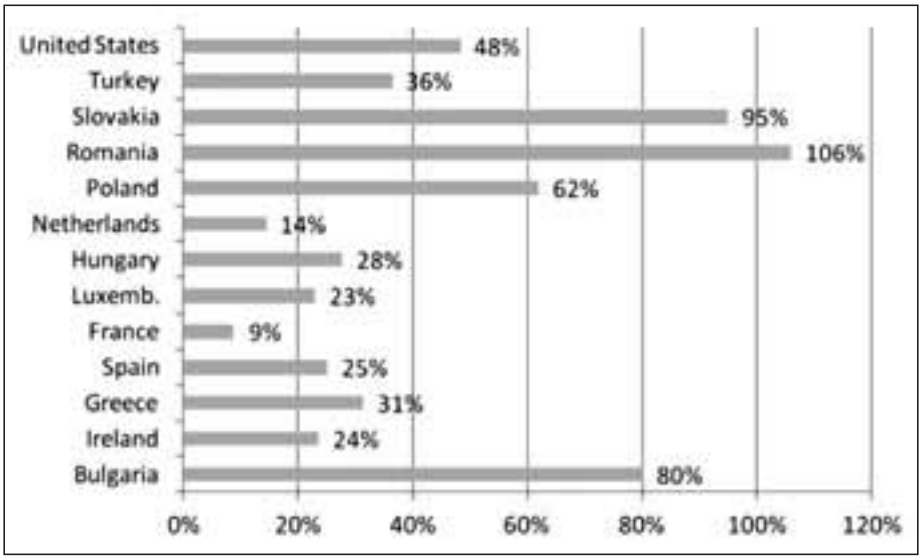
The new EU Member States clearly had the lowest increase of labour productivity, however, it should be pointed out that they had started with a much lower level of labour productivity than the countries of Western Europe. In Poland, the increase of labour productivity remains at 3.3. per cent, but this is still just 66 per cent of the EU average, while in Germany it is 111 per cent of the EU average.

The differences in labour productivity between the individual EU Member States are mainly caused by the differences in technological development, which, in turn, results in differences in the value of produced goods and services.

In theory, the increase of wages should be a direct result of an increased level of labour productivity, but in the strongly regulated European labour market, wages are not closely tied to productivity. The level of wages is influenced by such factors as the amount of taxes due or the number of employees. For instance, considering data regarding the Polish economy in 2011, the increase of labour productivity amounted to 3.3 per cent, while the increase of average wages in the private sector was 5 per cent.

In this context, we should also look at the values and changes of minimum wages in selected EU Member States.

Chart 13. Growth rate of minimum wages in 2005–2012



Source: Own compilation on the basis of Eurostat data, http://epp.eurostat.ec.europa.eu/ (last visited 15.12.2012).

In the entire European Union, the dynamics of growth of minimum wages show a clear growing tendency. In 2005–2012, the new members of the European Union from Central and Eastern Europe had the highest rate of growth of minimum wages.

Nevertheless, the differences in wages in the European Union are still considerable. In 2012, the minimum wage in Luxembourg was EUR 1801.49, in the Netherlands EUR 1446.6, while in Bulgaria it was EUR 138.05 and in Romania EUR 161.91. In Poland, it was EUR 336.47.[6]

One of the ideas that are supposed to save the bad condition of the European labour market and improve its flexibility is the flexicurity, which is the priority element of the European Employment Strategy, including the latest Europe 2020

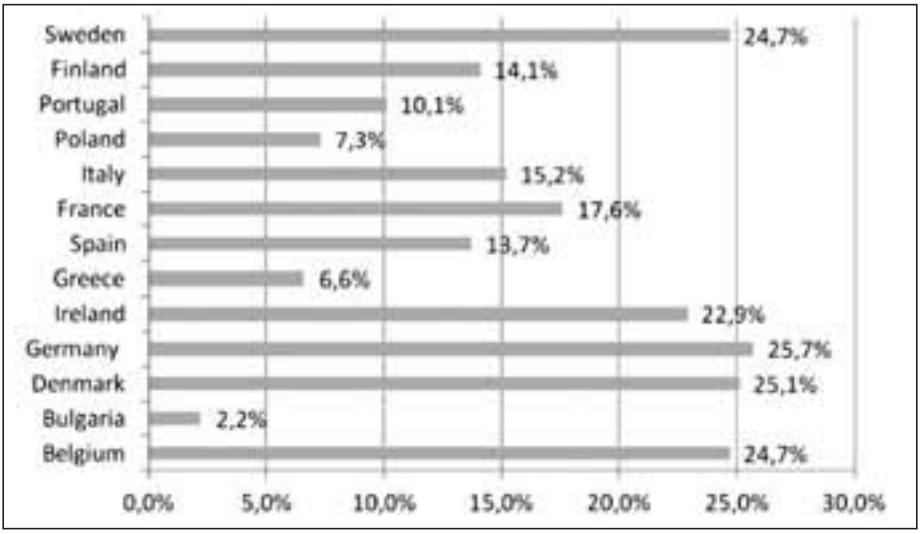
[6] On the basis on Eurostat data, http://www.epp.eurostat.ec.europa.eu/ (last visited 15.12.2012).

Strategy. Theoretically, flexicurity combines flexibility of the labour market and social security of workers.

The Communication from the Commission concerning the Common Principles of Flexicurity of 27 June 2007 states that: *'Flexicurity aims at ensuring that EU citizens can enjoy a high level of employment security, i.e. the possibility to easily find a job at every stage of active life and have a good prospect for career development in a quickly changing economic environment. It also aims at helping employees and employers alike to fully reap the opportunities presented by globalisation. It therefore creates a situation in which security and flexibility can reinforce each other'*.[7]

The modern economy requires quick adjustments to the changing situation, including the situation in the labour market. Therefore, flexicurity calls for, among others: ensuring social security of workers, understood as the guaranteed continuity of employment, however under the condition of active looking for work. Furthermore, it encourages active labour market policies and the development of system of education, allowing for the development and change of employee qualifications. Another important element of flexicurity is the promotion and implementation of flexible forms of employment. One of the most common types of flexible employment is part-time work.

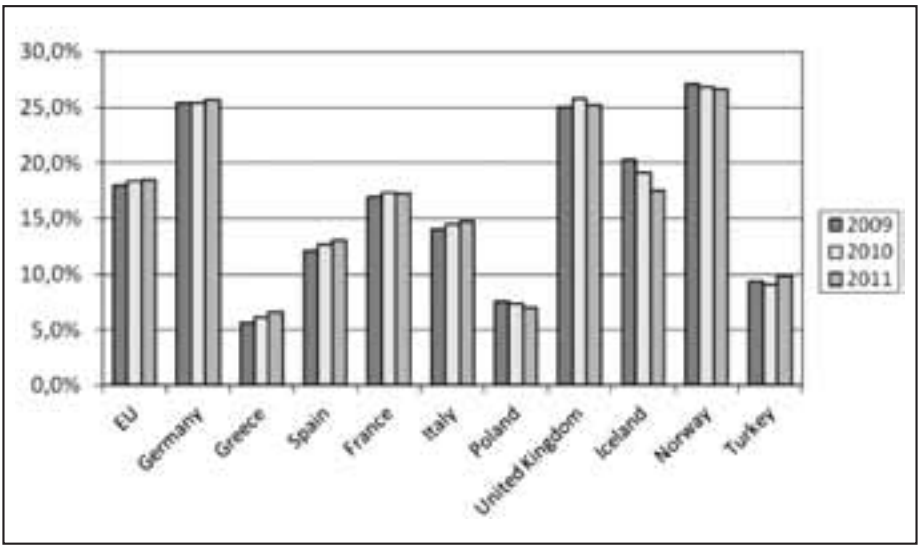
Chart 14. Part-time employment as a percentage of the total employment in the 2011 in selected countries



Source: Own compilation on the basis of Eurostat data, http://epp.eurostat.ec.europa.eu/ (last visited 15.12.2012).

[7] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Towards Common Principles of Flexicurity: More and better jobs through flexibility and security, Brussels, 27.6.2007, COM(2007) 359 final, p. 4.

Chart 15. Part-time employment as a percentage of the total employment in the years 2009–2011 in selected countries



Source: Own compilation on the basis of Eurostat data, http://epp.eurostat.ec.europa.eu/ (last visited 15.12.2012).

The number of workers employed on a part-time basis constituted 18.8 per cent of the total number of workers employed in the European Union in 2011. The percentage is the largest in the Netherlands, with 48.5 per cent, and the lowest in Slovakia, with 3.9 per cent (see Chart 14).

What is interesting, despite many campaigns promoting flexible forms of employment, the dynamics of changes in the number of persons employed on a part-time basis in 2009–2011 was not very high. In Poland the index fell by 0.5 percentage points, while in Germany and France there was a slight increase, by 0.3 and 0.2 percentage points respectively. In the European Union as a whole, the increase was also positive, amounting to 0.8 percentage points.

Conclusions

Under the Lisbon Strategy, by 2010 Europe was supposed to be the most dynamic and most quickly developing economy in the world, but unfortunately, the hopes and plans of European policy makers were not fulfilled. According to many forecasts, the year 2013 will bring an increase of the unemployment rate in almost entire Europe. The deepening crisis emphasised numerous weaknesses of the European labour market: excessive regulation, excessive attachment to benefits or excessive burdening of employers with employment costs. Moreover, it has shown that Europe is lacking a concrete vision which would allow it to take bold

actions to limit the complex social market model and highlighted the indecisiveness of European policy makers regarding the issue of fundamental liberalisation of the labour market.

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Europe at a Crossroads – Industrial Relations and Social Dialogue

Introduction

Industrial relations in the EU were seriously affected by the financial crisis of 2008–2010, the subsequent economic recession, and the Eurozone public debt crises of 2011–2012. Recent statistical information indicates that in 2012 the Eurozone has been suffering from an economic downturn.[1] Industrial output fell due to an accelerated rate of loss of new business. The fall in output was widespread across the single currency area, with both the core and periphery economies contracting as, for example, industrial output fell in Germany dropping at the fastest rate since June 2009 with the largest decline in manufacturing in over three years. French output also fell in the first half of 2012. Downturns accelerated also in Spain and Italy. Industrial production was down by 0.3 per cent in the euro area and EU-27.[2] Industrial sector downturns resulted in reductions in employment. Labour markets in the EU have not managed to recover from the global economic crisis throughout 2012. During the economic crisis, unemployment was increasing at a considerable pace, as in the EU-27. The unemployment rate at the end of 2012 was 11.8 per cent in the euro area and 10.7 per cent in the EU-27, with the lowest rates in Austria (4.5), Luxembourg (5.1), Germany (5.4), and the Netherlands (5.6). The highest unemployment rates have been recorded in Spain (26.6) and Greece (26.0 – September 2012).[3] The crisis which Europe has been undergoing since 2008 is having an exceptionally severe and ever-increasing impact on young people: the youth unemployment rate stood at 22.7 per cent in the third quarter of

[1] *Eurozone Suffers Worst PMI Downturn in Three Years in June 2012*, Agence France-Presse, http://www.eubusiness.com/news-eu/eurozone-business.gva/ (last visited 3.02.2013).

[2] *Industrial Production Down by 0.3 per cent in Euro Area and EU27*, Eurostat, "News Releases Euroindicators" 6/2013.

[3] *Euro Area Unemployment Rate at 11.8 per cent*, Eurostat, "News Releases Euroindicators" 4/2013.

2012, twice as high as the adult rate,[4] and no signs of improvement are in sight. Employment relations greatly influenced these employment rates and understanding the industrial relations during the crisis would produce useful conclusions to improve responses to the possible next economic downturns.

Social policy in the European Union includes labour law, occupational health and safety as well as gender mainstreaming. It also sets standards and objectives in these areas, as well as lays down the principles of anti-discrimination policy. The European Union has no powers to harmonise the numerous, in some cases very different systems of social protection in the Member States. Instead, its role is to coordinate these systems to protect the main principles of the Common market.[5] All Member States launched the European Employment Strategy in 1997 to encourage the exchange of information and joint discussions with the involvement of social partners, the European Parliament, the European Economic and Social Committee, and the Committee of the Regions.

Research done at academic and international institutions focuses on the issues mentioned above. In this article, the author discusses and provides opinion on the following questions: are there any diverging or converging trends towards Europeanisation of industrial relations?

Employment policies and social dialogue

Despite the fact that the general trend of labour markets deteriorated in the EU countries, unemployment has hit some countries harder than others. As many studies show, countries with most rigid labour market regulations and neoliberal economic policies[6] have suffered the sharpest surge in unemployment numbers, suggesting that this is an important condition deserving consideration alongside the analysis of stimulus programmes. Currently all Member States of the European Union are showing the same, or at least very similar, symptoms of crisis. They are experiencing the same problem situations (weak growth, unemployment, negative demographic trends, overloading of the social welfare systems), to which the reform process is a reaction.

Among those countries is also Latvia.[7] A number of EU countries have attempted to address labour market rigidity. One of the best examples is Germany

[4] Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committe of the Regions, Moving youth into employment, Brussels 5.12.2012, COM(2012) 727.

[5] T. Muravska, *The EU Approach to Socio-Economic Democracy and the Post EU Accession Latvia* in: *A Litmus Test Case of Modernity. Examining Mordern Sensibilities and the Public Domain in the Baltic States at he Turn of the Century*, L. Donskis (ed.), London 2009, pp. 17–48.

[6] T. Muravska, *Crisis in Latvia – Economic Transformation: The Regional Dimension and Development Constrains* in: *Adaptability and Change – The Regional Dimensions in Central and Eastern Europe*, G. Gorzelak, C. Goh, K. Fazekas (eds.), Warszawa, 2012, pp. 240–263.

[7] A. Åslund, V. Dombrovskis, *How Latvia Came through the Financial Crisis*, Washington 2011, pp. 113–123.

with its work-sharing scheme where wages/incomes are compensated for shorter hours. Such scheme appears to be successful in maintaining employment and incomes at high levels in wealthier countries. It should be noted, however, that such programmes are difficult to replicate in less economically prosperous countries.[8] Among the three Baltic States, for example, only Estonia has enhanced the flexibility of the labour market by introducing a new Employment Contracts Act, effective 1 July 2009,[9] which shortened the layoff notice and reduced severance payments.

Flexible labour markets have been conceptualised by the term 'flexicurity', which refers to the specific combination of flexibility, in terms of a high level of job mobility and a low level of employment protection, combined with a generous system of social welfare and unemployment benefits. The principle of flexicurity was established to conciliate both employers' and workers' needs, flexibility and security, by ensuring safe transitions of workers within the labour market, while maintaining and improving competitiveness of companies and also preserving the European Social model. Based on consultations with the Member States, international organisations, social partners and academic community, the European Commission has suggested 'pathways' and 'common principles' in order to achieve flexicurity.[10] In the Integrated Guidelines (IG) Member States are asked to promote flexibility combined with employment security – 'flexicurity' – and reduce labour market segmentation, having due regard to the role of social partners. The exchange between employment protection legislation and unemployment benefits can be considered the fundamental element of 'flexicurity'. The most common example cited to illustrate the concept of 'flexicurity' is the Danish model. Furthermore, according to the World Bank survey.[11] Denmark has the most flexible labour market among developed economies and this concept is quoted in scholarly literature and in EU employment guidelines and policy documents. Denmark's last year's experience points to the economic feasibility of a 'hybrid employment system' that combines the traditional virtues of a liberal and unregulated labour market with a reasonable level of economic protection for the individual wage earner.[12]

The Danish model is a combination of several major labour market policies. One of them is employment protection legislation that provides flexibility for

[8] *Employment Stability in an Age of Flexibility: Evidence from Industrialized Countries*, P. Auer, S. Cazes (eds.), Geneva 2003, pp. 90–105.

[9] *Estonian Labour Law*, Estonian Chamber of Commerce and Industry, Tallinn 2008, http://www.koda.ee/index.php?id=11874 (last visited 02.02.2013).

[10] *Flexicurity Pathways. Turning Hurdles into Stepping Stones*, European Expert Group on Flexicurity, June 2007, http://ec.europa.eu/social/main.jsp?catId=117&langId=en (last visited 2.02.2013).

[11] P. Auer, S. Cazes (eds.), op.cit., pp. 90–105.

[12] J. Hendeliowitz, C. Bastlund Woollhead, *Employment Policy in Denmark – High Levels of Employment, Flexibility and Welfare Security* in: *Local Governance for Promoting Employment,* S. Giguère, Y. Higuche (eds.), Tokyo 2007, pp. 121–138.

enterprises in terms of the hiring and firing of workers. Another one deals with a generous social safety net for the unemployed through unemployment benefits, and income security. The structural dynamics of such a system have been conceptualised by the term 'flexicurity', which refers to the specific combination of flexibility, in terms of a high level of job mobility and a low level of employment protection, combined with a generous system of social welfare and unemployment benefits. The exchange between employment protection legislation and unemployment benefits can be considered the main fundamental element of 'flexicurity'. The Danish labour market has a high degree of mobility both in terms of the willingness of the workforce to commute to work and the turnover in jobs. This lies in the predominance of small and medium-sized technologically advanced enterprises (SMEs) in the Danish industrial structure, where it is easier to shift from one firm to another due to lower entry barriers at the enterprise level.[13]

Another country mentioned as a good example of the implementation of the 'flexicurity' approach is the Netherlands.[14] One of the key issues is to develop effective employment policy at both the EU and domestic levels to ensure internal flexibility and labour market stabilisation. Internal European employment strategies pay increasingly more attention to issues of labour market flexibility and employment security or 'flexicurity'. The main characteristic of 'flexicurity' is its objective to overcome the tensions between labour market flexibility and the provision of social security for workers.[15] Flexible labour markets can be seen as beneficial for job creation, especially during periods of recovery after recessions but they generally entail lower levels of economic security. Other reasons for implementing 'flexicurity' include increased economic globalisation, rapid development of technology, and negative demographic processes in most EU countries. Welfare state programmes provide economic security but require higher public expenditure and less mobility of the labour force and in the labour market. In the 'flexicurity' concept, flexibility and security are viewed as complementary components. 'Flexicurity' comprises activities aimed at promoting labour market flexibility and employment security by mutual interaction. To implement successfully the concept of 'flexicurity', it is necessary to achieve labour legislation and agreements that are sufficiently flexible and corresponded to the interests of employers and employees. If needed, active labour market policy must efficiently facilitate the transfer from one work place to another or increase hiring. The report by the Danish Ministry of Finance suggested four identifiable regimes of labour market policies (LMPs) for further analysis of labour market performance in the EU-15 (table 1).

[13] J. Hendeliowitz, C. Bastlund Woollhead, op.cit., pp. 121–138.

[14] E. Viebrock, J. Clasen, *Flexicurity – A State-of-the Art Review,* "Working Papers on the Reconciliation of Work and Welfare in Europe", REC-WP 01/2009, p. 30, http://www.socialpolicy.ed. ac.uk/__data/assets/pdf_file/0013/31009/REC-WP_0109_Viebrock_Clasen.pdf (last visited 2.02.2013).

[15] Ibidem, p. 30.

Table 1. Employment policies and regimes in EU15

Regime	Policies	Countries
Regime A	1. High compensation rates 2. Strict availability for work requirements 3. Active LMPs 4. Low to average employment protection	Denmark, The Netherlands, Sweden
Regime B	1. Low compensation rates 2. Few formal demands on availability 3. Varying degree of active LMPs 4. Limited employment protection	Ireland, United Kingdom
Regime C	1. Varying compensation rates 2. Varying demand on availability 3. Passive LMPs 4. Average to high employment protection	Austria, Belgium, Finland, Germany
Regime D	1. Average compensation rates 2. Strict availability for work requirements 3. Passive LMPs 4. High employment protection	France, Italy, Spain, Portugal, Greece

Source: *Medium Term Economic Outlook*, Danish Ministry of Finance, Copenhagen 2004.

- The *North-European* regime (A) – Denmark, the Netherlands, Sweden. These countries have generous unemployment benefits and disincentive effects are counterbalanced by strict rules governing availability for jobs, and low to medium employment protection.
- The *Anglo-Saxon* regime (B) – the UK and Ireland. Low unemployment benefits, and expenditures on active labour market policies, few demands for availability, and a low level of employment protection.
- The *Central-European* regime (C) – Austria, Belgium, Finland, and Germany. Labour market policies in these countries are predominantly passive and employment protection is at average European levels.
- The *South-European* regime (D) – France, Greece, Italy, Portugal, and Spain. In these countries, employment protection is high, unemployment compensation close to the European average, and labour market policies are passive.

Labour market policies vary in the EU-12; however, in most cases they combine elements from B and C regimes. In Latvia there are elements of these two regimes with the following elements: low compensation rates, few formal demands on availability, limited employment protection, and passive labour market policies. To promote implementation of the 'flexicurity' principles in Latvia, the Saeima (Parliament) adopted on 15 May 2009 amendments to the Labour

Law, which brought flexibility and security in employment relations.[16] More flexible labour markets would reduce the costs of companies adjusting to rapid changes of the highly integrated international economy and improve competitiveness of the EU member states. At the same time, increased labour participation and higher income security contributes to higher levels of social inclusion. The 'flexicurity' approach is integrated in the Europe 2020 Strategy and is expected to contribute to the achievement of its objectives.[17] 'Flexicurity' comprises six fields of activities which promote labour market flexibility and employment security by mutual cooperation (Table 2).

Table 2. Fields of activities for implementation of the 'flexicurity' system

Labour legislation and agreements are sufficiently flexible and correspond to the interests of both the employer and the employee	Active labour market policies must efficiently facilitate the transfer from one workplace to another or from the status of unemployed to employed	Lifelong learning systems should be improved enabling an employee to be employed throughout the working age
A modern social security system must be established	Adequate assistance to residents in case of unemployment	'Flexicurity' must facilitate mobility and faster return to the labour market

Source: Draft Report from the Commission to the Council Draft Joint Employment Report (JER), 2009/2010, Brussels, COM(2009) 674/3.

Implementing the aims of the Lisbon Strategy and the principles of 'flexicurity' in Latvia requires ensuring an effective social dialogue between the Employers' Confederation of Latvia, the Free Trade Union Federation, and the government. This is another example of the implementation of social partnership in the country. Yet the development of this concept is still not included in national programmes on a large scale and does not enjoy strong government support. Several measures have been implemented in the recent years to improve the social dialogue on the national and local level. For example, with the help of European Social Fund financing, Latvian social partners including the Employers' Confederation of Latvia and the Free Trade Union Federation of Latvia, local governments, and the Latvian Association of Local and Regional Governments are involved in employment partnership and in improving the social dialogue at national and regional levels. This employment partnership could ensure social dialogue on the local and regional levels and increase the opportunities for social partner participation in the decision-making process and provision of public serv-

[16] Republic of Latvia Labor Law of 20 June 2001, effective as of 1 June 2002, amended, 2010.

[17] European Strategy Europe 2020, European Council, Brussels, 17 June 2010, EUCO 13/10 CO EUR 9 CONCL 2.

ices, as well as to improve the quality of public services provided by non-governmental organisations. Employment policies at all macro and micro levels are linked to industrial relations. Current socio-economic trends show the existence and practices of industrial relations in company, industry, and public sector levels of management (European Foundations for the Improving Living and Working Conditions, 2007). For example, tighter fiscal discipline has been one of the policy imperatives of the governments of EU Member States for the past decade. Social partners involved in this process agreed about the need for tighter control of public spending.

The fiscal targets set out in the Maastricht process[18] under discussion during the current EU debt crisis have reinforced financial discipline. Strong fiscal discipline has a number of implications for industrial relations. For example, it has led governments to focus on greater efficiency and higher productivity in public services resulting in reviews of how public service pay is determined, grading structures, employment contracts, and working practices. Fiscal discipline has also provided added impetus to new approaches to public management, such as the 'strategic management initiative' principles, devolved administrative budgeting, clearer objectives for service delivery, more accountability and flexibility in deploying resources, and devolving managerial decision-making authority. This change in public management due to the imperative of fiscal discipline on governments, inevitably led to the establishment of a new type of industrial relations practices in the public services, health, education and local authorities.

Industrial relations related research is closely linked to analysis of the position and activities of collective actors, e.g. employers' organisations, trade unions and governments. A fundamental element of industrial relations is social dialogue and the key institution in relations between unions and employers is the collective labour agreement. Social dialogue is a relatively new concept. It has gained significant importance in public debates internationally only in the last decades and is grounded in the constitution and activities of ILO covering rights at work, employment and social protection. Through its tripartite structure, the ILO has unique access to the world in relation to the implementation of the social dialogue. Social dialogue and social security have also become fundamental elements of the European Social Policy, thus the EU could serve as an example of analysis of main trends in the development of the social dialog and social partnership at the EU, national and company levels.

The complex nature of the economic downturn influenced employment policies and industrial relations institutions that are varied in the EU countries.[19] In

[18] OJ C 191, 1992.

[19] *The European Social Dialogue*, European Trade Union Confederation, 2011, http://www.etuc.org /a/1751 (last visited 2.02.2013); Commission Staff Working Paper, Industrial Relations in Europe 2010, Brussels, 03.03.2011, SEC(2011) 292 final.

general, institutions of industrial relations are defined as 'arrangements to regulate the employment relationship'.[20] Given that wages are the most important feature of the employment relationship, the institutions which regulate, set or influence wages are of particular significance. As a result, trade unions play a major role in industrial relations. A general trend of growing trade union activity of employees in Europe was recorded between the 1930s and the 1980s. Collective bargaining performed impressively after World War II, more than tripling weekly earnings in manufacturing between 1945 and 1970, gaining for union workers an unprecedented measure of security against old age, illness, and unemployment, and, through contractual protections, greatly strengthening their right to fair treatment at the workplace.[21] There have already been several decades of trade unions decline, shrinking union density in the EU countries, decentralisation of collective bargaining, and lowering of employee participation level. These trends are observed in most EU countries. Trade union membership statistics released by the European Trade Union Confederation in 2011 show that union density and collective bargaining coverage have once again fallen. Less than 31 per cent of workers were covered by a collective agreement in 2010, which is 2 per cent less than in 2009 and 5 per cent less than a decade ago. In 2010, union participation in the private sector fell from 18 per cent to 17 per cent, and in the public sector from 68 per cent to 64.5 per cent.[22] This means that across both the private and the public sector, fewer workers are covered by collective bargaining than at any time since World War II. These lowering trends of trade union density rates have spurred policy makers and scholars to study the organisation of trade unions, their models, and negotiations of collective agreements.

The European Union recognises social dialogue as one of the pillars of the European social model, and a tool of social cohesion. The European social partners use a very narrow definition, since they reserve the notion of social dialogue for their bipartite, autonomous work. Whenever European public authorities are involved, the social partners prefer to speak of tripartite concentration.

Social partners at the European level are organised according to three different types of activities. This system is the most advanced organisational scheme in the international labour practices:

- Tripartite consultation, exchanges are between social partners and European public authorities;
- Consultation of the social partners, these cover the activities from consultative committees and official consultations;

[20] S. Milner, *Charting the Coverage of Collective Pay Setting Institutions in Britain: 1895-1990*, London 1994, p. 53, http://eprints.lse.ac.uk/20801/1/Charting_the_Coverage_of_Collective_Pay_Setting_Institutions_1895-1990.pdf (last visited 4.02.2013).

[21] *Unions, Collective Bargaining and Employment Relations Project*, Trades Union Congress and the Economic and Social Research Council, "Research Bulletin" no. 2/2011.

[22] *The European Social Dialogue*, European Trade Union Confederation, op.cit.

- European social dialogue, the bipartite work of the social partners, whether or not stemming from the official consultations of the Commission, are based on Articles 153 and 154 of the Treaty on the functioning of the European Union.[23]

In EU Member States, the collaboration between state and social partners is an important link between industrial relations and government policy. It provides the means of attuning collective bargaining to national economic and social policy while opening it up to possible influence by social partners. Two subsystems of social partnership can be differentiated: bipartite consultations and negotiations between the social partners on one hand, and tripartite consultation and concerted policy-making between the social partners and the state on the other. Bipartite social partnership encompasses three areas: 1) the informal practice of negotiations and discussions at cross-sector levels; 2) the collective bargaining system, focused on the sectoral level and representing the core institution of bipartite social partnership; 3) tripartite social partnership relates to all social and economic policy issues which in formal terms fall within the purview of state powers and responsibilities.

The European Union has no powers to harmonise the numerous – and in some cases very different – systems of social protection as well as employment policies in the Member States. Instead, its role is to coordinate these systems to protect the main principles of the Common Market. The European Social Charter articulates a number of fundamental rights in such areas as collective bargaining, protection from unjustified dismissal, workplace health and safety.[24]

Scholars consider collective bargaining coverage as being similar to union membership.[25] This can be seen at the levels of bargaining coverage and the role many EU governments play in industrial relations. However, collective bargaining is the process through which social partners arrive at an agreement that regulates the terms and conditions of employment and labour relations. Collective bargaining plays a significant role in labour market governance. A collective bargaining coverage rate is an indicator of the degree to which wages and working conditions are regulated by collective agreements. For example, centralised collective bargaining structures tend to be associated with high coverage rates. In countries which extend the terms of a collective agreement to enterprises and workers who may not be parties to the agreement, coverage rates tends to be higher than in those which do not.

At the company-level, social dialogue was implemented in the EU by the adoption of the European Works Councils Directive in 1994 subsequently revised

[23] Treaty of Lisbon, OJ 2007/C 306/01.

[24] European Social Charter, Council of Europe Treaty, adopted in 1961, revised in 1996, OJ C 321E, 29.12. 2006.

[25] S. Lawrence, J. Ishikawa, *Social Dialogue Indicators Trade Union Membership and Collective Bargaining Coverage: Statistical Concepts, Methods and Findings,* "Working Paper" no. 59, Geneva 2005.

in 2009.[26] It was the result of constructive negotiations on promoting fairer economic development through collaborative efforts to increase productivity and enhance work conditions.

During the process of deepening and widening the European integration, development of new forms of partnership at European, national, and company levels occurred. In the European labour movement, the involvement of social partners and in particular trade unions within these institutions provides a solid basis for the redefinition of strategy and identity of trade unions. One of the major influential factors related to the strategy of trade unions and their collective bargaining is intensified international competition and currently, domestic economic and financial insecurity. There are, however, some signs of resistance starting to develop within the European labour movement challenging both the acceptance of austerity measures to overcome current economic crisis and the strategy of social partnership. These developments take the form of a transnational 'social movement unionism that links diverse groups and networks in opposition to austerity measures as being a core element of the neo-liberal conception of macroeconomic and fiscal stability. This is of particular importance due to growing globalisation and the mutual interaction between world economy and negotiations of world leaders with social partners.

Trade unions and collective bargaining: coordinated and fragmented systems

The tendencies of declining union density in the EU countries, decentralisation of collective bargaining, and employee participation has continued. However, such factors as employer organisations, bargaining coverage, and the role of governments in Industrial Relations (IR) remain unchanged. The social trend of IR and growing collective bargaining is still going strong and remains at high levels in, for example, Scandinavia and Belgium at a time when bargaining coverage has fallen elsewhere. The main reason for this is that collective bargaining in Scandinavia and Belgium is widely acknowledged by many political actors and social dialog partners including centre-right parties and employer groups. The main reason for widespread political approval is that according to practices in Scandinavia collective bargaining produces significant economic benefits and helps industries to remain competitive.[27]

Collective bargaining coverage remains at high levels in Central European and Scandinavian states and has increased in recent years. Studies show that the economic benefits of collective bargaining are more complex often produce mixed results and can negatively affect employment and inflation. At the same time, many scholars and international institutions agree that 'coordinated' systems

[26] Council Directive on European Works, OJ C 340, 16.05.2009.
[27] *Unions, Collective Bargaining*..., op.cit.

Table 3. Efficiency/macroeconomic impact of collective bargaining: coordinated and fragmented systems

Type of the collective bargaining system	Labour Market regulation	Impact	Macroeconomic Outcomes
Coordinated/centralised system in relation to collective bargaining	Deregulated labour market and flexibility	Positive results and 'flexicurity'	Lower unemployment
Decentralised or fragmented system in relation to collective bargaining	Coordinated labour market	Less efficient	Higher unemployment

Source: adopted from OECD, 2006, 2011.

of collective bargaining have a more positive impact than 'fragmented' ones. In other words, it is not how many or how few workers are covered by collective agreements, but rather the extent to which bargaining is coordinated that matters most in assessing whether collective bargaining systems have a positive or negative macroeconomic impact.[28]

In this respect it is interesting to follow the position of the OECD in relation to the deregulation of labour markets and the experience of Scandinavian countries that have a coordinated system of 'collective bargaining'. In 2006 the OECD reversed their position that deregulation of labour market was the best way to reduce unemployment, after witnessing the success of the Scandinavian countries moving towards a highly coordinated collective bargaining systems with active trade unions. In Sweden, local union activism is stronger than in many countries, which has helped the Swedish unions maintain high membership density – around 68 per cent according to the latest data.[29] The Scandinavian countries produced strong economic performance and job growth contrary to what the OECD was suggesting, (OECD, 2006, 2011) particularly Sweden and Denmark, both with highly centralised decision-making concerning collective bargaining. In addition, strong and efficient links between local and national levels help to coordinate collective bargaining and maintain strength across all levels of union organisation. Similar to Sweden, the Danish model of collective bargaining is centralised and highly 'coordinated', but this has not led to rigid labour markets or work practices. Coordination between the unions, employers, and the state through collective bargaining and

[28] A. Toke, T. Zafiris, *The Costs and Benefits of Collective Bargaining*, "Cambridge Working Papers in Economics" 0541/2005.

[29] *Unions, Collective Bargaining*..., op.cit.

other mechanisms has been the key factor enabling the Danish economy to be very open to international markets and adapt to the changes in the international environment. This centralised and coordinated system of collective bargaining in Denmark coexists with the 'flexicurity' model widely used in the country, which allows employers to relatively easily hire and fire workers.[30] At the same time, a generous system of unemployment benefits and social protections helps to reduce the economic burdens of unemployment. The Danish system of collective bargaining coordinated across the local and national levels shows how collective bargaining can impact negotiations between employers and employees over working hours. Recently, the Danish national trade unions and employer federations established an agreement to reduce the standard working week from 39 to 37 hours. Greater flexibility concerning the working time arrangements was agreed upon between managers and unions at the company level in exchange for the reduction. The coordination of bargaining in this manner effectively operates as a form of 'flexicurity'.

Different situation can be observed in the EU-12, where industrial relations do not represent a significant role in the social dialogue or in the collective bargaining. This difference between the EU-15 and the EU-12 can be explained by the evolution of trade unions in the New Member countries during the transition from socialism to a market economy and reflects the responses to social and political changes those countries underwent in their 20 years of independence. As a result, for example, trade unions in Latvia are transitioning from the model where the state plays a dominant role to a model of social partner unionism. This is common in other countries that were formerly part of the socialist or Soviet trade union systems. Decentralisation in 1991 in the Soviet Union left basic trade union organisations maintaining the one-workplace-one-union principle. This principle has since changed, but did not positively influence the density of trade unions. Trade unions in Latvia remain dominant within the trade union landscape maintain the same organizing principles, namely branch unions, which all add up to a large measure of continuity. In contrast to union structure, union membership has changed dramatically with trade union membership in Latvia declining dramatically since the early 1990s. Overall, only a small number (around 16 per cent) of employees are members of trade unions. Structural transformations of the Latvian economic and political system as well as organisational changes in the national economy have strongly influenced this trend. Despite the tradition of trade unions activities in the interwar period in Latvia and the experience of state socialism, there is a trend of declining membership. Trade unions and their membership are often considered as being part of the socialist past, although in that period they were unable to perform their most important tasks – providing collective representation and organising collective actions. At the same time, the reasons for trade union decline are not only the result of changes in the union environment, one

[30] Ibidem.

should take into account the strategic choices made by the unions themselves. In Latvia, only one unionconfederation dominates at the national level – the Free Trade Union Federation of Latvia (LBAS). Analysis of recent statistical data shows that the Latvian Free Trade Union Federation currently consists of 20 trade unions.

Table 4. Changes in trade union membership in 1995–2010

Year	Membership in trade unions	Union density among total employed (%)
1995	320,572	27
2003	179,614	16
2005	151,906	14.7
2007	151,222	13.5
2008	151,222	13.5
2009	143,000	16
2010	127,000	14

Source: European Industrial Relations Observatory on line (2010); ICTWSS: Database on Institutional Characteristics of Trade Unions (2011).

The proportion of employees that are members of unions is only 14 per cent (according to the SCB in 2010 it was only 127,000 people) with a decline of 2.5 per cent since 2008. Membership is higher in some areas of the public sector but is generally 33 per cent. In health, social work, and education sectors, membership could reach up to 60 per cent.[31] Industrial relations in Latvia even before the 2008 economic crisis were already highly individualised and dominated by the employers.

However, the role of trade unions is more evident in the public sector and in social dialogues at national level. In Latvia, collective wage bargaining is not the rule but rather the exception. Similar to the other EU Member States that joined the EU in the past decade, the disparity between the high level of labour legislation and the de facto liberal labour relations at the workplace also applied to Latvia. The new Labour Law in force since 1 June 2002[32] provides that trade unions may be formed on the basis of professional, branch, territorial or other principles; employers are also entitled to form associations. The most widespread practices are the branch, undertaking, and professional trade unions. The Law guarantees the right to join, abstain, or withdraw from a union (the so-called negative right). According to the Law, collective agreements and other types of

[31] *Report December 2011*, Ministry of Economy of the Republic of Latvia, Riga 2011.

[32] Republic of Latvia Labor Law of 20 June 2001, effective as of 1 June 2002, amended, 2010.

agreements shall govern property and financial relations between trade unions and the employer. In most cases, the relations of a trade union and employer are regulated by collective agreements.

As a result of the labour law reform, a new framework for national consultation was established. The status of a social partner and social dialogue is regulated by the laws 'On Employers' Organisations and their Associations' and 'On Collective Labour Agreements' (26 March 1999).[33] These legal documents are in line with the EU principles on social dialogue and social partnerships. In addition, the trilateral consultation mechanism between government representatives, the largest employers, and trade union organisations launched the Latvian Employers' Confederation and the Free Trade Union Federation of Latvia. The National Tripartite Co-operation Council and its institutions – the Sub-council for Vocational Education and Employment, the Sub-council for Labour Matters, and the Social Insurance Sub-council aim to promote cooperation between the social partners at national level. This institutionalisation of the social dialogue helps to provide a framework for agreements between all social partners in solving social and economic problems. Such a framework also increases the responsibility of social partners in the policy decision-making process. Starting from 1996, the Free Trade Union Federation of Latvia and the Latvian Employers' Confederation are obliged in their charters to annually sign a bilateral social partnership agreement. The agreement allows both institutions to agree on, for example, the conditions related to level of the minimum salary.

The impact of the financial and economic crises on industrial relation and employment

The impact of the current financial and economic crisis on industrial relation as set out in EU arrangements is not yet clear. Most of the European Union Member States were seriously affected by the economic, financial and social crises of 2008–2009, consequences of which continue to be felt particularly within the social sphere. The socio-economic state of affairs of the EU experienced serious negative changes that threaten social cohesion in Europe. This situation is further affected by the euro area and public debt crises of 2011–2012. Already in the 2009/2010 Joint Employment Report to the Council, the European Commission called for measures to be taken to ensure social stability in the EU. Despite signs of economic recovery in the EU, employment prospects remain unfavourable.

During the recent 2008–2010 crisis, a clear policy was taken in many countries to decentralise collective bargaining, shifting from the national/sectoral level to the company level with the aim to give businesses more flexibility and help

[34] Republic of Latvia Law "On Collective Labour Agreements" (26 March 1999). ("LV", 161/162 (1621/1622).

them adjust to labour market conditions. In addition, these changes to labour laws and regulations in the Member States are presented as necessary to get out of the economic crisis. In Latvia, a number of anti-crisis measures have been undertaken: adjusting the minimum wage, lowering or even cutting social security and social assistance protection and benefits, cuts in public services, and so on. Another trend is the adoption of measures reviewing the criteria of representation for social partners (for example, as done in Greece, Hungary, Italy, the Netherlands, Portugal, Romania, Slovakia, and Spain) and extending what used to be trade union prerogatives to other bodies of workers' representation – often at company level (for example, the policies in Greece, Portugal and Slovakia). There are also examples of countries like Hungary and Romania abolishing or at least diminishing the role of certain (tripartite) social dialogue institutions with the government withdrawing from such bodies.[34]

In some countries, labour law reforms have been introduced to impose alternative dispute resolution mechanisms instead of tribunals (Bulgaria, the United Kingdom, Spain). In Greece, for example, arbitration must be triggered by the joint request of the parties involved and is restricted to basic wage demands. In the United Kingdom, access to labour tribunals has been restricted. As a result, such reforms could weaken trade union representation and action at all bargaining levels. This could affect the aim, core functions, and institutional tasks of trade unions of protecting and representing workers. Decentralisation of collective bargaining to the lowest level weakens the social *acquis* achieved so far by the trade unions at national and local levels and will affect sectoral collective bargaining. It also lowers the standard of rights recognised anchored in legislation and collective agreements, as well as affecting fundamental employment conditions related to working time, pay, work organisation, working environment, social protection, and workplace health and safety.

It is also important to underline that national reforms affect the hierarchy of social norms. For example, in some cases in Latvia, there has been recourse to 'emergency procedures' by national legislators to bypass agreements on 'anti-crisis' measures agreed upon by social partners and/or prepared by national governments in consultation with them. As a result, anti-crisis measures and labour law reforms directly or indirectly affected fundamental social rights.

Some EU Member States have been hit by the economic crisis more seriously than others. Latvia, after having the fastest GDP growth in the EU in 2004–2007, recording double-digit growth rates, experienced severe economic downturn severely affecting the growth rate in 2008.[35] The unusual economic growth was largely due to substantial inflow of foreign capital, which stimulated domestic demand based on easy credit conditions, and an expansionary fiscal policy. The

[34] Commission Staff Working Paper, Industrial Relations in Europe 2010, Brussels, 03.03.2011, SEC(2011) 292 final.

[35] *Report June 2010*, Ministry of Economy of the Republic of Latvia, Riga 2010.

economic crisis originated in the reversal of the domestic real estate boom and worsened rapidly when risk aversion became extreme on global financial markets. In 2009, GDP had fallen by 18.7 per cent. According to the Ministry of Economy, at the end of 2010 Latvia managed to overcome the recession and a slow recovery started in 2011.

The economic downturn in Latvia was accompanied by rising unemployment, with the labour market significantly deteriorating since the end of 2008. The lowest point was in the first quarter of 2010 when the employment rate shrank to 57.7 per cent (population aged 15–64 years), and the unemployment rate among the population aged 15–74 increased to 20.4 per cent.[36] The decreases in the employment rate and level of wages due to the recession were the main push factors for large emigration flows of the labour force and created dangerous structural problems in the Latvian economy. The outflows of labour and especially of high skilled professionals negatively influence the potential for economic recovery and sustainability of the welfare system.

Significant budget consolidation measures have been taken to implement the cumulative fiscal adjustment in 2009–2010 to the amount of 10.5 per cent of GDP. The government reduced public spending and budget deficit by LVL 500 million (EUR 711.4 million), in 2009 and by LVL 250 million (EUR 355.7 million), in 2010.[37] Additional cuts to public spending were taken in 2011. This trend increased the number of unemployed people and the subsequent reduction in demand.

As a result, trade unions have found it more difficult to maintain collective agreements in an increasingly international competitive economic environment. Another trend related to the crisis is the high loss of trade unions members due to redundancies, a serious decrease in collective agreements, and the comparative lack of success of public protests against austerity measures. What most troubles the interviewed trade union representatives is the large number of membership cancelations due to redundancies, leading to a loss of bargaining power, resources, and representatives. In comparison to its counterparts, trade unions in Latvia are hit harder by mass redundancies due to the following factors:

- collective redundancies due to the global collapse in demand took place primarily in the sectors where trade unions are traditionally strong, i.e. manufacturing, transportation, communication;
- there is a unique practice in Latvia of employing pensioners with a 'double' income. When this group of employees, over-represented in the trade unions, became the first to be laid off at the beginning of the crisis, membership of company trade unions declined disproportionally.

At a time when Latvia is slowly recovering from economic recession, particularly from a fall in production and employment, a swift and decisive response by the government is essential.

[36] Ibidem.

[37] *Report June 2010...*, op.cit.

The Latvian government has determined to pursue a strict and stable monetary policy and to stabilise the state's financial system. Nevertheless, it would be important to coordinate financial system support measures with active labour market policies in order to mitigate structural long-term unemployment and to avoid social tensions. The following consequences are taking place as the result of the current economic downturn and subsequent recession:

- a shift in the balance of bargaining power in favour of employers;
- further weakening of trade unions due to membership losses, resulting in lower representation;
- the capacity of trade unions' to represent employee interests, influence changes in labour legislation, to ensure constructive social dialogue, and to strengthen social-democratic policies in Latvia.

The Treaty of Lisbon and the European citizen initiative as a new opportunity for trade unions

The Lisbon Treaty[38] gives the citizens a golden opportunity to participate directly in shaping the future of the EU.

While in many countries there are various types of citizen initiatives (from petitions to referenda) this seems to be the first time in contemporary history that such an opportunity is offered to citizens at a multinational level, that of the European Union. Under Article 11(4) of the Lisbon Treaty *'not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, which the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.'*

The question of what is meant by a *'significant number of Member States'* was debated at length. Civil society organisations argued that the number should be not too high because many European issues have a regional character. The European Commission opted for one-third of Member States. The support of the European Parliament to this initiative is shown in particular by the fact that at the beginning European Parliament considered this initiative as possibly encroaching on its prerogative. It set up a group of four reporters from all the major political groups (a very unusual procedure) to prepare the Parliament's position on this initiative. In the end, it produced a document strongly supportive of this initiative, for example by reducing the number of Member States required from one-third, as proposed by the Commission, to a quarter.

There was, though, no change in the minimum number of signatures for each state (the number of MEPs by country multiplied by 750, the total number of MEPs). As the result of the debates, on 16 February 2011 the European

[38] Treaty of Lisbon, OJ 2007/C 306/01.

Parliament and European Council adopted the Regulation No 211/2011[39] to ensure practical implementation of Article 11 of the Lisbon Treaty.

The Regulation requires that for an initiative to be valid a minimum of one million signatures from at least seven Member States are needed, the proportion of signatures in each of the Member State being based on the number of the members of the European Parliament. In practice this means that signatures must be collected in at least seven Member States through appropriately formed committees.

This is a major breakthrough, and trade unions should consider how to make the best use of it to enhance the conditions for workers thought the EU. Trade unions exist in all Member States and still have considerable numbers of members, even though these numbers have significantly fallen. Trade unions can therefore be the driving forces for requesting the European Commission to introduce initiatives to further improve the working conditions. The trade unions should consider overcoming their ideological differences in their identities to take a real advantage of this opportunity. This would increase their value and attractiveness for their members and for the labour force in the European Union in general and consequently revitalise the trade union movement in the EU.

Conclusions

The crises of 2008–2010 and the public debt crisis of 2011–2012 have shown a number of complex problems: both political and institutional. One of the major concerns is the implementation of employment policies in the EU Member States. A constructive social dialogue as the fundamental element of industrial relations has to be enhanced and decisive responses from all social partners over the choices in correcting employment policies are needed. The viability of these choices largely depends on the readiness of social partners to become engaged in setting up national employment policies. However, discussions and solutions are needed in an appropriate response to the consequences of the economic difficulties resulted in the explosive growth of inequalities and insecurity in many EU countries.

Improved governance, transparency and involvement of stakeholders in social dialogue are essential to strengthen the links between economic development and effective employment policies. There is an urgent demand for a minimum set of social standards suited to the very complex realities of today's companies and the diversity of working people to guarantee a proper balance between competition, social protection, and social cohesion. The positions of many trade unions across Europe have become more visible and stronger in the current economic situation than in the past. Trade unions and employers' organisations are recognised as being the major interlocutors for several governments seeking to respond to the crisis. Together with monetary and fiscal stimulus poli-

[39] Regulation EU No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, OJ L 65/1, 11.03.2011.

cies, negotiation and consultation involving social partners could play a significant role in limiting negative social consequences and a number of crucial economic recovery objectives such as reform of the global financial system, restoring and improving growth dynamics to create more and better jobs, promoting skills and entrepreneurship, revitalising the single market and developing an integrated EU industrial policy among others.

Employment policies and industrial relations in Europe are currently the subject of intensive scholarly debates. Questions of high importance for the national governments, such as: is there any diverging or converging trend towards Europeanisation of industrial relations? Are the aforementioned trends similar in all EU Member States? In which Member States are the employment policies most efficient and is there a need for harmonisation of employment policies in the EU?

Finally the collective engagement of all social partners and particularly trade unions in using the opportunity offered by the provision of the Lisbon Treaty by the 'European Citizen's Initiatives' should not be missed to both enhance their value to their membership and revitalise their image.

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Part V

Policies of the European Union

Anna Wróbel

EU Commercial Policy in a Globalised World – Factors and Instruments

Introduction

There is no detailed definition of commercial policy to be found in the official documents of the European Union. In practice, the European Commission defines it as all measures governing trade with third countries. On the other hand, the Court of Justice has held that commercial policy covers the same areas as the national foreign trade policy. It can therefore be considered that the common commercial policy is a set of instruments for influencing international trade, involving a group of measures and economic and administrative tools aimed at maintaining the balance of payments in the European Union. For this reason, it functions mainly in the external sphere of economic policy and, in principle, fulfils the same functions in relation to the EU internal market as each country's trade policy in relation to its own market. The Common Commercial Policy covers, one the one hand, unilateral (autonomous) measures, i.e. normative acts of secondary legislation adopted by EU institutions and administrative measures taken by the European Commission in particular, and on the other hand, agreements (regardless of their names) between the EU and countries or other subjects of international law.

Principles of the Common Commercial Policy

After introduced the Lisbon Treaty, the principles of the Common Commercial Policy are regulated by Articles 206–207 of the Treaty on the Functioning of the European Union (TFEU). Article 206 specifies its basic objectives, which include the harmonious development of world trade and the liberalisation of international economic relations, understood as the progressive abolition of restrictions on international trade and foreign direct investment.[1]

[1] Treaty on the Functioning of the European Union, Article 206, http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:FULL:EN:PDF (last visited 18.08.2012).

Article 207 TFEU describes practical aspects of the Common Commercial Policy. Under Article 207(2), upon entry into force of the Treaty of Lisbon, the commercial policy became subject to the regulations of the European Parliament and the Council adopted under the ordinary legislative procedure. This provision has significantly contributed to the strengthening of the role of the European Parliament in establishing EU commercial policy.[2] However, the procedure of negotiating and concluding international agreements in the field of Common Commercial Policy has not been essentially changed. Negotiations concerning the Common Commercial Policy are still conducted by the Commission, under the authorisation from the Council. During the negotiations, both institutions are responsible for ensuring compliance of the negotiated solutions with the internal rules and policies of the EU. The Commission conducts these negotiations in consultation with a special committee of the Council (Committee for Trade Policy, formerly known as 'Article 133 Committee'[3]), to which it regularly reports on the progress of negotiations. A new obligation of the Commission under the TFEU in this respect is the obligation of reporting on the negotiations also to the European Parliament.[4]

The basic procedure for voting in the Council in matters covered by Article 207 is qualified majority voting. Unanimity is required only for negotiation and conclusion of agreements in the fields of trade in services, commercial aspects of intellectual property, as well as foreign direct investment, provided that the conclusion of the agreement must be followed by adopting EU laws requiring unanimity within the Council. In other cases, the decisions in these areas are taken by qualified majority voting. Unanimity is also required if the negotiated agreement covers the field of trade in social, education and health services, where these agreements might seriously disturb the national organisation of such services and have a negative effect on the Member States' responsibility to deliver them. A similar voting procedure also exists for cultural and audiovisual services, where agreements in these fields could become a threat to the Union's cultural and linguistic diversity.[5]

The instruments of the Common Commercial Policy can be divided into two groups. The first group are instruments of import policies aimed at protecting the internal market against competition from the outside, which include import duties and safeguard measures taken in the event of dumping or subsidies, safeguards against excessive imports, special safeguard clauses in agriculture. The second

[2] See: M. Krajewski, *Die neue Handelspolitische Bedeutung des Europäischen Parlaments* in: *Die gemeinsame Handelspolitik der Europäischen Union nach Lissabon*, M. Bungenberg, Ch. Herrmann (hrsg.), Baden-Baden 2011, pp. 55–74.

[3] The name was changed upon the entry into force of the Treaty of Lisbon.

[4] See also: S. Barkowski, *Traktat z Lizbony a wspólna polityka handlowa Unii Europejskiej* (*Treaty of Lisbon and EU Common Commercial Policy*), "Wspólnoty Europejskie" no. 6(11)/2008, pp. 6–11; *Die gemeinsame Handelspolitik*..., op.cit., pp. 95–102.

[5] Cf. Treaty on the Functioning of the European Union, Article 207, op.cit.

group are the instruments of export policy, including, among others, safeguard measures in exports and exports support measures.

According to the intentions of the creators of the Treaty establishing the European Economic Community, the basis for the common market was to be the customs union. Ensuring the free movement of goods in the internal market is not possible without common regulations in customs matters. The establishment of the customs union within the EEC was completed on 1 July 1968, a year and a half before the expiry of the transitional period stipulated in the Treaty. The customs tariffs between the Community Member States were completely abolished and a common customs tariff for third countries was established. At that time, the rates of the Common Customs Tariff were the arithmetic mean of national tariff rates of the Federal Republic of Germany, the Benelux countries, France and Italy in 1957. Upon the introduction of the Common Customs Tariff, customs policy was delegated by the Member States to the Community bodies. Under the provisions of Article 31 TFEU, Common Customs Tariff duties are fixed by the Council acting by qualified majority of votes on a proposal from the Commission. In this case, the Commission is guided by:[6]

- the need to promote trade between Member States and third countries;
- developments in conditions of competition within the Union, in so far as they lead to an improvement in the competitive capacity of undertakings;
- the requirements of the Union as regards the supply of raw materials and semi-finished goods; in this context the Commission shall take care to avoid distorting conditions of competition between Member States in respect of finished goods;
- the need to avoid serious disturbances in the economies of Member States and to ensure rational development of production and an expansion of consumption within the Union.

The above shows that in the case of the European Union, customs duties are not only a financial category ensuring budget revenues, but also an economic one. Duties are in fact a mechanism for the protection and regulation of the internal market and define the boundary conditions for running a business. Importers and producers must take into account the value of duty in their economic calculations. This affects the calculation of operating costs, including the margins and ultimately the profitability of each business activity.

In addition to duties, the instruments of the EU imports policy also include actions to protect EU producers against imports conducted on terms which distort competition. In this case, such actions include the application of non-tariff trade policy measures by trade partners in the form of subsidies and dumping. EU laws on anti-dumping and countervailing proceedings are based on the agreements binding for the members of the WTO, i.e. the Agreement on the implementation of Article VI of the GATT 1994 and the Agreement on subsidies and countervailing measures.

[6] Ibidem, Article 31, p. 312.

EU laws make it possible to protect EU producers not only against imports conducted on terms which distort competition, but also against imports conducted on fair terms. Protective measures can be applied where imports are conducted on terms which cannot be regarded as reprehensible, but which are harmful to the EU industry. Council Regulation (EC) 260/2009 of 26 February 2009 on the common rules for imports, which is applicable in such cases,[7] is in most part a modified and more detailed version of the next WTO agreement, namely the Agreement on Safeguards. For imports of agricultural products, in addition to the general safeguard procedure against excessive imports, the EU may also apply a special safeguard clause (Special Safeguard – SSG) under the WTO Agreement on Agriculture.[8]

The basic principle of EU export policy is not to apply, with a few exceptions, any restrictions in exports.[9] EU activity in this area includes attempts to create uniform rules to support exports, so that the solutions applied do not lead to distortion of competition between enterprises. The EU has no competence in the field of direct or indirect promotion of exports. They are still the domain of the Member States and are subject to the obligations under the OECD. Much effort has been put in the approximation of the conditions of competition in the field of export credit insurance and loan guarantees. The Community is a party to the OECD Arrangement (Consensus) on Guidelines for Officially Supported Export Credit, which came into force in April 1978. The EU also conducts activities to promote exports in the form of trainings and seminars for small and medium enterprises and supports their participation in exhibitions and international fairs.[10]

The instruments of EU export policy also include measures to assist exporters against protectionist practices of third countries, if such practices are not justified in light of the WTO standards. In accordance with Council Regulation (EC)

[7] Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports (Codified version), OJ L 84/1, 31.3.2009.

[8] The SSG clause is designed to ensure minimum protection of the EU market in a situation of significant price falls in world markets or a significant rise in imports. It is not applied to imports under minimum market access quotas. The application of the SSG clause is regulated by the Council Regulation No 3290/94 on the adjustments and transitional arrangements required in the agriculture sector in order to implement the agreements concluded during the Uruguay Round of multilateral trade negotiations. The Regulation allows the introduction of additional customs duties, which have been added to the existing provisions on certain groups of products (for instance cereals, sugar, rice, oils and fats, milk products, pork). Imports of a product are subject to an additional customs duty in certain conditions: when it exceeds the trigger volume or when the cif import price of the product is lower than the trigger price. The trigger volume is determined on the basis of imports to the EU in the last three years preceding the year in which the undesirable effects occurred. The cif import prices are verified by comparing with representative prices of a given product in world markets. These rules are applied by the EU in imports from the WTO countries, http://handelue.pl (last visited 30.03.2011).

[9] The scale and structure of EU exports is regulated by the relations between demand and supply on the global market. There are certain restrictions in exports of specific goods, including national treasures, artistic goods, weapons. The main aim of export restrictions is to ensure security.

[10] A. Wróbel, *Mechanisms and Instruments of Common Commercial Policy. Implications for Poland* in: *Poland in the European Union: Adjustment and Modernisation Lessons for Ukraine*, A. Adamczyk, K. Zajączkowski (eds.), Warsaw–Lviv 2012, p. 123.

No 125/2008 of 12 February 2008 amending Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization, each EU enterprise, or any association, having or not having legal personality, acting on behalf of one or more EU enterprises, which considers that such EU enterprises have suffered adverse trade effects as a result of obstacles to trade that have an effect on the market of a third country may lodge a written complaint. The European Commission decides to initiate the proceedings, and it conducts the proceedings. If, as a result of the investigation, the Commission finds that acting against the third country is in the interest of the EU, it may initiate litigation at the WTO forum or conclude a bilateral agreement with that country. In this situation, the Commission may also accept the unilateral actions of the third country aimed at mitigating the effects of barriers to trade.[11]

Treaty-based trade relations between the EU and its main economic partners

European Union's trade policy is based on the political conception of a competitive European economy existing in an open system of world trade, based on multilateral rules supplemented by principles developed within the framework of bilateral and regional trade agreements.[12] In addition to membership in the WTO and a number of international agreements within this organisation, the EU is a party to many international agreements which cover subjects included in the Common Commercial Policy. The diversity of these agreements makes it difficult to make a clear classification. There are two types of such agreements: 1) trade agreements (including customs agreements), which may be preferential or non-preferential; 2) mixed agreements (mainly association agreements, agreements on trade and economic cooperation and partnership and economic cooperation agreements), which are more extensive than trade agreements.[13]

The European Union has a well-developed system of trade preferences. It concludes preferential trade agreements of two types. The first of these provide for the

[11] Council Regulation (EC) No 125/2008 of 12 February 2008 amending Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization, OJ L 40/1, 14.2.2008.

[12] S.M. Mcguire, J.P. Lindeque, *The Diminishing Returns to Trade Policy in the European Union*, "Journal of Common Market Studies" no. 5/2010, pp. 1337–1342.

[13] M. Adamczyk, A. Piasecka-Głuszak, *Stosunki handlowe pomiędzy Unią Europejską a wybranymi krajami azjatyckimi* (*Trade Relations Between the EU and Selected Asian States*) in: *Ekonomia i stosunki międzynarodowe. Studia azjatyckie (The Economics and International Relations. The Asian Studies)*, B. Drelich-Skulska (ed.), "Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu" no. 28/2008, pp. 10–11.

mutual granting of certain concessions by the partners in the form of tariff reductions and/or reducing other trade barriers. The second type of agreements includes those under which the EU unilaterally grants preferences to its trade partners. The aim of the actions taken by the Union within the WTO and under bilateral trade agreements is to promote solutions favourable for building prosperity by ensuring internal stability and economic development of countries in different regions.[14]

Since the founding of the EEC, many preferential agreements were concluded with trade partners. These agreements vary in nature, i.e. in the scope of preferences granted. On the basis of the criterion of declining trade preferences (mainly customs duties), trade agreements concluded by the EU can be presented in the form of the so called 'Pyramid of Preferences'. Thus, we can distinguish the agreements or unilateral decisions of the European Union, which:

- establish a customs union between the EU and its partners (such as Turkey), which consist in abolishing trade barriers between the parties to the agreement, as well as in setting up a common external tariff (or equivalent level of customs duties) on imports from outside the EU;
- build a free trade area (for example, with the Republic of Korea), which involves the removal of trade barriers (duties, quantitative restrictions and others) between the parties to the agreement;
- grant unilateral trade preferences (for example, to African, Caribbean and Pacific countries[15] and countries covered by the Generalized System of Preferences – GSP);
- establish no preferences (they guarantee the most favoured nation clause – MFN, based on the WTO agreements; trade agreements often only confirm the rules applicable in this system). An example of such a contractual relationship are the agreements concluded with the USA, Japan, Australia, New Zealand, Hong Kong, Singapore and other countries not covered by customs preferences;
- partners are treated less favourably in trade relations than the countries subject to the most favoured nation clause (discriminatory treatment). In the past, such agreements were in place e.g. with the Council for Mutual Economic Assistance (CMEA).[16]

[14] M. Grącik-Zajączkowska, *Unia Europejska i Stany Zjednoczone w Światowej Organizacji Handlu (The European Union and the United States in the World Trade Organization)*, Warszawa 2010, pp. 115–116.

[15] Since the unilateral customs preferences granted to the ACP countries by the Community were contested by the other developing countries within the World Trade Organization, which did not enjoy such preferences. The system of unilateral trade preferences for these countries initiated by the 1st Lomé Convention will be replaced by the Economic Partnership Agreements (EPAs). By replacing unilateral preferences with mutual abolishment of customs tariffs, the EPAs are meant to ensure that relations between the EU and the ACP countries are consistent with the rules of the WTO. See: M.G. Desta, *EC-ACP Economic Partnership Agreements and WTO Compatibility: An Experiment in North-South Inter-Regional Agreements?*, "Common Market Law Review" vol. 48/2006, pp. 1343–1379.

Due to the limited scope of this chapter we will focus on a more thorough analysis of trade relations between the EU and its main trade partners. According to European Commission data, the highest share in EU trade turnover in 2012 belonged to: the United States (14.3 per cent), China (12.5 per cent), Russia (9.7 per cent), Switzerland (6.8 per cent), Norway (4.3 per cent), Turkey (3.5 per cent), Japan (3.4 per cent), India (2.2 per cent), Brazil (2.2 per cent), Republic of Korea (2.2 per cent).[17] Since there is a variety of different links between the EU and its partners and the preferences granted to them under various agreements, the examples below will serve as a good illustration of the variety of legal solutions applied by the EU in trade relations with third countries.

Trade relations between the EU and Turkey

Taking into account the aforementioned 'Pyramid of Preferences', we should start the deliberations on the European Union's trade relations with its main trade partners from its relations with Turkey. Although it is not the most important trade partner of the EU in terms of trade turnover, it takes a special place among its economic partners, as it belongs to EU's customs union without being a member of this organisation.

The process of Turkey's integration with European structures started relatively early, as it applied for association with the European Communities already in 1959. A relevant agreement was signed on 12 September 1963 in Ankara.[18] The Association Agreement between the EEC and Turkey included a commitment on the part of the Community that it would allow for Turkey's accession, provided that Turkey fulfils all provisions of the Agreement and accepts the requirements of the Treaty of Rome. However, the Agreement indicated that this process will take a long time. Ankara had to settle for the promise that both sides would consider Turkey's accession when there are favourable conditions for this. The process of Turkey's integration with the EEC was divided into three stages:[19]

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[16] A.A. Ambroziak, E. Kawecka-Wyrzykowska, *Traktatowe stosunki handlowe Wspólnoty Europejskiej z państwami trzecimi* (*Treaty-Based Trade Relations Between the European Community and Third Countries*) in: *Unia Europejska (The European Union)*, E. Kawecka-Wyrzykowska, E. Synowiec (eds.), Warszawa 2004, pp. 208–209; Cf. S.-H. Park, *EU's Strategy Towards East Asian Integration and Regionalism* in: *East Asian Economic Regionalism*, C.Y. Ahn, R.E. Baldwin, I. Cheong (eds.), Dordrecht 2005, pp. 176–177.

[17] http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113366.pdf (last visited 17.08.2013).

[18] The agreement entered into force on 1 December 1964. See: Agreement establishing an association between European Economic Community and Turkey (signed at Ankara, 12 September 1963), OJ C113/2/1973.

[19] W. Niemiec, *Unie celne zawarte pomiędzy Wspólnotami Europejskimi a państwami niecłonkowskimi – przypadek Turcji (Costoms Unions Concluded between the European Communities and the Non-Member States – Case of Turkey)* in: *Wymiana handlowa UE z wybranymi regionami świata (The EU Trade with Selected Regions of the World)*, J. Rymarczyk, M. Wróblewski (eds.), Wrocław 2004, p. 179.

- 1964–1968, when Turkey should adjust its economic structure to be more similar to EEC Member States' economies, while the Community granted to Turkey tariff quotas for four products, which together represented 40 per cent of Turkish agricultural exports (tobacco, raisins, dried figs and hazelnuts);
- 1969–1980, when a customs union between Turkey and the Community was to be established, in order to ensure conditions for the free movement of goods between the two sides;[20]
- 1981–1988, when Turkey should reach a level of economic development close enough to the Community economies to enable full membership in the European Communities.

The above schedule has not been realised, nor have been the next ones indicating the date of Turkey's possible accession to the European Communities, and many elements of the programme have not been realised. A new schedule for Turkey's integration with the EEC was adopted in November 1970, in the form of the Additional Protocol. It extended the period for reaching the customs union until 1995. The complex schedule and the level of reduction of customs duties in mutual trade has also not been realised.[21]

The process of liberalisation of trade between Turkey and the EEC was accelerated only in the 1980s and 1990s, with the return of democratic rule in Turkey in 1983 and the implementation of the Matutes Package. The economic reforms, the primary aim of which was to boost economic development in Turkey, have become an important premise for introducing the customs union between Turkey and the Community. In June 1993, at the summit in Copenhagen, the European Council confirmed the readiness to establish a customs union with Turkey. In December 1994, the Commission presented a document defining the rules of customs union to the Association Council.[22] On 22 December 1995 the Association Council took a final decision on establishing the customs union. It entered into force on 1 January 1996.

The establishment of the customs union between Turkey and the Community meant the elimination of, first of all, customs duties and other similar duties, as well as all quantitative restrictions in exports and imports of industrial goods, and in the period of five years, the removal of technical barriers to trade. However, agricultural products were excluded from the liberalisation, which was explained by the need for harmonisation of the Turkish agricultural policy with the Common Agricultural Policy. Moreover, the customs union brought about a significant change for Turkey in terms of the possibilities of conducting trade policy towards third countries. As a direct effect of the process, Turkey had to adopt Community

[20] The Community was supposed to abolish all customs duties and quantitative restrictions on commodities imported from Turkey from 1 December 1975, while Turkey should do the same thing for Community commodities from 1 December 1986.

[21] W. Niemiec, op.cit., pp. 180–181.

[22] The main institution for cooperation, established under the Association Agreement of 1963.

customs regulations and anti-dumping and anti-subvention proceedings. On 1 January 1996 Turkey introduced some elements of the Community Customs Code, for instance those concerning the rules of origin, determining the customs value of goods, introducing commodities to the Community customs area, issuing customs declarations. Turkey was also committed to transfer part of its powers in the field of trade policy to the Community level, including first of all the power to freely conclude trade agreements with third countries. Another element of the changes introduced by Turkey was the adoption of the Generalized System of Preferences of the Community. In addition, Turkey was committed to harmonise law in the areas not belonging to trade policy but still within the broader framework of economic cooperation, covering the following issues: protection of intellectual, industrial and commercial property, competition policy, direct taxes, environment protection and consumer protection.[23]

Trade relations between the EU and Norway

Trade relations between the European Union and Norway, as well as Iceland and Lichtenstein, are governed by the provisions of the Agreement on the European Economic Area (EEA), which was signed on 2 May 1992 in Oporto, Portugal.[24] It was a result of strengthening institutional bonds between the European Free Trade Association (EFTA) and the EEC, as well as an answer to the EFTA countries' fear of negative impact of the single European market.

Following the implementation of the Agreement, most rules of the internal market of the EU are applicable in the EEA countries, including the free movement of goods (except for agricultural and fishery products), persons, services and capital. Apart from customs barriers in mutual trade relations, also technical barriers have been gradually eliminated as a result of harmonisation and of introducing the principle of mutual recognition of technical requirements and provisions. However, the EFTA states conduct a separate trade policy towards third countries.[25]

The Agreement provided for a far-reaching adjustment of the laws of the EFTA states to the requirements of the single market, which later helped them in negotiating their membership in the European Communities, as was the case with Austria, Finland and Sweden.

Trade agreements between the EU and Switzerland

The fundamental act regulating mutual trade relations between the European Union and Switzerland is the Free Trade Agreement concluded on 22 July 1972. The Agreement provided Switzerland with relevant conditions for participating in

[23] W. Niemiec, op.cit., pp. 182–183.

[24] The Agreement entered into force on 1 January 1994. Lichtenstein joined the EEA on 21 January 1995.

[25] A.A. Ambroziak, E. Kawecka-Wyrzykowska, op.cit., p. 218.

the economic dimension of European integration, while enabling the prevention of customs discrimination in the trade in industrial goods. Thus, Switzerland gained economic benefits, at the same time keeping full direct democracy, federal government and neutrality.[26]

In the following years, Switzerland concluded over a hundred trade agreements with the EEC countries. The dynamics of building bilateral contractual links with those countries were especially high after the Swiss society rejected, by a referendum, membership in the European Economic Area in 1992. Following this, in order to avoid becoming isolated, Switzerland made attempts to intensify actions for further development of economic relations by bilateral agreements covering selected areas of cooperation. By opening sectoral markets, the Swiss government strived to secure access to the European internal market for Swiss producers of goods and services. The bilateral trade negotiations launched in 1994 covered five of fifteen areas proposed by Switzerland (public procurement,[27] technical barriers to trade,[28] research, road transport,[29] air transport[30]) and two areas of cooperation proposed by the European Union (agriculture,[31] free movement of persons[32]). The negotiations ended in June 1999 by signing a package of seven agreements called Bilateral Agreements I. They significantly extended the access to the market, going beyond the provisions of the 1972 agreement. The package entered into force on 1 June 2002. At the same time, the negotiations on the second package, the Bilateral Agreements II, were launched.

The negotiations on the new package of agreements covered ten areas, seven of which had been omitted in the first package. These were: liberalisation of trade in services, processed agricultural products, statistics, environment protection, youth exchange, audiovisual cooperation and abolition of double taxation of retirement pensions of former European Union officials residing in Switzerland. Three new areas negotiated under the Bilateral Agreements II package were the harmonisation of taxation of income from bank deposits, combating tax crimes and police and judicial cooperation and coordination of asylum policy. The aforementioned areas of negotiation of Bilateral Agreements II went beyond economic

[26] S. Kozłowski, *Konfederacja Szwajcarska a proces integracji europejskiej* (*The Swiss Confederacy and the Process of European Integration*), "Sprawy Międzynarodowe" no. 2(LXI)/2008, pp. 61–62.

[27] *Das Abkommen Schweiz-Europäische Union (EU) über das öffentliche Beschaffungswesen*, 21 June 1999, http://www.admin.ch (last visited 18.08.2012).

[28] *Das Abkommen über den Abbau technischer Handelshemmnisse*, 21 June 1999, http://www.admin.ch (last visited 18.08.2012).

[29] *Das bilaterale Landverkehrsabkommen*, 21 June 1999, http://www.admin.ch (last visited 18.08.2012).

[30] *Das Luftverkehrsabkommen*, 21 June 1999, http://www.admin.ch (last visited 18.08.2012).

[31] *Das Abkommen über den Handel mit landwirtschaftlichen Erzeugnissen*, 21 June 1999, http://www.admin.ch (last visited 18.08.2012).

[32] *Das Abkommen vom 21. Juni 1999 zwischen der Schweizerischen Eidgenossenschaft einerseits und der Europäischen Gemeinschaft und ihren Mitgliedstaaten andererseits über die Freizügigkeit*, http://www.admin.ch (last visited 18.08.2012).

matters and covered important and sensitive areas of security policy, migration, environment protection, culture and education. On 26 October 2004, in Luxembourg, after long negotiations, Switzerland and the European Union signed nine bilateral agreements belonging to the second negotiation package. The tenth agreement, concerning the liberalisation of the market in services, had been withdrawn from the package in 2003 under a joint decision of the European Commission and Switzerland. Negotiations in this sector had been halted in the interest of the Swiss banking sector. Adopting the *acquis communautaire* in the field of supervision and control of services and providing administrative and legal help was unacceptable for this sector of Swiss economy. The European Union was also not ready to mutually recognise the legal heritage of the other side.[33]

The aforementioned bilateral agreements created a well functioning equivalent of membership in the EEA for Switzerland. In addition, Switzerland was granted some privileges pertaining to member states. Apart from the sectoral bilateral agreements, Switzerland concluded over a hundred technical agreements with the European Union, which ensured 'legislative compatibility' of Switzerland with the EU. This compatibility consists in the conformity of Swiss legislation with the *acquis communautaire.* In fact, practically over a half of Swiss legal acts in the field of economy stems from the *acquis communautaire.*[34]

Trade relations between the EU and the Republic of Korea

As a result of a systematic growth in importance of the Republic of Korea in world economy and the growing trade turnover in relations with the European Union, the EU conducted trade negotiations with this country, ending in a free trade agreement in the field of free movement of goods, services and entrepreneurship.

The negotiations on the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part started in May 2007. So far, mutual economic relations had been regulated by the *Framework Agreement for Trade and Cooperation,* concluded on 10 March 2001 in Brussels. The negotiations on the new agreement moved forward quickly. According to the original plans, they were to be concluded during the Czech presidency in the EU. In the end, it was initialled in October 2009, and on 16 September 2010 the Council of the European Union gave its consent to the signing of the agreement. The ceremonial signing of the agreement by the Belgian presidency, the European Union and the Republic of Korea took place in Brussels on

[33] See also: K. Christine, M.J. Greiner, *Accords bilatéraux II. Suisse–UE et autres Accords récents/ Bilaterale Abkommen II. Schweiz – EU und andere neue Abkommen*, Helbing & Lichtenhahn 2006.

[34] A. Wróbel, *Stosunki handlowe Szwajcaria–Unia Europejska* (*Trade Relations between the Switzerland and the EU*) in: *Państwa niemieckojęzyczne w procesie integracji europejskiej. Austria, Liechtenstein, Szwajcaria* (*German-speaking Countries in the Process of European Integration. Austria, Liechtenstein, Switzerland*), D. Popławski (ed.), Warszawa 2011, p. 234.

6 October 2010, at the EU–Korea summit. The agreement has been in force since 1 July 2011.[35]

One of the declared reasons for concluding the agreement was the intention to further strengthen their close economic relationship as part of and in a manner coherent with their overall relations. The parties to the agreement were also convinced that the agreement would create a new climate for the development of trade and investment between them and that it would create an expanded and secure market for goods and services and a stable and predictable environment for investment, thus enhancing the competitiveness of their firms in global markets. In addition, the agreement should become a factor supporting the expansion and development of world trade under the WTO international trade system and under multilateral, regional and bilateral agreements and arrangements to which they are party. The parties to the agreement reaffirmed their commitment to priorities such as: sustainable development, poverty reduction, full and productive employment and decent work for all as well as the protection and preservation of the environment and natural resources.[36]

According to the estimates of the European Commission, the agreement will bring the EU around 19 billion euro a year in the form of new trade exchange. Thus, the effects of the agreement will be felt directly by EU exporters, as Korean customs duties of 1.6 billion euro a year will be abolished. However, the final economic effects of the EU–Korea agreement will be there to see only after the gradual implementation of all stages of reducing barriers to trade.

Trade relations between the EU and India

For many years, India has been stressing the importance of economic relations with the European Union. Mutual relations have been strengthened since the first EU–India summit in Lisbon in 2000. An important factor in intensifying mutual cooperation is the strategic partnership EU–India, with the aim of supporting peace, stability, democracy, human rights, rule of law and good governance, cooperation in reducing poverty, inequality and social exclusion; cooperation in environment protection and climate change as well as increasing economic exchange and ensuring the strengthening of the international economic order.[37]

Among the abovementioned priorities, the most important are economic relations. For, as Jakub Zajączkowski points out, despite the development of political

[35] See also: F. Nicolas, *Negotiating a Korea–EU Free Trade Agreement: Easier Said than Done*, "Asia Europe Journal" vol. 7/2009, pp. 23–42.

[36] *Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part*, Brussels, 6 October 2010, Preamble, OJ L127/6, 14.5.2011.

[37] Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee – an EU-India Strategic Partnership, Brussels, 16.6.2004, COM (2004) 0430 final.

relations and cooperation in research and education, the main characteristic of the relations between New Delhi and Brussels at the beginning of the 21st century is their economisation. After the Cold War, the main dimension of mutual relations is still trade relations,[38] as the European Union is India's biggest trade partner, whereas India is EU's eighth trade partner.

The liberalisation of mutual trade is to serve further development of economic cooperation between India and the EU. To this end, actions were taken towards the creation of a free trade area. In 2005, the EU and India adopted a Joint Action Plan, with the aim of, among others, bringing the two sides closer and developing trade relations. In the second half of June 2007, the European Commission conducted the first round of negotiations with India on a free trade agreement. A result of these negotiations is to be a broad trade and investment agreement, which will, however, remain complementary to the priority actions within the framework of the WTO. So far, the talks have been focusing mainly on the negotiation parameters and goals, and they are progressing very slowly. This circumspection results from the fact that both sides have strong offensive and defensive interests. Moreover, the slow pace of the negotiations is not a matter of tactics, but rather of India's analysis of benefits from a common free trade area with the EU, as compared to the potential results of the ongoing round of multilateral trade negotiations in the World Trade Organization.[39] It is also worth underlining that the establishment of the free trade area will require further changes in India's trade policy, namely in the field of reducing barriers to trade.[40] A wave of criticism in India against the negotiated agreement was caused by a proposal to abolish customs duties on products from the EU. The opponents of the agreement insist that this decision, with current subsidising of agricultural production in the EU maintained, would lead to serious negative effects for the Indian agricultural sector and millions of family farms in the country. On the other hand, the proposals to open the EU market to Indian services presented so far are also unsatisfactory. In India's view, access to the EU market in services is hampered by the restrictive visa policy of the EU and barriers concerning employment in European countries.

So far, the greatest differences in opinion appeared in the issue of opening markets to cars and car parts, wines and spirits, and services. It also seems extremely difficult to reach an understanding in the field of rules of origin and geographical indications of commodities. For India, one of the most sensitive negotiation problems are the regulations concerning the protection of intellectual property, since social organisations in this country fear that they would harm the

[38] J. Zajączkowski, *Unia Europejska – Indie: strategiczne partnerstwo (The European Union – India: Strategic Partnership*) in: *Strategie rozwoju Unii Europejskiej* (*Development Strategies of the EU*), J. Adamowski, K.A. Wojtaszczyk (eds.), Warszawa 2010, p. 236.

[39] See: D. Gupwell, N. Gupta, *EU FTA Negotiation with India, ASEAN and Korea: The Question of Fair Labour Standards*, "Asia Europe Journal" vol. 7/2009, pp. 79–95.

[40] M. Gasiorek, P. Holmes, S. Robinson, J. Rollo, A. Shingal, *Qualitative Analysis of a Potential Free Trade Agreement between the European Union and India*, Sussex 2010.

pharmaceutical industry by reducing access to cheap medicines in India and other developing countries. EU's position in the negotiations, aimed at working out much further-reaching commitments then those adopted by the two sides within the framework of the WTO, gives rise to concerns. The EU is also interested in gaining access to the Indian public procurement market. Negotiations in this field are especially important for the EU because India has not adopted the non-obligatory Agreement on Government Procurement worked out under the GATT/WTO, and thus it is not obliged to the non-discrimination of foreign enterprises in public procurement proceedings.

Trade relations between the EU and Brazil

Apart from the attempts to establish free trade areas with Asian states, for example with the Republic of Korea and India as described above, the European Union takes actions towards strengthening economic cooperation with South America. The attempt to institutionalise cooperation with Brazil is part of a broader process, covering the cooperation between the EU and the Southern Common Market (MERCOSUR). The aim of this cooperation is to sign an Association Agreement with the countries of this organisation.

The negotiations of the agreement with four MERCOSUR countries were launched in 2000. The agreement will provide the basis for a political dialogue and for the establishment of a free trade area. In the part concerning trade, the sides are negotiating obligations regarding, among others, access to the market in industrial and agricultural goods, services and public procurement, rules of origin, protection of intellectual property rights, including geographical indications, trade facilitation, competition policy. The main barrier for the successful conclusion of the negotiations are disputes concerning this part of the agreement. For this reason, the negotiations were suspended in 2004. At the same time, it was agreed that they would be resumed after working out the commitments under the WTO Doha Development Round. In consequence of the problems with concluding the multilateral negotiations in the WTO, in 2009 the European Commission proposed the possibility of resuming the negotiations of the Association Agreement. After a series of informal bilateral meetings, the College of Commissioners in Madrid in May 2010 took a decision on resuming the negotiations. Both parties to the future agreement officially confirmed this at the 6th EU – Latin America and the Caribbean Summit of Heads of State or Government in May 2010 in Madrid. The persisting differences regarding the extent of liberalisation of mutual trade result in a slow progress of the negotiations. So far, the parties have focused on negotiating the particular provisions of the individual chapters of the agreement, whereas no mutual offers of access to the markets have yet been exchanged.[41]

[41] http://www.mg.gov.pl/Wspolpraca+z+zagranica/Clo/Umowy+handlowe/MERCOSUR.htm (last visited 18.08.2012).

Trade relations between the EU and China

The relations between the European Union and China have significantly evolved, following the political and economic changes in the latter country. For China belongs to a group of states which used to be discriminated against. With the reforms implemented in this country, the relations between the EU and China have substantially improved, especially in the 1990s. The first trade agreement between the European Economic Community and the PRC was concluded on 3 April 1978. The Agreement only defined the general framework of mutual trade cooperation. It stressed the determination on the both sides to create favourable conditions for mutual trade, to improve its structure, and it pointed out the need for taking into account the position of the other side regarding the introduction of facilitations in mutual trade. Both contracting parties granted to each other, in a restricted form, the most favoured nation clause. Under this agreement, they established the EEC–China Joint Committee for Trade, with the aim of solving trade problems between the two parties. The Committee met once a year, in Brussels and Beijing alternately.[42]

The Trade Agreement of 1978 was replaced by the Agreement on Trade and Economic Cooperation of 1985. The Agreement covered a significantly broader set of areas – apart from trade, it also concerned the problems of mutual economic cooperation, in particular in the following areas: industry, mining, agriculture, science and technology, energy engineering, transport and communication, environment protection, cooperation in third countries. The contracting parties also undertook, to the extent allowed by their internal regulations, to take actions towards the intensification of mutual investments.[43]

Starting from the late 1970s, China and the EEC have developed specific regulations concerning trade in textiles. As this sector is highly labour-intensive and little capital-intensive, China has a significant advantage over the European countries. Thus, the agreements regulating the mutual trade in textiles were mainly aimed at protecting the EEC market, limiting the sales of Chinese products. In 1979, the EEC and China signed the first agreements regulating mutual trade in textiles.[44] The agreement was concluded outside the Multi-Fibre Arrangement (MFA) adopted under the GATT system, to which the PRC was not a party. The agreement established a system of annual export quotas.[45] In 1988, the agreement expired and was replaced by another textile agreement. In the following years, it

[42] *Trade Agreement between the European Economic Community and the People's Republic of China* in: *The European Union and China 1949–2008. Basic Documents and Commentary*, F. Snyder (ed.), Oxford, Portland 2009, pp. 58–62.

[43] *Agreement on Trade and Economic Cooperation between the European Economic Community and the People's Republic of China* in: *The European Union and China...,* op.cit., pp. 62–66.

[44] Textiles Agreement between the EEC and China as implemented by EEC Council Regulation (EEC) No 3061/79, OJ L 345, 31.12.1979, pp. 0001–0051.

[45] Agreement between the European Economic Community and the People's Republic of China on trade in textile products, OJ L 380, 31.12.1988, pp. 0002–0073; OJ L 352, 15.12.1990, p. 0002.

was prolonged twice – first in 1990, then in 1992, when it was extended until 31 December 1995. In 1995, the EU concluded another textile agreement with China, which included products not covered by the 1988 agreement: mainly silk products, as well as other textiles, excluding those made of cotton, wool, fine animal hair and man-made fibres. It also provided for a system of quotas and double control. The agreement was concluded for two years, with the possibility of automatic extension for one-year periods.[46] Towards the end of China's accession negotiations with the WTO, in 1999, the Community and China concluded an agreement on products not covered by the Multi-Fibre Arrangement, which prolonged the earlier agreements until 31 December 2000.[47] A similar agreement was concluded again in December 2000. It was related to the obligation of notifying the restrictions to trade in this group of products stipulated in the WTO Agreement on Textiles and Clothing.[48] Since 1 January 2005, with the end of the ten-year transition period defined in the Agreement on Textiles and Clothing, the WTO members, including the EU and China, are not allowed to apply quantitative restrictions. Since then, the rules applied to other industrial products are applied also to trade in textiles and clothing. However, under the WTO Accession Protocol, China maintained some possibilities of protection. It was allowed to apply a special protective clause in the imports of textiles and clothing to the EU by the end of 2008.[49] Until the end of 2007, ten textile and clothing products imported from China to the EU were also governed by the Shanghai Memorandum of Understanding of 12 June 2005.[50]

The process of strengthening bilateral economic relations between the EEC and China was slowed down after China violently suppressed the demonstrations in Tiananmen Square in June 1989. European countries answered to these events with

[46] Agreement between the European Community and the People's Republic of China on trade in textile products not covered by the MFA bilateral Agreement on trade in textile products initialled on 9 December 1988 as extended and modified by the exchange of letters initialled on 8 December 1992, OJ L 104, 6.05.1995, pp. 0002–0029.

[47] Council Decision of 21 December 1999 on the provisional application of the Agreement in the form of an Exchange of Letters amending the Agreements between the European Community and the People's Republic of China on trade in textile products (1999/876/EC) in: *The European Union and China...,* op.cit., pp. 232–266.

[48] Agreement in the form of an Exchange of Letters between the European Community and the People's Republic of China initialled in Beijing on 19 May 2000 amending the Agreement between them on trade in textile products and amending the Agreement between them initialled on 19 January 1995 on trade in textile products not covered by the MFA bilateral Agreement in: *The European Union and China...,* op.cit., pp. 266–282.

[49] When the increase of imports from China caused market distortions, the EU could conduct consultations with China, and if no agreement could be reached, it was allowed to introduce quantitative limits in imports. The clause covered the same products as covered by the Agreement on Textiles and Clothing.

[50] Textile and footwear sector Memorandum of Understanding (MOU) Between the European Commission and the Ministry of Commerce of the People's Republic of China on the Export of Certain Chinese Textile and Clothing Products to the European Union 12 June 2005 in: *The European Union and China...,* op.cit., pp. 303–305.

economic sanctions towards the PRC. Only after the normalisation of situation in China in the first part of the 1990s did the EU return to the talks on the development of mutual trade and investments. As a result, in 2000 China signed an agreement with the Community in which it agreed to open its market to European suppliers of goods and services by 2005. During this time, the two parties signed many specific agreements regulating in detail selected aspects of mutual economic relations. These agreements concerned, among others, see transport (2002), science and technology (1999), satellite navigation (2003), and tourism (2004).

A significant change in the economic relations between the EU and China was China's accession to the World Trade Organization (WTO) in 2001, which ensured easier access for Chinese products to the world market, and thus also the EU market. However, this does not mean that the EU treats China in the same way as other WTO members. There are visible differences, in particular as regards anti-dumping and countervailing proceedings. Under China's WTO Accession Protocol, for 15 years (i.e. until the end of 2016) the members of this organisation can treat China in anti-dumping and anti-subvention proceedings as a non-market economy.[51] This approach ensures high discretionality in the treatment of trade partners during an anti-dumping proceeding. Although China agreed to the aforementioned conditions of accession to the WTO, less than two years after joining the organisation it started diplomatic efforts to gain the status of a market economy. This issue is constantly present in the relations between the European Union and China. China asked the European Commission for the status of market economy in September 2003. Since then, the situation of the Chinese economy and other non-market economies has been the subject of biannual reviews. However, so far the talks with China have not changed the position of the EU.

In January 2007, the European Union started negotiations with China concerning the Partnership and Economic Cooperation Agreement (PCA), which is to create the framework for mutual development of trade and investments. The PCA is not a preferential agreement. The aim of the negotiations is to enhance the obligations and transparency, as well as the rules of China's trade policy, in particular in the context of commitments in the WTO. The first draft of the agreement was composed of seven chapters concerning general norms, movement of capital, protection of intellectual property, transfer of technologies, technical barriers to trade, consumer protection and economic cooperation. The next draft of the agreement was extended by chapters concerning investments, services, e-trade, internal market, sanitary and phytosanitary measures, resources.[52]

At the same time, parallel to the PCA negotiations, the two sides are creating a new framework for economic cooperation. For example, since March 2008, the EU and China have been meeting annually under the High Level Economic and

[51] *Accession of the People's Republic of China. Decision of 10 November 2001*, WT/L432, Article 15, World Trade Organization.

[52] http://www.mg.gov.pl (last visited 18.08.2012).

Trade Dialogue, which is meant to stimulate the debate on problems such as the conditions of access to the Chinese market, transfer of technologies to China, protection of intellectual property, actions for the improvement of quality and safety of products sold by China, the exchange rate of yuan, natural environment, energy and the status of market economy.[53]

However, the attitude of China is a significant barrier to the present negotiations, as it is not very ambitious. China's aim is only to update the agreement of 1985 and to adjust it to the changed economic situation, and not to replace it with a new, extended document. As a result, the agreement concluded in the mid-1980s is still in effect in the relations between the two parties.

When analysing the EU–China relations, we should also mention the relations with Hong Kong and Republica of China (Taiwan). In both cases, trade relations are conducted under the WTO rules. It should be stressed that some Chinese products in the EU market benefit from preferences ensured under the Generalized System of Preferences.[54] For the first time, Chinese products were covered by preferential access to the European market in 1980. However, in the next years, the list of products subject to preferences was gradually shortened.

Trade relations between the EU and Japan

The rules concerning the trade relations between the European Union and Japan have been developed mainly within the WTO. Therefore, these relations are based on the most favoured nation clause and are non-preferential. Due to the scale of mutual trade and the position of both economies in world economy, the EU and Japan are developing a dialogue, in which they discuss not only economic problems, but also political issues related to security. These relations are very intensive. They include, for instance, annual EU–Japan summits,[55] high-level consultations on finance, high-level consultations on the protection of the natural environment, economic consultations, meetings in the field of telecommunications, high-level meetings on transport, talks concerning the competition policy, the round table of business representatives and the exchange of opinions in the field of industrial policy and cooperation. In addition, there are bilateral meetings within the framework of the Science and Technology Forum, which take place every two years, and consultations on trade in fish and fishery products, which take place twice a year.[56]

[53] Ibidem.

[54] M. Adamczyk, A. Piasecka-Głuszczak, op.cit., p. 12.

[55] The first summit, at which the Prime Minister of Japan met with the President of the European Commission and the President of the Council, took place in The Hague in 1991. They signed the Joint Declaration on Relations between the European Community and its Member States and Japan. One of the aims of the declaration was liberalisation of trade in bilateral and multilateral relations.

[56] Z. Raczkiewicz, *Relacje handlowe Unia Europejska-Japonia* (*Trade Relations EU–Japan*) in: *Wymiana handlowa UE z wybranymi regionami świata* (*Trade Exchange with Selected Regions of the World*), J. Rymarczyk, M. Wróbelwski, op.cit., pp. 102–103.

Another element of the bilateral economic cooperation between the EU and Japan is the dialogue on legal regulations, which should contribute in particular to the introduction of changes to legislation in order to facilitate the flow of investments and the intensification of trade exchange.[57] The Regulatory Reform Dialogue (RRD) between Japan and the EU was initiated in 1994. The current priorities of the dialogue have been set by the EU in October 2009. The Union underlined the problem of insufficient access to the Japanese market for EU enterprises and such aspects as: investments, public procurement, ICT, air transport, automotive sector, health protection, food safety and agricultural products, as well as standards concerning wood industry products. The EU indicated negative barriers within these areas which affect economic cooperation of the two partners and which should be eliminated by Japan.[58] Another element which is to help eliminate the said barriers and to support development of mutually beneficial cooperation is the dialogue for the establishment of a free trade area between the EU and Japan. At the 20th EU–Japan Summit (28 May 2011) both sides agreed that they would start parallel negotiations aimed at: signing a Deep and Comprehensive Free Trade Agreement (FTA) or an Economic Partnership Agreement (EPA), covering all issues in the common interest of both contracting parties, including customs duties, non-tariff measures, services, investments, intellectual property rights, public procurement and competition policy as well as at concluding a binding agreement based on common values and principles, concerning comprehensive cooperation in political matters, global issues and other sectoral matters important to both parties.[59]

The participants of the summit decided also that both sides would start talks aimed at defining the scope and priorities of negotiations on both agreements mentioned above. When considering the possible course of negotiations concerning the establishment of a deep and comprehensive free trade area between the EU and Japan, we should conclude that these negotiations will surely not be easy. The basic difficulty will be the already existing barriers in working out a common position of the Japanese and European businesses on the future agreement.

Trade relations between the EU and the USA

The relations between the European Union and the United States, just as the relations with Japan, are conducted under the WTO rules, though it does not mean that there were no proposals for developing preferential conditions of trade between these two entities. One initiative of this kind was a proposal for a Transatlantic Free Trade Area (TAFTA). The establishment of the TAFTA was meant

[57] To learn about barriers in trade relations between the EU and Japan see: *Assessment of Barriers to Trade and Investment between the EU and Japan*, Copenhagen Economics, Copenhagen 2009.

[58] *EU Proposals for Regulatory Reform in Japan*, 2 October 2009, http://www.eeas.europa.eu/japan/docs/2009_eu_rrd_proposals_en.pdf (last visited 18.08.2012).

[59] 20th EU–Japan Summit Brussels, 28 May 2011, Joint Press Statement, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/122303.pdf (last visited 18.08.2012).

to ensure more freedom of action for entrepreneurs and intensification of mutual trade exchange. The idea has not been put into effect due to failure to reach an agreement between both partners. In addition, the initiative to create a free trade area between the USA and the EU raised concerns among third countries. The establishment of such a large and strong economic organism could threaten the states which are outside it.[60]

The idea of the TAFTA was never realised, and neither was the next proposal contained in the New Transatlantic Agenda of 1995. The proposal concerned the establishment of a Transatlantic Marketplace,[61] which was to contribute to gradual reduction of barriers in the movement of goods, services and capital, and as an end result, to the facilitation and intensification of mutual trade and investment relations.

After these two failures, one definitely positive result of the transatlantic cooperation was the establishment of the Transatlantic Economic Partnership (TEP), which followed the 1998 EU–USA summit in London.[62] The actions planned under the partnership included the establishment of a more open and accessible world trade system, as well as the improvement and development of economic cooperation between the EU and USA. Other effects of the TEP initiative include agreements facilitating mutual trade and the strengthening of cooperation within the framework of transatlantic economic dialogues.

In February 2013, the European Union and the United States of America announced their intention to start negotiations on the Transatlantic Trade and Investment Partnership (TTIP). According to the text of EU draft mandate the agreement should provide for the progressive liberalization of trade and investment in goods and services as well as rules on trade and investment related issues with particular focus on removing unnecessary regulatory barriers. It is very ambitious project with an important influence of multilateral trade system. It would be the biggest bilateral FTA ever negotiated. Both parties are the world's largest economic and trade powers. [63]

Trade relations between the EU and Russia

In order to regulate the relations with Russia after the fall of the USSR, the European Union negotiated a Partnership and Cooperation Agreement (PCA). The agreement was concluded in 1994 and has been in effect since 1997. The Community has concluded such agreements also with Ukraine, Moldova,

[60] A. Jarczewska-Romaniuk, *Stosunki Transatlantyckie* (*Transatlantic Relations*) in: *Dyplomacja czy siła? Unia Europejska w stosunkach międzynarodowych* (*Diplomacy or Force? The European Union in International Relations*), S. Parzymies (ed.), Warszawa 2009, p. 204.

[61] *New Transatlantic Agenda*, http://eeas.europa.eu/us/docs/new_transatlantic_agenda_en.pdf (last visited 17.08.2012).

[62] See: *Transatlantic Economic Partnership: Action Plan*, "European Business Journal" vol. 11/1999, pp. 24–34.

[63] See: *Framework for Advancing Transatlantic Economic Integration between European Union and United States of America*, http://www.eeas.europa.eu/us/docs/framework_trans_economic_integration07_en.pdf (last visited 18.08.2012).

Kazakhstan, Armenia, Georgia, Kyrgyzstan, Uzbekistan, Azerbaijan and Tajikistan.[64] These agreements were signed with countries which did not belong to the WTO, and their task was to introduce the rules applicable between the members of WTO into mutual trade relations. When a country which did not belong to the World Trade Organization earlier is admitted to it, the provisions of the said agreements are replaced with multilateral provisions applicable in the WTO.[65]

The EU–Russia agreement provided for the development of broad cooperation covering both political and economic matters, as well as financial, legal and humanitarian cooperation and cooperation in science and technology. The PCA also defined the goals and instruments of cooperation. It was to remain in effect for ten years after its entry into force. In 2005, the EU–Russia Summit in London decided that there was a need to start negotiations leading to the signing of a new 'strategic' document, covering the entirety of relations between these two entities. The new agreement was to focus on the idea of establishing 'common areas', which had been accepted in Spring 2003 in Saint Petersburg. In May 2005 the idea of common areas was developed in the form of 'Road Maps', which defined the goals and rules of these areas.[66] The most important provisions for the economic relations between the EU and Russia were those concerning the establishment of a common economic area, of which the main aim was the creation of an open and possibly well integrated market between the EU and Russia. This would be attained by creating favourable conditions for the flow of investments and facilitating the establishment and functioning of economic entities under the principles of reciprocity, non-discrimination and transparency.[67]

In the face of growing divergences between the EU and Russia, making it impossible to easily negotiate a new agreement at the EU–Russia Summit in Sochi on 25 May 2006, the two parties agreed that the PCA would remain in effect until the entry into force of the new agreement. The EU accepted the mandate for negotiations with Russia in May 2006. At the EU–Russia Summit in Siberia in

[64] The PCA with Turkmenistan was signed in May 1998, but has never entered into force.

[65] In the case of countries covered by the Eastern Partnership programme, the Partnership and Cooperation Agreements can also be replaced by Association Agreements, including agreements establishing free trade areas. For one of the main aims of the Eastern Partnership is to conclude Association Agreements between the EU and the countries involved in this programme. They will replace the Partnership and Cooperation Agreement, which has been in effect since the 1990s and give a more advanced status to the relations between the EU and its partner countries. In the economic dimension, the cooperation should lead to the establishment of Deep and Comprehensive Free Trade Areas (DCFTAs). A comparison of the scopes of these negotiated agreements on deep and comprehensive free trade with the agreements concluded by the EU so far shows that they are largely similar to the agreements with the Balkan countries and with the members of the European Economic Area and Switzerland.

[66] M. Raś, *Szanse i możliwości realizacji czterech „wspólnych przestrzeni" w perspektywie XXI wieku* (*The Opportunities and Possibilities of Realisation of the Four 'Common Areas' in the 21st century*) in: *Stosunki Rosji z Unią Europejską* (*The European Union–Russia Relations*), S. Bieleń, K. Chudoliej (eds.), Warszawa 2009, p. 64.

[67] Ibidem, p. 67.

June 2010, it was agreed that the two sides should start negotiating a new Partnership and Cooperation Agreement.

Although the new agreement has not been adopted yet, the trade relations between Russia and the EU will change substantially as a result of the implementation of the WTO Accession Agreement by Russia,[68] as negotiations with the EU were an important element of Russia's accession process. During the Polish Presidency, the EU negotiated four bilateral agreements with Russia, constituting an important element of the Accession Package, which was officially accepted at the 8th WTO Ministerial Conference (Geneva, 15–17 December 2011). These agreements regulated, among others, the rules of trade in services, raw materials and parts and components of motor vehicles, as well as Russian wood exports to the EU. Russia's membership in the WTO is undoubtedly an opportunity for further development of cooperation with the European Union. After adopting the WTO standards, the Russian market and companies will become more stable and predictable for European investors.

Conclusions

The European Union is undoubtedly the world's largest trade power. According to the data from the World Trade Organization, the value of goods exported by the European Union in 2012 totalled USD 2,167 billion, which accounted for 14.7 per cent of global exports of goods. The European Union is also the world's biggest importer of goods. In 2012, the European market imported goods worth a total of USD 2,336 billion, which accounted for 15.6 per cent of global imports of goods. The position of the EU in trade in services is also similar. The European Union is not only a major global exporter and importer of services, but also occupies leading positions in the exports of different categories of services. In 2012, the EU provided services to the international market worth USD 830 billion, which accounted for 24.8 per cent of world exports of services. At that time, the EU market imported services worth USD 651 billion, which accounted for 20.1 per cent of the total world imports of intangible assets.[69]

The trade policy conducted by the EU and its Member States, under which multilateral actions within the WTO are supplemented by bilateral agreements concluded with the main trade partners, surely strengthens their position in world economy. Under these bilateral agreements the EU is gaining a more preferential access to markets. As shown by the examples discussed in this paper, an important element of the EU Common Commercial Policy in the recent years were the negotiations on free trade agreements. The main aim of concluding agreements of this kind is to facilitate access to the existing and new markets for European pro-

[68] Russia became the member of the WTO on 22 August 2012. After Russia's accession the organisation has 156 members.

[69] *International Trade Statistics 2013*, World Trade Organization, Geneva 2013, pp. 25–27.

ducers, service providers and investors, and thus increasing the competitiveness of the Single European Market, including the economies which make it up. The free trade agreements are negotiated with selected trade partners. The competition strategy *Global Europe: Competing in the World*, adopted by the Council on 13 November 2006, stipulates that the partners are selected on the basis of: market potential, level of protection of EU products, including also the negotiations on free trade areas initiated between these countries and other countries or regions, which compete with the European Union.[70]

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[70] See: *Global Europe: Competing in the World*, European Commission, Brussels, 04.10.2006.

Benon Gaziński

Common Agricultural Policy at a Crossroads

Introduction

Since its principles were laid out in the Treaty of Rome in 1957, the Common Agricultural Policy (CAP) has been undergoing constant changes, particularly in the last decades. Essential reforms of the CAP were undertaken in the early 1990s and they were connected with the GATT negotiations which liberalised the trade policy.[1] They are continued in the present times as well and consist in gradual elimination of instruments of market governance, including the support for agricultural prices aimed at ensuring direct support of agricultural revenue.[2]

The changes of the CAP are also aimed at increasing the effectiveness of the significant financial resources from the EU budget allocated to this goal.[3] Although they yield rather satisfying results,[4] nevertheless, a series of significant flaws have still not been overcome. These are, among others: weak focus on the formally adopted objectives, granting most funds to richer entities, providing more support to intensive agriculture than to environmentally friendly forms, excessive absorption of natural resources and infringing on the principles of competition. Moreover, this policy, celebrating the 60th anniversary of its establishment in 2012, is far too complicated and, consequently, poorly understood and overly bureaucratised – it requires a costly system of management and

[1] R.E. Baldwin, *Trade Negotiations within GATT/WTO Framework: A Survey of Successes and Failures,* "Journal of Policy Making" no. 4/2009, pp. 515–525.

[2] R. Grochowska, *Koncepcja „zazieleniania" wspólnej polityki rolnej w strategii rozwoju rolnictwa unijnego* (*The Concept of 'Greening' the CAP in the EU Agriculture Development Strategy*), "Roczniki Naukowe SERiA" iss. 1/2011, vol. XIII, pp. 131–134.

[3] F.A. Van der Zee, *Political Economy Models and Agricultural Policy Formation: Empirical Applicability and Revelance for the CAP*, Wageningen 1997.

[4] *Stanowisko uczestników II Kongresu Nauk Rolniczych wobec Reformy WPR w latach 2014–2020* (*Position of the Participants of the 2nd Congress of Agricultural Science on the CAP Reform in 2014–2020*), http://www.cdr.gov.pl/kongres2/ (last visited 10.11.2011).

control.[5] This is why the debates on the principles of the Common Agricultural Policy for the next financial perspective (2014–2020) emphasise the need for significant simplifications of the CAP.

History and general principles

Heralded already in the Treaty of Rome in 1957, the Common Agricultural Policy is one of the oldest Community policies. Its special importance is confirmed by high budget expenditure, which exceeded 75 per cent in the record years prior to the reforms and, despite numerous efforts, continue to amount to around 40 per cent of the total expenses. This is why the CAP has always been stirring up a great deal of controversy, not only in the Member States, but also during trade negotiations conducted previously within the framework of the GATT and now in the World Trade Organization (WTO).

The general objectives of the Common Agricultural Policy stipulated in Article 39(1) of the Rome Treaty in five points have not been amended for over 50 years:[6]

a) to increase agricultural productivity by promoting technological progress and by ensuring (...) the optimum utilization of the factors of production, in particular labour;
b) to ensure the fair standard of living for the agricultural community;
c) to stabilise markets;
d) to guarantee regular supplies;
e) to ensure the supplies reach consumers at reasonable prices.

The above principles reflect the conditions in agriculture at that time. The memories of World War II were still vivid and so was the fear for food shortages (many countries, not only the occupied ones, had to use the system of food ration coupons). Farms were fragmented and the rural areas were poor and technologically backward, which was manifested by the high percentage of population employed in agriculture and in the significant share of agriculture in the national income. Furthermore, the six states which founded the European Communities[7]

[5] H.O. Nielsen, A.B. Pedersen, T. Christensen, *Environmentally Sustainable Agriculture and Future Developments of the CAP* in: *The Common Agricultural Policy in a Changing Context*, G. Skogstad, A. Verdun (eds.), London 2011, pp. 100–117.

[6] A. Ledent, Ph. Burny, *La politique Agricole commune des origines au 3e millenaire,* Gembloux 2002, pp. 33–45.

[7] These were: Belgium, France, Netherlands, Luxembourg, Germany and Italy. First to be established (1952) was the European Coal and Steel Community, followed in 1958 by the European Economic Community (EEC) and the European Atomic Energy Community (Euratom). The first community was disbanded in 2002. The EEC was transformed into the European Community under the Treaty on European Union (Treaty of Maastricht), which, in turn, was transformed into the European Union and equipped with legal personality under the Treaty of Lisbon. Therefore, due to historical reasons, in this chapter the author uses the term Community meaning the modern European Union.

were not self-sufficient in terms of food and, therefore, food resources were considered a sort of 'strategic weapon'.[8]

It is easy to notice that when outline if the Common Agricultural Policy was laid out, its strategic objectives focused on issues related to food production and supply. Moreover, the objectives in Article 39(2) and 39(5) are mutually contradictory to a certain extent – a compromise is made by the market as long as its regulatory mechanism functions properly. Otherwise, rather predictably, one of the market players will be preferred to the other – and it was soon found out that the preferred party are agricultural producers, while the benefits for consumers were illusory. It is also noteworthy, from today's perspective, that the initial five objectives did not mention the natural environment or food quality.

These objectives, however, helped work out the general principles of conducting the Common Agricultural Policy:[9]

1) the common market,
2) preferences for the Community,
3) financial solidarity.

The first principle was a real breakthrough at that time – food products were to move between the Member States without any barriers. The second one comes down to protecting the external borders from cheaper imports, while financial solidarity pointed to the costs of maintaining the system – all Member States share the costs in accordance with budget requirements, and all countries which meet the Community support criteria take advantage of the system. In practice, this leads to a situation in which some Member States are net payers to the system and others are its beneficiaries.

These rather general principles were accompanied by the introduction of more concrete tools and detailed solutions for conducting the Common Agricultural Policy. Among the most important of them were high intervention prices, variable levies (countervailing charges – which, in time, were converted into customs duties under international agreements) and export subsidies. Thus developed instruments of the CAP have survived almost unchanged for several decades. They will be explained later, although with some simplifications.

Market intervention mechanisms

The basic mechanism of the Common Agricultural Policy will be presented on the example of the organisation of the cereal market in the form which developed in the 1960s and which has, essentially, survived for the next several decades.

[8] A.L. Knudsen, *Ideas, Welfare and Values. Framing the Common Agricultural Policy in the 1960s* in: *Fertile Ground for Europe? The History of European Integration and the Common Agricultural Policy Since 1945,* K.K. Patel (ed.), Baden-Baden 2009, pp. 61–78.

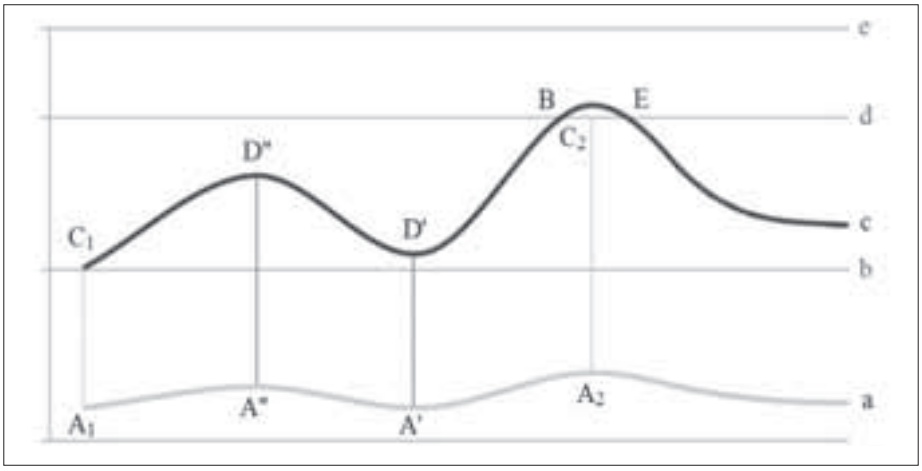
[9] R. Ackrill, *The Common Agricultural Policy,* Sheffield 2000.

Four basic organisations of the common market have been distinguished – here we shall focus on only one of these, covering the most important group of agricultural products, i.e. approximately 70 per cent of the value of global production of the entire Community agriculture. Apart from cereals, this includes: milk and milk products, beef, mutton, some fruit and vegetables and table wines.[10]

The manner of intervening in the cereal market can be explained using a simple chart (Chart 1). Each year, the Council of the European Union[11] specifies the target price. It is a hypothetical price in the Community market in the forecasting perspective. Usually, the price was adopted 'over the top' and the market prices were lower than it. Therefore, it has rather low practical significance – mainly as a point of reference for establishing other prices.

Undoubtedly, the intervention price is the most important for the farmer. It is the minimum guaranteed price that the Community – through public or private

Chart 1. Development of prices under the Common Agricultural Policy



$A_2 C_2$ – variable levy
A' D' and A" D" – export subsidies
a – global price
b – intervention price
c – price in the Community market
d – treshhold price
e – target price

Source: Own compilation.

[10] B. Gaziński, *Unia Europejska nie tylko dla początkujących (The European Union is not just for Beginners),* Olsztyn 2002, pp. 141–151.

[11] The author uses modern terminology referring to institutions. It is now known simply as the Council, but it also used to be referred to as the Council of Ministers, as it is composed of the ministers relevant to issue discussed.

collection points – commits to pay for the purchase of agricultural products in a period of their increased supply. This ensures that the market price will not drop below the intervention price ('b' line).

The excess accumulated in periods of high supply are stored so that they can be marketed in periods of limited supply, when the prices are higher. The mechanism described above stabilises the agricultural market, limiting the fluctuations.[12]

However, reality quickly escaped the theoretical framework. Let us take a look at Chart 1 once again. Please note that the lowest line is 'a' – that is global price. It is a curve, as the price is a variable dependent on the relation of supply and demand. Above that line, in a quite 'safe' distance, is the intervention price, represented by the straight line 'b' (administratively adopted value, a constant in the given period). Setting it at a high level (usually the prices recorded in the global market did not reach the intervention price) was an incentive to farmers to develop production and become self-sufficient in terms of food. In the mid-1950s, when the theoretical framework of the Common Agricultural Policy was developed, it was of strategic importance – for the memories of the cataclysm of World War II and the resulting food shortage were still fresh.

The mechanism in question performed its function too well – having guaranteed purchase of their products at favourable prices and not exposed to the risk connected with price changes in the international market, farmers growing cereal were increasing production. The level of self-sufficiency was not only reached, but even exceeded and surplus food started to accumulate. The state of excessive supply in relation to the internal demand was lasting and export became a short-term solution for dealing with the surplus.

However, how does one go about selling when the price in the internal market is much higher than in the global market? In such conditions, the transactions are possible due to export subsidies which compensate the difference. The amount of the subsidies depends on the disparity between the two prices, which is represented by the two sections in Chart 1: A' D' and A" D". It is noteworthy that the practice of introducing products to the international market at lowered, subsidized prices is nothing new. It was well known in the inter-war period – and the other actors in the international market considered it unfair, corrupting for free trade and thus they called it dumping. It makes the access to the market difficult particularly for products from weak economies. The inflow of cheaper products from abroad often constitutes a barrier to the development of agriculture in these countries.

It is noteworthy, as well, that the considerable divergence between the prices in the international market and in the protected Community market encourages imports from third countries. However, the inflow of cheaper imported products would constitute a threat to domestic, relatively more expensive production.

The solution which comes to mind is rather simple – imports can be stopped at the border, so that they are profitable only in certain cases. How does one go

[12] M. Tracy, *Government and Agriculture in Western Europe, 1890–1988*, Hemsaed 1998.

about doing it? There is no need for an administrative prohibition – economic mechanisms are quite sufficient. A special fee, determined as the difference between the treshhold price and the prices in the international markets, was collected on imports from third countries. It was called the 'variable levy', as it depended on the global price (while the second price – the treshold price – is a constant). In Chart 1, it is represented by the section A_2C_2. It should be stressed that the variable levy is something entirely different than customs duty, as it is calculated in a different way, since customs duty is a percentage of the value of the imported goods or depends on a physical measure (items, kilograms, litre, etc.) of the imported goods.

When the price in the internal market is lower than the trigger price, imports become unprofitable, as with the variable levy collected at the border these products become more expensive for the buyer than the products of own agriculture. The system is effective. Products from abroad can be cheaper in the internal market only when the price in the Community market is higher than the treshhold price (in Chart 1 represented by the section BE).

However, this happened rather rarely, usually with fruit or vegetables. An 'unnaturally' high price in the internal market is usually caused by a too limited supply (poor harvest). In this case short-term imports 'calmed' the market.

The deliberations so far can be summed up in the following points:

1) the mechanism described here is favourable to producers (farmers),
2) the Common Agricultural Policy is certainly not a free market policy,
3) the policy was effective in a certain period, but it is a very costly solution.

The costs of the Common Agricultural Policy and some of its other unfavourable consequences resulted in the fact that reforms of the policy were inevitable.

The need for reforms

The fundamental concepts of the Common Agricultural Policy were devised in the second half of the 1950s and implemented in the following decade. It was a child of that time – an answer to the particular situation of the rural areas and agriculture of that period.[13]

The basic objectives of stabilising the market and achieving self-sufficiency in terms of food were quickly achieved. However, the Common Agricultural Policy fell victim to its own success. The need for reforms became obvious already within a few years since its introduction – proposals concerning bold, far-reaching changes were presented by the EEC (European Economic Community). Commissioner for Agriculture, Sicco Mansholt, one of the co-creators of the principles of the common policy.[14] They met with some resistance of influential farmers' organisations, who were interested in preserving the existing status quo.

[13] W. Grant, *The Common Agricultural Policy,* New York 1997.

[14] J. van Merrienboer, *Commissioner Sicco Mansholt and the Creation of the CAP* in: *Fertile Ground for Europe?*, op.cit., pp. 181–197.

There are many reasons which make reforms necessary:

- one of the main reasons is the burden for the Community budget. Despite over two decades of efforts aimed at lowering the costs of conducting the Common Agricultural Policy, it still takes up approximately 40 per cent of total expenditure from the budget;
- a particularly clear manifestation of the costs of the Common Agricultural Policy are the chronic food surplus, costly in storing and problematic in distributing (this, among others, is the reason for subsidised exports);
- since the introduction of the Common Agricultural Policy, the number of people living on agriculture has significantly decreased. Consequently, the number of people interested in preserving the current solutions has decreased and the number of people who directly (high prices) or indirectly (taxes and other charges paid to the Community budget) have to pay for the flaws of these solutions has increased;
- the Common Agricultural Policy was devised and implemented in a period when environmental protection was not yet a point of interest. Therefore, agriculture was excessively intensified, with all the negative consequences of that fact, and now these consequences are surfacing on an unprecedented scale. The movement for environmental protection has become organised. Many activists believe that intensive agriculture and its high-yield crops resemble an athlete taking drugs and should be banned for the same reasons as doping;
- the pressure on reforms of the Common Agricultural Policy was increasing outside the integrating Europe and took the final form during the GATT Uruguay Round (which was reflected in the agreement of 1994).

Moreover, the Common Agricultural Policy has proved to be little effective in the social sphere. What was especially stressed by its opponents, despite the fact that agriculture had a significant share in the structure of budget expenses, the income of most farmers was still below the average income of those pursuing non-agricultural activity. Moreover, the stream of support funds bypassed those who needed them most – approximately 80 per cent of the funds ended up with approximately 20 per cent of farmers, often the most wealthy ones.

In time, it was becoming more and more clear that the farmers' situation cannot be narrowed down to the relation between agricultural products and the means of production – it must be approached more broadly, in the context of entire rural areas. From then on, particular significance was ascribed to the expansion of the profile of business activity and the appearance of new forms of employment, providing additional non-agricultural income.

The dispute around Mansholt's proposed reforms contributed to the adoption in 1972 of three social and structural directives concerning the modernisation of farms (159/72), early retirement pensions for farmers (160/72) and improvement of the organisation of advisory services (161/72).

Although the implementation of these directives was not perfect, they contributed to the development of the structural policy, aimed at a more even development of rural regions and agriculture. In 1975, after the United Kingdom's accession, the Community adopted directive 268/75 on mountain and hill farming and farming in certain less-favoured areas (today called Less Favoured Areas – LFA). In 1997, it issued regulation 797/85 concerning the specificity of agriculture in the Mediterranean region. The document promoted the idea of integrated development of rural areas, or sustainable rural development, which apart from agriculture, referred also to local industry, craftsmanship, tourism and services. Further changes in the agricultural policy were determined by the reform of the structural policy.[15]

The development of the structural policy was related to the attempts to change the 'classic' model of agricultural policy, introduced in the 1960s. Radical measures were taken in the dairy industry, which was suffering a structural overproduction ('butter mountains' and 'milk lakes'). In 1984, the Community introduced a system of production limits (the so called dairy quotas). A global level of milk production for the entire Community was adopted and divided between the Member States and then regions. Finally, individual farms obtained the allotments – using the records concerning the production in the period before the introduction of the limits. The production level was limited by a percentage set by administrative authorities. This way, the level of milk production became subject to effective control and within the granted limits, farmers were guaranteed good prices. We should mention that farmers started to trade in these production limits (although not between countries). This enabled a flexible adjustment of the rigid, administrative system to the diverse realities of life (farmers giving up dairy cattle in favour of, for example, pig farming would sell their limits to farmers who wanted to specialise in this particular field).

Proposals for further reforms of the Common Agricultural Policy were presented in the Green Paper prepared in the mid-1980s by the Commissioner for Agriculture, Frans Andriessen. The most important of these were to:[16]

- limit the level of intervention prices,
- increase the quality requirements regarding the products subject to intervention,
- limit the period in which the purchase at intervention prices is guaranteed,
- include the producers in overproduction costs,
- support programmes of environmental protection and agriculture extensification.

Several years later, Commissioner Ray MacSharry (called 'Mack the Knife') proposed even further-reaching reform proposals. They are important enough to merit dealing with in detail.

[15] J. Bache, *The Regional and Structural Policies of European Union,* Sheffield 1998.

[16] F. Drago, B. Gaziński, *Od Rzymu do Amsterdamu – 40 lat podróży. Szkice o Unii Europejskiej (From Rome to Amsterdam – 40 Years of Journey. The Sketches about the European Union),* Olsztyn 1998, pp. 53–61.

Directions of changes. The MacSharry reform

The need for changes in the Common Agricultural Policy was particularly strong already in the 1970s, when the excess food amassed and the expenditure on agriculture from the common budget reached record-breaking levels. Despite these and other proposals for amendments, the principal mechanism of the Common Agricultural Policy remained unchanged until 1992, when yet another reform was started – more radical than the previous reforms. Its architect was the Commissioner for Agriculture, Ray MacSharry. The reform consisted in departing from subsidies directly related to market interventions, which was leading to excessive (in economical and ecological terms) intensification of agriculture. Subsidies were introduced on a broader scale – under special requirements – increasing the direct income of farms, so that the funds provided from the Community budget would not encourage an excessively high level of production (and the resulting excessive food supply). Let us explain this in detail on the example of wheat – the most common crop subject to the Common Agricultural Policy.[17]

Within three years from the commencement of the MacSharry reform, the level of intervention prices of wheat were reduced significantly – by approximately 30 per cent, and they were lower by 54.34 ECU/tonne[18] in the economic year 1995/96 than in the pre-reform period. Therefore, it was necessary to introduce compensation for the farmers who lost a portion of their income (through farmer associations, farmers have considerable means of exerting political pressure in Brussels).

The solution adopted was a simple one. Every farmer growing wheat was entitled to ask for compensation for the income lost due to the lowering of the intervention price (i.e. for direct payments). The amount of subsidies paid was calculated with the account of the average crop yields in the given region and crop area. Please look at the example below (the prices are rounded for clarity):

The average wheat yield in two selected regions were:

- in Sicily – 3 tonnes/ha
- in Île-de-France – 7 tonnes/ha

Let us assume that the rounded compensation payment is 50 ECU/t. Thus, a farmer from Sicily received the following amount for every hectare of wheat:

3 x 50 ECU = 150 ECU

and a farmer from Île-de-France:

7 x 50 ECU = 350 ECU

It might seem that the new system does not change a farm's income at all. This, however, is not the case, as there are farmers with crop yields higher than

[17] A. Cunha, A. Swinbank, *An Inside View of the CAP Reform Process: Explaining the MacSharry, Agenda 2000 and Fischler Reforms,* Oxford 2011, pp. 68–101.

[18] In the example in question we use the ECU, which was replaced by the euro (in a ration of 1:1) on 1 January 1999. See: B. Gaziński, op.cit., pp. 147–151.

the average in the given district or region, as well as farmers who have lower yields, and farmers who indeed have average yields.

Let us look at the change of income of three farmers in every region – one achieving crop yields a tonne higher than the average for the given region, one equal to the average, and one a tonne lower than the average. Let us also assume that these farmers sell their wheat at the intervention price, which amounted to 150 ECU/t before the reform, and fell to 100 ECU/t after the reform, with the compensation amounting to 50 ECU/tonne.

Table 1. Farmers' income before the reform (ECU/ha)

Sicily		Crop yield	Income
Farmer	A	2t/ha	300 ECU (2 x 150 ECU)
	B	3t/ha	450 ECU (3 x 150 ECU)
	C	4t/ha	600 ECU (4 x 150 ECU)
Île-de-France			
Farmer	D	6t/ha	900 ECU (6 x 150 ECU)
	E	7t/ha	1050 ECU (7 x 150 ECU)
	F	8t/ha	1200 ECU (8 x 150 ECU)

Source: Own compilation.

In consequence of the reform, the farmers' income consists of two parts: income from sales (but at a lower price) and subsidy to every hectare of grown wheat. With the same crop yields as before, this income is as follows:

Table 2. Farmers' income after the reform (ECU/ha)

Sicily		Wheat sale	Subsidy	Income
Farmer	A	200 ECU (2 x 100 ECU)	150 ECU	350 ECU
	B	300 ECU (3 x 100 ECU)	150 ECU	450 ECU
	C	400 ECU (4 x 100 ECU)	150 ECU	550 ECU
Île-de-France				
Farmer	D	600 ECU (6 x 100 ECU)	350 ECU	950 ECU
	E	700 ECU (7 x 100 ECU)	350 ECU	1050 ECU
	F	800 ECU (8 x 100 ECU)	350 ECU	1150 ECU

Source: Own compilation.

On the basis of the above tables it is easy to see the differences between the farmers' income in the new system as compared to the old one. Now, farmers with lower crop yields than the average for their region (A and D) have higher income than before the reform, while those who have higher yields than the average (C and F) loose under the reform. The situation of farmers whose crop yields are equal to the average (B and C) has not changed.

The above example reveals one of the objectives behind the new solution – it is supposed to discourage farmers from achieving high yields at the expense of the Community (production sold at high intervention prices will partially become a troublesome surplus). Therefore, the new system favours the economically weaker farms with crop yields lower than the average.

It is also worth mentioning the additional system of compensations aimed at preserving the level of cultivation of durum wheat varieties of particularly high quality – without them it would be hard to imagine, for instance, the production of pasta in Italy. A list of durum wheat varieties subject to additional subsidies was compiled, along with a list of regions in which they are paid. The list included Sicily, but not Île-de-France (a region unsuitable for the cultivation of durum wheat).

Furthermore, large farmers have been distinguished from the group of farmers growing wheat. Large farmers would be those who produce more than 92 tonnes of wheat per year. Why this particular amount? It was calculated that the average wheat yield in the Community in the period when the reforms were introduced amounted to 4.6 t/ha. It was further assumed that a large farm is a farm with a wheat cultivation area exceeding 20 ha, thus arriving at the yield border value of 92 tonnes per year.

In this group of farms, access to Community subsidies was limited by an additional requirement, namely to set aside arable land. During the changes in the relevant provisions the required level was 15 per cent. It changed from year to year, but the reforms introduced in the last years aim at completely eliminating the set-aside requirement.

How does this system function in practice? Subsidies are granted to farmers who submit an application in writing and within the set time limit. The application must state the total area of wheat cultivation, as well as the individual fields in the farm on which wheat is grown. This is to ensure that the truthfulness of the application can be verified, and, indeed, random controls compare the actual state with the declarations. Minimum discrepancies are tolerated. However, if the discrepancies are more significant, the subsidies are usually suspended. 'Mistakes' on a larger scale can entail charges of extorting funds from the Community budget.

The institutions responsible for conducting the policy in question (examining the farmers' applications, making payments) vary from state to state and are called the Paying Agencies. In Poland, then Paying Agency is the Agency for Restructuring and Modernisation of Agriculture.

The causative factor of the reforms, illustrated on the example of wheat, consisted not only in internal factors, but also in the negotiations conducted at that

particular time on the principles of international trade, which also covered agriculture. It is therefore only prudent now to present the impact of the decisions made during the final GATT Round on the format of the Common Agricultural Policy.

Impact of the GATT negotiations

The General Agreement on Tariffs and Trade (GATT), concluded in 1947 and replaced by the World Trade Organization (WTO), was one of the specialised agencies of the UN. The prolonged negotiations on the liberalisation of world trade are commonly called Rounds.

Until the Dillon Round (1960–1961), agriculture was excluded from the negotiations, despite the fact that the level of protection of agricultural trade was high. In this period, the United States did not oppose to the principles of the EEC's Common Agricultural Policy, probably considering the Community's agriculture too weak to successfully compete with US agriculture. At that time, nothing seemed to justify any greater concerns – the needs of the Community internal market in comparison with the supply of native agriculture were so high that, despite the application of export subsidies, there was no product in the international market which was exported in larger quantities. This is why the American negotiators could consider an agreement on free trade with vegetable protein and oil (e.g. soya) a success.

Further negotiations, the so called Kennedy Round, lasted between 1964 and 1967. At that time, there were also no controversies concerning the Common Agricultural Policy – the Community was still not very significant as an exporter of food.

The negotiations of the Tokyo Round (1973–1979) were conducted in a period of collapse of the international Bretton Woods monetary system. During this Round, it was agreed that export subsidies should not be used to significantly increase the share of a given product in the international market. Furthermore, the principles of more liberal trade (e.g. access of some amounts of products to the EEC market at lowered customs duties) in certain products (e.g. beef, dairy products, citrus fruits and almonds, tinned food, dried plums, tobacco products and turkey meat) were adopted.

The 40th GATT Conference (26–30 November 1984) established the permanent Committee for Liberalisation of Agricultural Trade. However, its activities did not bring any significant results, as every country was making efforts to obtain easier access to the markets of third countries while not really making any concessions in this regard itself.

This resulted in yet another Round of negotiations, under insistence of the USA. The declaration of Punta del Este, adopted at the start of negotiations in September 1986, stated the parties' commitment to liberalisation of agricultural trade through, among others, limiting the non-customs barriers and export subsidies.

The laborious multi-annual negotiations of the Uruguay Round, abounding in many dramatic clashes, resulted in a series of important agreements concerning the trade in agricultural products.

Among the 15 final agreements adopted in 1994, one is particularly significant and concerns only agriculture. It constitutes a compromise between the main parties achieved as a result of hard negotiations – the European Community and the USA, supported by a dozen states of the so called Cairns Group (Argentina, Indonesia, Canada, Columbia, Malaysia, New Zealand, Thailand, Uruguay, Hungary, and others), arbitrated by the Director-General of GATT, Arthur Dunkel, who proposed his own solutions to the issues in question when negotiations seemed to fail.[19]

The final phase of GATT negotiations coincided with the 1992 reform of the Common Agricultural Policy resulting in lowered intervention prices and compensations for lost income paid to farmers. The most important provisions adopted there include: limitation of export subsidies, lowering the subsidies to agriculture, limitation of customs duties and withdrawing from variable levies.[20]

Limitation of export subsidies

It was agreed that the period of reference would be the five years between 1986 and 1990, and it is for this period that the average level of export subsidies was calculated in terms of value (how much was the average annual spending on subsidies) and quantity (what quantity of a given product was subject to subsidies).

The parties committed to do the following by 1999:

1) limit export subsidies by 26 per cent. This means that if in the period of reference the subsidies amounted to, say, 100 million ECU, in 1999 they could not exceed 64 million euro;
2) lower the volume of products subject to export subsidies by 21 per cent. That is, if 100 thousand tonnes of cheese was subject to subsidies in the period of reference, in 1999 it could be no more than 79 thousand tonnes.

Lowering the subsidies to agriculture

It was agreed that by 1999 the level of general subsidies to agriculture would be lowered by 20 per cent. However, a much more difficult task than to decide on the percentage of the limitation was to decide how to count it. Earlier proposals had been aimed at taking into account the entire subsidies to agriculture. However, during the negotiations, the subsidies were divided into the ones which would be reduced and the ones which would be exempted from the negotiations and would remain unlimited (the so called 'green box subsidies' and 'blue box subsidies').

In the end, it was decided that reductions would only pertain to the so called aggregated measure of support (AMS), related to price intervention and calculated

[19] C. Daugbjerg, A. Swinbank, *Ideational Change in the WTO and its Impacts on the EU Agricultural Policy Institutions and the CAP* in: *The Common Agricultural Policy in a Changing Context,* G.D. Skogstad (ed.), London 2011, pp. 44–67.

[20] B. Gaziński, op.cit., pp. 151–154.

as the difference between the intervention price and global price multiplied by the production value (annual average for the period 1986–1988). This implied, that the reductions did not include, for instance: subsidies for research, consulting, infrastructure development, and even subsidies compensating lost income, not related directly to the level of production (such as subsidies to the hectare of cultivated cereal).

Limitation of customs duties and withdrawing from variable levies

This change was an entirely new quality. It was decided that by 1999 variable levies would be entirely abolished (converted into customs duties) and, in addition, that they would be lowered by 36 per cent. The average from three years (1986–1988) was adopted as the base for the calculation of the referential level of customs duties and levies.

Abolishing variable levies was a very important change, as for several decades they had co-shaped the essential interventions mechanism, ensuring the implementation of the principle of preference for the Community, one of the foundation stones of the entire Common Agricultural Policy.

The existing mechanism of levies enabled the maintaining of fixed prices for agricultural products in the Community market and isolating them from the varying prices in the global market. In the new system, after replacing the variable levies by customs duties, the turbulences in international markets transferred, although in a rather limited extent, to the relations in the Community' internal market.

The significance of the decisions made in the final round of GATT negotiations concerning short-term solutions was rather minor, as the extent of the concessions made by the Community was essentially in line with the budget cuts in agriculture, resulting from the 1992 reform of the Common Agricultural Policy. This is not a coincidence, but rather a success of the European negotiators, who successfully proposed that the calculation of referential averages used the periods from the earlier decade, that is from before the reform, when the level of agriculture protection was higher. However, this actually did not solve the problem of liberalising international agricultural trade, but only postponed it.

Changes in the recent years

Further reforms of the CAP undertaken in the last two decades continue and complement the MacSharry reforms. Their context, just as the Uruguay Round of GATT before, is determined by the prolonged negotiations concerning the international trade conducted by the WTO.[21]

[21] The Doha Ministerial Declaration adopted in January 2001 states: *'We recall the long-term objective* (...) *to correct and prevent restrictions and distortions in world agricultural markets.* (...) *We commit ourselves to comprehensive negotiations aimed at: substantial improvement in market access, reduction of – with a view of phasing out – all forms of expert subsidies; and substantial reduction in trade-distorting domestic support'*. See: A. Greer, *Agricultural Policy in Europe,* Manchester 2005, p. 107.

Agenda 2000

The *Agenda 2000* is a document drawn up by the European Commission and published in summer 1997. The provisions (and modifications) it contained were adopted at the European Council Summit in Berlin on 24–26 March 1999. The two volumes entitled 'For a Stronger and Wider Union' and 'Reinforcing the Pre-Accession Strategy' discuss various issues: the evaluation of the preparations for joining the EU in a group of candidate states, budget issues in the new seven-year period 2000–2006, as well as proposals concerning the Common Agricultural Policy.[22] It refers, among others, to the European Agricultural Model, drawing attention to the multifunctionality of rural areas. It emphasises the significance of farmers as 'stewards of the countryside' and provides for the introduction of compensations to farmers for participation in agri-environmental programmes. There were also decisions to further gradually lower intervention prices, along with expanding the system of direct payments, compensating the farmers' income loss. It is an important fact that the document in question explicitly opposes subjecting farmers from the new Member States to direct payments (after several years, as a result of negotiations, this position was softened). It was also decided that the CAP would be reviewed in the middle of the budget period 2000–2007.

Fischler Reforms of 2003 and 'Health Check' of 2008

The Mid-term Review announced in the *Agenda 2000* started at the meeting of Ministers of Agriculture held in Luxembourg in June 2003. In fact, it was much more than a simple review of the Common Agricultural Policy, it was decided that further, essential changes should be introduced. It was agreed that intervention prices would be further lowered and that direct payments would be increased as compensation. The popularisation of direct payments was accompanied by diversification in the principles according to which they were calculated in the individual Member States and even between the regions of one state. The reforms introduced single area payments, unrelated to actual production. Payments like these played an increasingly important role as a tool for redistribution of income, and not as direct market intervention. Thus, questions were raised whether a limit on direct payments available to a single farm should be introduced and if so, what criteria should be taken into consideration.

Direct payments were subjected to the so called modulation, a kind of tax imposed on the Member States, deducted from the sum of calculated direct payments, if the amount exceeds the set threshold value (at present, 5 thousand euro per farm). However, these funds remain at the disposal of each country, which can use it to realise selected objectives concerning the development of rural areas.

The eligibility of farmers to receive direct payments is more and more conditioned by a number of requirements pertaining to environmental protection, product quality, compliance with the rules of hygiene and care for the well-being

[22] A. Cunha, A. Swinbank, op.cit., pp. 102–124.

of animals, as well as good agrotechnical practice, referred to as cross-compliance – a term well known to agricultural advisers and to most farmers.[23]

Reforms similar to those introduced by MacSharry gradually cover new markets, gradually broadening the extent of subsidies not connected with the level of production in farms, which is referred to as decoupling. The Single Area Payment Scheme (SAPS) is becoming more popular and it expected that it will become more uniform in future and that the methods of calculating these payments will be simplified. This means that farmers now have more freedom in making decisions – to some extent, they become not only manufacturers of agricultural products, but also 'stewards' of public goods, such as countryside landscape and natural environment.[24]

Thus, to an ever greater extent the Common Agricultural Policy concerns more than just agriculture. It is also a policy for the development of rural areas, and considered to be the second pillar. This important process started in the first half of the 1970s and has accelerated in the recent years.

The new challenges to the Common Agricultural Policy of the recent years include:

- protection of biodiversity,
- managing water resources,
- preventing climate change,
- obtaining energy from alternative sources,
- supporting innovation,
- restructuring the dairy industry (in view of the expected abolition of diary quotas in 2015).

In the future, in light of the said changes, farmers will have to face the demands of the market characterised by price changeability, to a much greater extent than so far. They can counteract this in several ways: by concluding contracts with food-processing enterprises and supermarkets, developing various ways of direct sales or even – as it is the case in Canada – through insurance from income drop.[25]

The Common Agricultural Policy costs tens of billions of euros, but per one citizen it makes not much more than 100 euro per year. At present, there is a debate on the shape of the CAP in 2014–2020, in the new budget period.[26]

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[23] T. Haniotis, *The Health Check of the CAP Reform. Lessons from its Impact Assessment* in: *The Economic Impact of Public Support to Agriculture. An International Perspective,* V.E. Bell, R. Fanfani, L. Gutierrez, Springer (eds.), New York 2010, pp. 67–79.

[24] A. Sorrentino, R. Henke, S. Severini, *The Common Agricultural Policy after the Fischler Reform. National Implementation, Impact Assessment and the Agenda for Future Reforms,* Barlington 2011.

[25] Ph. Burny, *Reforming the Common Agricultural Policy. Perspective of 2013 and Beyond* in: *Szkice europejskie. Historia – Gospodarka – Polityka (The European Sketches. History – Economy – Politics),* B. Gaziński (ed.), Olsztyn 2011, pp. 203–216.

[26] It is proposed that budget expenditure should be maintained at a level similar as in the previous seven-year period – 371.7 billion euro. See: P. Bugnot, *Future legal Framework for Financing the CAP and Requirements for EU Paying Agencies,* 30-th Conference of the Directors of the Paying Agencies, Sopot, 21–23 September 2011, http://www.arr.gov.pl/index.php?option=com_content&view=article&id=1159&Itemid=590 (last visited 30.11.2011).

Case study: Polish agriculture within the CAP framework

The enlargement of the European Union did not confirm most of the concerns of the farmers in both the candidate states (EU-12) and the old Member States (EU-15).[27] Already in the period preceding the accession, for the first time in history, the balance of trade in agricultural and food products with the EU changed from negative to positive. Poland has rather quickly become the strongest exporter of food products in the region and continues to reinforce its position.[28] From 2004 (the accession) to 2010, the value of the positive export and import balance in the agricultural and food processing sector more than tripled (see Table 3).

Many authors point out the positive influence of the membership in the European Union on agriculture and rural areas.[29] The impact of Poland's membership in the EU on the situation of the agricultural and food sector is multidimensional and not always quantifiable. Nevertheless, agriculture is rather commonly considered one of the main beneficiaries of the membership:

- there has been a noticeable increase in the income level per person with full employment in agriculture. An essential factor is the share of budget subsidies, estimated at approximately 50 per cent (however, this income is still much lower than the average income in the entire economy, the so called income parity does not exceed 60 per cent);
- the improved financial status means better moods among the inhabitants of rural areas in comparison to the pre-accession period; investments improving the technical and social infrastructure of rural areas and the visible technological progress further contributed to this;

[27] These moods are well known to the author, since prior to the accession he conducted more than a hundred lectures, seminars and workshops. The concerns were not at all irrational – due to, among others, the protectionist policy, as at that time Poland was still a third country and the EU was considered the 'bad neighbour'. See: B. Gaziński, *Polish Agriculture as Faced by European Integration,* "Vagos Mokslo Darbai" no. 51(4)/2001, pp. 38–41.

[28] The second place in this regard belonged to Hungary. Cf.: B. Gaziński, *Polskie rolnictwo w Unii Europejskiej i niektóre doświadczenia pierwszego roku członkostwa* (*Polish Agriculture in the European Union and Some Experiences of the First Year of Membership*), "Biuletyn Instytutu Hodowli i Aklimatyzacji Roślin" no. 242/2006, pp. 3–14.

[29] These include, among others: S. Figiel, *Reformować, ale jak. Ocena skutków potencjalnych zmian wspólnej polityki rolnej (Reform, but how. The Assessment of the Effects of Potential Changes in the Common Agricultural Policy)*, "Nowe Życie Gospodarcze" no. 23–24/2009, pp. 36–37; W. Guba, P. Purgał, *Wnioski z debaty (The conclusions of the Debate)* in: *Międzynarodowa konferencja "Rolnictwo i obszary wiejskie – 5 lat po akcesji do Unii Europejskiej (The International Conference on „Agriculture and Rural Areas – Five Years after the Accession to the European Union),* Warszawa 28–29 April 2009, http://www.minrol.gov.pl (last visited 15.02.2012); R. Kameduła-Tomaszewska, *Polska wobec Wspólnej Polityki Rybackiej (Poland and the Common Fishery Policy)* in: *Dokąd zmierza WPR? Stan debaty publicznej, zainicjowanej przez polską Prezydencję (Where is CAP going to? Status of the Public Debate Initiated by the Polish Presidency),* Konferencja ekspercko-medialna, 9 stycznia 2012, Centralna Biblioteka Rolnicza w Warszawie, pp. 22–29; A. Kowalski *Polski sektor żywnościowy 5 lat po akcesji (The Polish Food Sector Five Years after Accession*, "Biuletyn Informacyjny ARR" no. 6/2009, pp. 21–33.

- the environmental awareness of the inhabitants of rural areas has improved, as has the awareness of the importance of the integration of agriculture and sustainable rural development;
- the CAP measures have contributed to improved stability of the food market and to lower growth rate of retail prices;
- Poland's membership in the European Union has promoted the development of the civic society (development of human capital), motivating local communities to engage in various forms of activity (one of stimulating factors was the availability of funds under various regional development programmes).

Table 3. The results of the Polish agricultural trade in 2003–2010

Item	2003	2004	2005	2006	2007	2008	2009	2010
Balance of total Polish foreign trade (billion EUR)	–8.50	–11.40	–9.80	–12.90	–18.60	–26.20	–9.3	–13.50
Share of agricultural trade in total exports (%)	8.40	8.70	9.90	9.70	9.90	9.90	11.0	11.30
Share of agricultural trade in total imports (%)	5.90	6.10	6.80	6.40	6.80	7.00	8.6	8.20
Value of agricultural exports (billion EUR)	4.00	5.20	7.00	8.50	9.90	11.40	11.4	13.30
Share of EU countries in Polish exports (%)	65.20	71.90	73.90	76.50	80.50	80.70	80.7	78.90
Balance of the Polish foreign agricultural trade (billion EUR)	0.45	0.85	1.65	2.08	1.97	1.33	2.2	2.57
– balance of trade with EU states (billion EUR)	0.44	1.03	1.80	2.48	2.65	2.19	2.8	3.19

Source: Own compilation on the basis of data collected by the Central Statistical Office (GUS), Science Center of Foreign Trade (CIHZ) and of analyses performed by the Institute of Agricultural and Food Economics (IERiGŻ) and Foundation of Assistance Programmes for Agriculture (FAPA).

Apart from the benefits gained by farmers from support for rural areas and agriculture, there are also drawbacks, most of which result directly or indirectly from the commonly known shortcomings of the CAP. Furthermore, some of the compromises worked out during accession negotiations are not really favourable and differ significantly from the expectations of farmers and the food-processing industry:

- many farmers would agree with the opinion of a former British MEP John Alexander Corrie who said during his visit to Poland: *'we used to be paid*

for what we produced on our farms, but now we are more often paid for discontinuing production';[30]

- the redistribution of funds from the CAP programmes reaching farms is far from satisfactory. The biggest farms can be paid substantive sums, whereas the subsidies granted to small farmers (and there are a lot of them in Poland) function more like 'a social security benefit' instead of being a tool for modernisation and development of farms. As a result, the desirable process of creating larger and economically more viable farms is slowed down;
- for more than ten years now – also prior to Poland's access to the EU, when other support programmes, mainly pre-accession ones, were implemented – we have been witnessing a considerable progress in agriculture and development of rural areas. Unfortunately, the gap between the richest and the poorest regions has been growing bigger despite the assumption that it should be diminished;[31]
- among examples of obstacles encountered by agricultural producers due to unfavourable solutions is the problem of potato starch quotas, imposed by the Accession Treaty. The processing capacity of the Polish potato industry is estimated to be within the range of 220–260 thousand tonnes a year. However, the negotiators failed to secure a production limit that would correspond to the industry's potential or the demand on the domestic market. The potato starch quota is a bare 145 thousand tonnes.[32] Thus, the country which is a leading European potato producer is forced to import potato starch, although the Polish potato processing plants are not used to their full capacity.

In 2010, the Agricultural Advisory Centre, Poznań Branch, conducted a survey, which helped to define several barriers, indicated by local government units, to the successful implementation of the programme "Revival of the Countryside":[33]

- frequent lack of a single interpretation of regulations, different formal requirements, rules and guidelines often changed 'while the ball is in play';

[30] See: J. Corrie, *EP to Campus. Visit to Poland (24-th May – 29-th May 2009),* "FMA Bulletin" no. 28/2009, pp. 12–13 (version in French: J. Corrie, *PE au Campus. Visite en Pologne (du 24 au 29 mai 2009),* "Bulletin de l'AAD" no. 28/2009, pp. 12–13).

[31] Being aware of the problem, the Polish government set up a special programme for the years 2007–2013, addressed to the five poorest provinces, known as 'The Eastern Wall'. Cf. *Program Operacyjny: Rozwój Polski Wschodniej 2007–2013 (Operational Programme 'Development of Eastern Poland)*, Ministry for Regional Development, Warszawa, 2006.

[32] More on this subject in: J. Chotkowski, B. Gaziński, *Problem of Fair Competition on the Single EU Market – the Case of Potato Starch,* "Olsztyn Journal of Economics" no. 6(1)/2011, pp. 89–98.

[33] G. Cetner, K. Żok, *Odnowa*..., op.cit.

- competitions announced very late, leaving too little time to prepare applications, especially when application forms are complicated and comprise many attachments, declarations and other formal documents;
- very detailed requirements as to the breakdown of investor's costs (once the investment project is completed, the final costs will differ from the planned budget);
- managing institutions pay too much attention to formalities, often irrelevant to the essential subject matter, like a missing date or the fact that documents cannot be verified by a communal council;
- funds secured to provide own contribution, and laid aside for many months while the application processing procedure is prolonged;
- full documentation, such as a legal building permit and a cost breakdown, must be prepared, which requires incurring costs without any guarantee that funds for the performance of the project will be granted;
- technical problems with filling in application forms, e.g. wrong format of cells.

Similar difficulties have been pointed out by directors of Paying Agencies in a survey conducted prior to one of their regular conferences, held in September 2011.[34] Hence, the proposal put forward by the Polish Forum of Development Initiatives to have just one application form for area payments for a whole seven-year budgetary term seems interesting.[35]

Certainly, the efficiency of EU support programmes would improve if the detailed specification of measures, conditions and requirements for granting support (including model forms and required documents) along with the relevant schedule was known at the beginning of each multi-annual financial framework (budget perspective). Potential beneficiaries could then analyse their capacities and carefully prepare themselves to submitting applications. At present, the time period between a measure is announced and the deadline for applications is too short. Paying Agencies, as well as all other public institutions working for the benefit of agriculture and the rural areas, should always remember that their mission is to support the development of farming and rural areas. Unfortunately, this involves changing the attitude of some of the officials.

[34] Representatives of 27 paying agencies from 23 – Member States responded, and indicated that the major causes of problems were: too little time: decisions taken very late leave too little time for their execution; unclear rules and imprecise definitions; „rules of the game" changed far too often; set requirements are burdensome to beneficiaries, who also complain about difficult access to information. Cf. M. Wardal, *Workshop 2. How can Paying Agencies and the European Commission Ensure the Successful Implementation of the CAP Reform? Questionaire Results,* 30th Conference of the Directors of the Paying Agencies, Sopot, 21–23 September 2001, http://www.arr.gov.pl/index.php?option=com_content&view=article&id=1159&Itemid=590 (last visited 30.11.2011).

[35] Forum Inicjatyw Rozwojowych EFRWP, *Wspólna*..., op.cit.

The proposed CAP reforms from the Polish perspective

After nine years of Poland being an EU Member State, we can draw on our experience and make certain evaluations. An excellent opportunity to voice our opinion in the debate on the future of the CAP was the first Polish Presidency, which fell on the second half of 2011.[36] During that time, there was a multidimensional debate on the legislative package put forward by the European Commission and comprising the forthcoming reforms of the CAP. These questions were discussed, for example, at an informal meeting of the Council of Ministers of Agriculture and Fisheries in Wrocław, when such issues as support measures to promoting EU agricultural products were raised.

The proposed changes in the CAP are not satisfactory from Poland's perspective.[37] One of the proposals voiced by Poland, also on behalf of the other EU-12 countries, is to move to the same level of aid per hectare for all farmers in the EU, i.e. to the level set in the 'old' EU Member States. Another source of criticism is the lack of actual, not just formal, simplification of the CAP regulations. Moreover, it is feared that the suggested measures will be insufficiently not effective to improve the competitiveness of European agriculture in the world market.

Regardless of the above general opinions, the European Commission's proposals are certainly a good starting point for further discussions, preceding the stage of making final decisions, and therefore they deserve a closer look.

The question of the level of payments

Two systems for establishing the entitlement to direct payments have been used so far under the CAP. One is known as the Single Payment Scheme (the SPS), applied mainly in the EU-15 states and based on payment entitlements linked to eligible farmland. The other solution is called the Single Area Payment Scheme (the SAPS) and is applied for example in Poland and other EU-12 states. It took the Paying Agency in Poland (ARMA) over three years to implement it.

The Commission suggested a unification of these rules and substituting the two previous solutions with the Basic Payment Scheme (BPS). However, the new scheme will more closely resemble the SPS. It is a fundamental change for the countries which have used the SAPS until now. It will incur costs (changes in

[36] *Agriculture and Ford Economy in Poland,* Ministry of Agriculture and Rural Development, Warsaw, 2010, pp. 59-61.

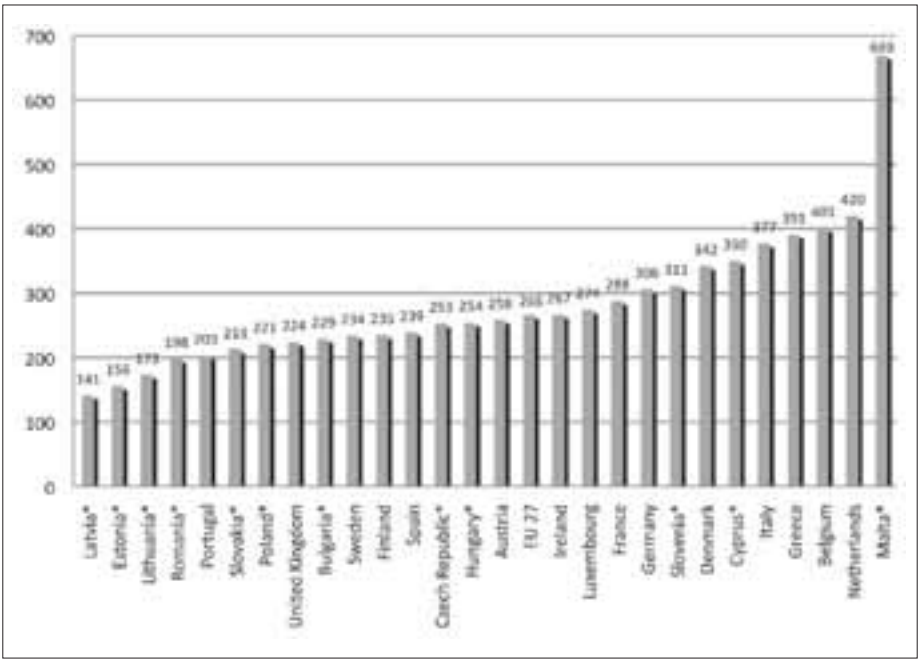
[37] This opinion was expressed very clearly by the Polish Minister of Agriculture and Rural Development, Marek Sawicki in his address to the participants of the Expert and Media Conference: *Dokąd zmierza WPR*? *Stan debaty publicznej, zainicjowanej przez polską Prezydencję* (*Where is CAP Going to? Status of the Public Debate Initiated by the Polish Presidency*) *'The proposed reform is just a minor refinement but not a fundamental change... I am deeply convinced that the lesson we have learn from the current crisis will enable us to work out solutions that will lead to a true and profound reform of the CAP, which will make European agriculture stronger and more competitive on the global market'* (Ministry of Agriculture and Rural Development, Warszawa, 9 January 2012.)

the Integrated Administration and Control System) and require time, the time that – in view of prolonged negotiations and delayed agreements – we may run out of

The Commission has proposed the redistribution of funds allocated to direct payments between Member States ('financial envelopes') for the years 2014–2020. Unfortunately, the basis for calculations is the historical intensity of agricultural production dating back to the pre-accession period. As a result, the current disparities in the level of payments, despite the formally accepted principle of decoupling, will remain 'fossilised' – the average rate per hectare of agriculturally used land is estimated to range from ca 141 euro in Latvia to ca 669 euro in Malta (the estimated rate for Poland is 221 euro). The disparity will therefore reach over 500 euro; in relative terms, it is a 4.74-fold difference (Chart 2).[38]

Thus, the proposed post-2013 model does not correspond to the current market conditions: the level of social welfare, structure of production costs, etc.,

Chart 2. Average amount of direct payments per hectare in 2019, according to the EC proposal (in EUR)



Source: M. Zagórski, *WPR po 2013 roku. Propozycja modyfikacji wniosków legislacyjnych Komisji Europejskiej (The CAP after 2013...)*, Europejski Fundusz Rozwoju Wsi Polskiej, Warszawa 2012, p. 3.

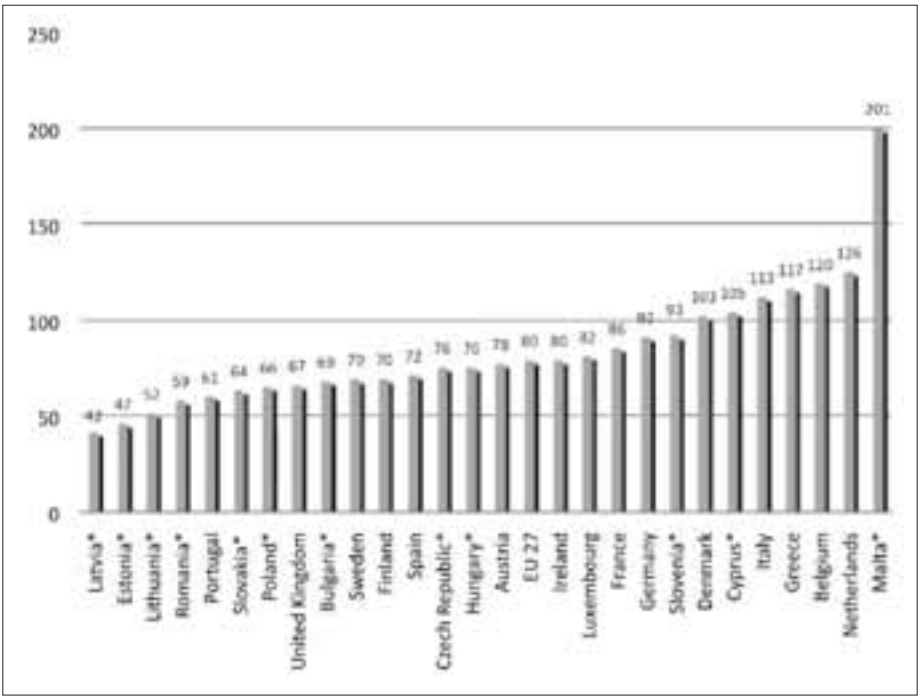
[38] Quoted after: M. Zagórski, *WPR po 2013 roku. Propozycja modyfikacji wniosków legislacyjnych Komisji Europejskiej (The CAP after 2013. The Proposal to Modify the Legislative Proposals of the European Commission),* Europejski Fundusz Rozwoju Wsi Polskiej, Warszawa 2012, p. 2.

which are largely shaped by belonging to the area regulated by the Common Agricultural Policy. Therefore, ensuring similar conditions for competition between farmers from different countries leaves much to be desired.

Greening

Among all proposed changes, the question of greening could be pointed to as a "hot potato".[39] The Commission suggests that payments for good practices for climate and environment should be a mandatory component of the system. The obligatory nature of this component is questioned. Such requirements as crop diversity or setting aside 7 per cent of eco-friendly arable land and maintaining it in good agricultural condition, in some cases may prove to be both difficult and hardly useful

Chart 3. Diversification of the rates of payments for good climate and environmental practices in 2019, according to the EC proposal (in EUR)



Source: M. Zagórski, *WPR po 2013 roku. Propozycja modyfikacji wniosków legislacyjnych Komisji Europejskiej (The CAP after 2013...)*, Europejski Fundusz Rozwoju Wsi Polskiej, Warszawa 2012, p. 5.

[39] Term used in reference to difficult issue, causing lively disputes.

Other controversies concern the ways of setting rates of payments for good climate and environmental practices. The basis for the calculations is the assumption that the calculated contribution for 'greening' will equal 30 per cent of the envelope. This means that the differences in payments between particular countries will be fossilised.[40] Once again, it is Latvia (ca 40–42 EUR/ha) and Malta (201 EUR/ha) that lie at the opposite ends, the divergence being almost five-fold (Chart 3). It is not easy to understand why rates for greening actions should be varied. Poland is to receive 40 EUR/ha (at a payment of 66 EUR/ha) and Greece – 22 EUR/ha (at a payment of 117 EUR/ha). Therefore, it is worth considering another proposal,[41] i.e. to first separate a pool of money on greening from the general EU budget allocated to direct payments and then redistribute it between particular countries using a uniform rate – which would then equal ca 80 EUR/ha annually.

Other proposals concerning the First Pillar

Formal declarations that the CAP will be simplified are not confirmed by the presented proposals. We should at least consider whether the option granted to small farms, such as submitting one direct payment application for the whole budgetary period, should not cover other farms as well.

Furthermore, the way the Commission proposes to support young farmers may lead to substantial differences in the level of payments received by farmers living and working in different EU Member States.[42]

A few comments on the Second Pillar

It is hard to speak of any breakthrough in this area either – the suggested decrease in the number of measures and their division into axes is a change in the way these measures are registered. Most of the measures defined as 'new' ones deal with the same areas as before. They are just grouped differently.

The states benefiting from the previous solutions may oppose the proposed change in specifying the less favoured areas. In Poland (and in Germany as well) the total area of LFA may decrease by as much as around 1/3.

On the other hand, new risk management instruments, such as co-financing farmers' insurance policies, supporting mutual funds for combating plant and animal diseases and the Income Stabilisation Tool including supporting mutual funds for insuring farmers' income sound very interesting.[43]

[40] *Ocena najważniejszych założeń pakietu legislacyjnego WPR 2020 z perspektywy Polski (The Assessment of Key Assumptions of the Legislative Package of the CAP in 2020 from the Polish Perspective)* in: *Dokąd zmierza WPR...*, op.cit., p. 2.

[41] M. Zagórski, *WPR po 2013 roku...*, op.cit., pp. 7–8.

[42] A young farmer in Poland who has a 100-hectare farm would receive ca 1300 euro, whereas a young Czech farmer with a similar farm would receive nearly five times more – as calculated by M. Zagórski in: *WPR po 2013 roku...*, op.cit., p. 13.

[43] Ibidem, pp. 16-19.

However, at the moment these proposals are very sketchy and general. Their more detailed form is to come during further debates.

Conclusions

The European Commission, especially since 2005, has taken various actions to simplify the rules, procedures and mechanisms of the Common Agricultural Policy. They have evolved into one of the goals of the reformed policy for 2014–2020. Simplification is perceived as a necessary condition for improving the effectiveness of budget expenditure on agricultural policy and the competitiveness of the EU agriculture on the global market.

The results obtained so far are not very impressive. This conclusion is confirmed by beneficiaries, who feel that the requirements and procedures are becoming more complicated rather than simpler. Therefore, the attitude of officials responsible for the implementation of the CAP measures needs to change. Likewise, employees in Paying Agencies, who are now interested in the passive execution of the binding laws and procedures, should rethink their approach.

What is necessary is close collaboration not only between ministers of agriculture and rural areas, but also with the Council of Europe, the COPA-COGECA group, mass media and other opinion-making circles, for the sake of attaining true simplification of the CAP. Any such actions deserve broad support.

Before the accession, the integration of the Polish agriculture with the EU structures caused numerous worries among interested parties. Most of the doubts have proven groundless. The total balance of the first years of Polish membership in the EU for Polish agriculture and the whole food production sector is positive – this is confirmed by the fact that Poland is now an important exporter of food products among the EU-12 countries. The EU rural development support programmes have been used fruitfully.

In addition, certain problems have emerged. Some difficulties, for example the low potato starch quota, originate from the provisions of the Accession Treaty, as not all of them were favourable for Poland. Others can be attributed to the general weaknesses of the CAP and other EU programmes. Although all rural areas have been developing recently, it is worrying to see that the gap between the poorest and the richest areas is growing bigger instead of diminishing.

Poland is no longer a passive 'recipient' of support programmes. It obviously aspires to be a leader among the Central and Eastern European Countries (the CEEC). And perhaps it has already become one. Consequently, Poland is a critical commentator of suggested reforms of the CAP. Several suggestions were phrased more precisely during the first Polish Presidency in 2011. Among the most essential questions are the ones which aim at levelling differences in payments per hectare of farmland between the EU-12 and EU-15 Member States. Poland advocates this change on behalf of all new Member States.

At the same time, Poland is aware of a much more fundamental matter – the proposed extent of reforms in the CAP is not sufficient in the context of the last economic crisis or changes in the world economy (emerging markets, i.e. growing economic and political role of China, India and several other countries). Not much time is left to work on better solutions before the final decisions are made.

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Bartłomiej Nowak

Energy Policy of the European Union – Myth or Reality?

Introduction

The energy policy of the European Union (EU) is a concept which is rather difficult to pin down. In general, it encompasses legal, political, business-related as well as environmental considerations. Although the Community has legislated in the area of energy policy for many years, the concept of introducing a comprehensive European energy policy for all Member States is fairly new. Accordingly, it was quite a typical phenomenon over the past decades, until the mid-eighties, that the energy sector was dominated by public monopolies strongly dependent upon state regulation and control and therefore very resistant to change. With this state of affairs, it was hardly surprising that actions undertaken by the European Commission until the mid-eighties with the intention to develop a common energy policy, one that would promote energy solidarity among the Member States on the common (internal) energy market of the European Union, brought no significant progress in that field.[1] It is not an exaggeration to say that for many years the provisions of the EC Treaty concerning the energy industry were not actually applied. As a result, the principal role in regulating the energy sector was taken over by national legislation, thus pushing the Community law to the background. It was only recently that the Treaty of Lisbon provided a new opportunity to seriously reconsider the idea of a common energy policy for all EU Member States. In fact, the possible principles of the EU energy policy were first elaborated in the Commission's Green Paper "A European Strategy for Sustainable, Competitive and Secure Energy"[2] and in

[1] See more in: J. Hassan, A. Duncan, *Integrating Energy: The Problems of Developing an Energy Policy in the European Communities*, "The Journal of European Economic History" no. 23/1994, pp. 164; see also P. Cameron, *Competition in Energy Markets, Law and Regulation in the European Union*, New York 2002, pp. 39–43.

[2] Green Paper, "A European Strategy for Sustainable, Competitive and Secure Energy", Brussels, 8.3.2006, COM (2006) 105 final.

"An Energy Policy for Europe".[3] Both documents identify six key areas where action is necessary to address the challenges the EU presently faces. The key areas include:

- Competitiveness and the internal energy market;
- Security of supply (mainly diversification of the energy mix);
- Solidarity;
- External policy (especially energy relations with third countries);
- Sustainable development;
- Innovation and technology.

The variety of issues relevant for the EU energy policy makes it almost impossible to discuss every concept in detail. Therefore, for the clarity of this publication, some limitations have to be introduced. As a result, the most fundamental question which this article seeks to answer is whether an agreement reached on the need to develop the common European energy policy could be reached and whether internal (competitiveness and internal energy market) as well as external issues (security of supply, external policy) should be the core principles to underpin this policy? The answer is yes, although such a process is a difficult and lengthy one.

This paper reviews the developments that have produced the current state of EU energy policy and discusses the prospects for further progress in the light of the challenges that remain. These challenges include the slow process of creating the internal energy market, as well as the lack of a comprehensive common external energy policy – especially with regard to the security of supply and the relations with third countries. Although sustainable development, together with the environmental protection and climate change, are equally important issues in the EU energy policy, they will not be discussed in this volume.

Treaty of Lisbon – towards a Common Energy Policy

According to some researchers,[4] the lack of progress in the area of creating a common energy policy has been influenced to a certain degree by the lack of a separate chapter in the EC Treaty specifically dedicated to energy issues. This was despite proposals being submitted to include the energy policy in the Single European Act (SEA) or in the Treaty on the European Union, Treaty of Maastricht. Nevertheless, even within the doctrine, there are opinions opposed to the view that the creation, at that time, of a separate chapter in the EC Treaty dedicated to the energy sector could have overcome or remedied the problems related to the devel-

[3] Communication from the Commission to the European Council and the European Parliament, An Energy Policy for Europe, Brussels, 10.1.2007, COM (2007) 1 final.

[4] See for instance: D. Swann, *The Economics of the Common Market,* London 1988; E.D. Cross, *EU Energy Law. The Treaty Framework* in: *Energy Law in Europe, National, EU and International Regulations*, M. Roggenkamp, A. Rønne, C. Redgwell, I. Del Guayo (eds.), Oxford 2007, pp. 219, 225–227.

opment of a common energy policy in the European Union.[5] However, the Member States provided little support for the introduction of a new chapter on energy. This reflected their obvious motivation, manifested at the national level, to maintain as great a control over the energy sector as possible. Furthermore, even in the European Commission – the key propagator of energy market liberalisation and advocate of a common energy policy – the opinions as to whether it was advisable to add a new chapter to the EC Treaty were highly divided. Those favouring such a solution pointed out that this would equip the Commission with additional powers to carry out necessary legal actions for the development of a common energy market and policy. On the other hand, experts in the field of competition law argued that the fundamental treaty principles were lucid enough and there was no need to supplement them with another separate chapter dealing with energy.[6]

It was only recently that the Constitutional Treaty[7] provided a new opportunity to seriously reconsider the idea of a separate energy-related chapter as part of the fundamental Treaty. However, according to Hancher,[8] the introduction of a dedicated chapter on energy to the new Constitution for Europe, and in effect to the Treaty of Lisbon (the Treaty on the Functioning of the European Union) fails to solve all the legal problems surrounding the issue of the Commission's powers to address energy-related issues of individual states. On the other hand, however, the introduction of a chapter concerning energy, namely Article 194 TFEU, into the Treaty on the Functioning of the European Union (TFEU)[9] provides a legal basis for development of a common energy policy[10] in the spirit of solidarity among the Member States. The aim of this is, among others, to ensure the proper functioning of the common energy market and the security of supplies to the EU.[11] Moreover, the new

[5] G. Rashbrooke, *Clarification or Compilation? The New Energy Title in Draft Constitution for Europe*, "Journal of Energy and Natural Resources Law" no. 22(3)/2004, pp. 375–377.

[6] See, e.g.: *'...it is totally wrong to justify the status quo by the lack of the special chapter on energy in the EC Treaty. Such a chapter is neither necessary nor, in my view, desirable'*, C. Ehlermann, *Role of the European Commission as Regards National Energy Policies,* "Journal of Energy and Natural Resources Law" no. 12(3)/1994, pp. 342, 346–347.

[7] See Article 176 A concerning the energy industry in the Treaty establishing a Constitution for Europe signed in Rome on 29 October 2004 which never entered into force. Treaty establishing a Constitution for Europe, OJ C 310/1, 16.12.2004.

[8] L. Hancher, *The New EC Constitution and the European Energy Market* in: *European Energy Law Report II,* M. Roggenkamp, U. Hammer (eds.), Antwerpen 2005, pp. 3–14.

[9] More about the need to create a chapter dedicated to the energy industry – see also S.S. Haghighi, *Energy Security and the Division of Competences between the European Community and its Member States*, "European Law Journal" no. 14(4)/2008, pp. 461–482.

[10] K. Kurze, *The Changing Discourse of Energy Security. A New Impetus for Energy Policy Integration in the European Union?*, "Transatlantic Research Papers in European Studies (TraPES)" no. 2/2010, p. 5.

[11] However, there has been a debate within the doctrine regarding the Article 194 TFEU as legal basis serving only: (i) to adopt legal acts in the area of energy, but only under functioning or development of the common market, as suggested by Walde in: T. Wälde, *Energy in the Draft EU Constitutional Treaty*, "OGEL" no. 5/2003, p. 4; or in a much broader manner, (ii) *i.e.* as legal basis mainly used to adopt legal acts necessary to achieve the Treaty objectives, as mentioned in

chapter of the Treaty, dedicated to energy matters, indirectly strengthens the role played by the European Commission as an initiator of legislative changes in national energy markets. However, as correctly noted by Nowacki,[12] for the process to be successful, it would also require the will to change on the part of individual states, rather than solely the legal basis. Unless such good will, mainly political will, is truly manifested, the present energy-related Article may, unfortunately, remain a non-implemented declaration. Indeed, the lack of such political will may inactivate even the most ambitious and weighty legislative drafts. Unfortunately the will to implement depends largely on the geopolitical (external) conditions of the Member States regarding energy sources, which shall be discussed further.

Internal aspects of the EU Energy Policy

Europe's aim of achieving a fully integrated and competitive energy market comprised of 28 national markets is a unique mission – difficult but not impossible to achieve. For decades, a unified European energy market with common energy policy existed solely in theory. Rather, it remained an economic sector dependent on and under the control of the different national governments. It did so for two reasons. First, because these nations attached very high importance to energy matters, which they perceived as strategic to their national economies, they wanted to exercise close control of energy. Second, the very high cost of the energy infrastructure kept the national energy markets dependent on their respective national governments. Not surprisingly, it is only recently that the segmented European energy markets are being combined together under the name of the internal energy market as a large part of the EU energy policy. Although Europe is on the right track, the process of unification is still far from being complete. One has to bear in mind that the creation of a solid energy policy and a common energy market, one that would take under consideration the views of many different Member States, cannot occur all at once but will occur only over time. The reason for this is that it involves a complicated process of political negotiations, decision-making, the passing of specific legislation, and massive market adaptations. Moreover, it should be clear that the necessary political involvement will not end with the decision to establish a common energy policy or with the completion of the legislative work required to establish the market framework as part of this policy. Continued political involvement will be required to create a competitive European internal energy market as well as to monitor and regulate the exercise of monopoly powers by independent national regulators.

paragraph one of Article 194 (including, among other things, security of energy supplies to the EU, thus reaching beyond the idea of the common market, as indicated by Bogdanowicz in: T. Bogdanowicz, *Interes publiczny w prawie energetycznym Unii Europejskiej (Public Interest in the European Union's Energy Legislation)*, Warszawa 2012, p. 46.

[12] M. Nowacki, *Prawne aspekty bezpieczeństwa energetycznego w UE (Legal Aspects of Energy Security in the EU)*, Warszawa 2010, p. 82.

As a matter of fact, well functioning, liberal domestic energy markets ensuring secure energy supplies at competitive prices are fundamental for economic growth and consumer benefit in the EU. To achieve this double objective, Community institutions must foster the observance of the EU competition law and harmonise the domestic energy markets through directives and regulations. For the purpose of harmonisation, the Community introduced legislation at three different times. The first was in the 1990s and included laws to end legal monopolies in the electricity and gas sectors. Unfortunately, the legislative framework established by the first electricity and gas directives[13] – which aimed at allowing large industrial users to freely choose their supplier, at granting access to independent third parties, and at separating the operations of vertically integrated companies – did not prove as beneficial as envisaged. In response, the Community adopted a second legislative package.[14] It further liberalised the energy sector by unbundling vertically integrated activities of the electricity and gas conglomerates and reducing their horizontal concentration, by introducing competition in the wholesale generation market and retail supply, by monitoring transmission and distribution networks through mandating regulated third party access to the energy infrastructure, as well as by introducing fixed access tariffs, which were to be established and approved by national regulators that the Member States were also obliged to set up. The third wave of energy legislation came just recently (August 2009) and the Member States were obliged to bring into force the provisions necessary to comply with the third package of directives[15] by 3 March 2011.

Additionally, two other legislative acts provide for structural changes in the regulatory framework of the electricity and gas sectors with the aim of harmonizing trade between the Member States. Regulation 1228/2003 of the European Parliament and Council, as amended by regulation no. 714/2009,[16] which stipulates the conditions for access to the network for cross-border exchanges in

[13] Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, OJ L 027, 30.01.1997; Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas, OJ L 204/1, 21.07.1998.

[14] Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity, OJ L 176/37, 15.07.2003; Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas, OJ L 176/57, 15.07.2003.

[15] Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing directive 2003/54/EC, OJ L 211/55, 14.08.2009; Directive 2009/73/EC of the European Parliament and of the Council of July 13 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211/94, 14.08.2009.

[16] Regulation No 1228/2003 of the European Parliament and Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity, OJ L 176/1, 15.07.2003; Regulation 1228/2003 has been amended by regulation no 714/2009 of the European Parliament and of the Council of July 13 2009 on conditions for access to the network for cross-border exchanges in electricity, OJ L 211/15, 14.08.2009.

electricity (hereinafter electricity regulation), and regulation 1775/2005 of the European Parliament and Council, as amended by regulation no. 715/2009,[17] which lays out the conditions for access to the natural gas transmission networks (hereinafter gas regulation), set non-discriminatory rules for cross-border trade of electricity and gas. The aim of these regulations is the establishment of harmonised principles and methodologies for calculating tariffs and for setting both non-discriminatory rules (for access to transmission systems, capacity allocation, and congestion management) and balancing rules.

The third package[18] is meant to ensure that all European citizens can take advantage of the numerous benefits provided by a truly competitive energy market. Consumer choice, fairer prices, cleaner energy and security of supply are at the centre of the third legislative package.

While the scope of the electricity and gas directives is complex and includes numerous requirements for the Member States, their objective is to transform the monopolistic base of the electricity and gas markets by making both the wholesale and retail markets free, open and competitive. To this end, the directives outline a balanced approach to the access to the system and competition; in addition, they broadly apply the principle of subsidiarity to permit the individual nations to adopt the means of fostering competition that are most suitable to their particular economic, social, political, and legal traditions, thus facilitating the incorporation of the directives into national law. However, the legalities involved in enacting the directives and harmonizing the divergent energy laws in the Member States on the way toward creating the European internal energy market are complex and require a huge institutional and human effort. Achieving the goal of a free, open, and competitive energy market requires more than just hiring more civil servants or judges; it requires changing the very structure and operating methods of companies and governmental institutions. Sometimes existing institutions have to be redefined and reorganised; sometimes new institutions have to be created, as is the case with the establishment of energy regulators. This is not an easy task, espe-

[17] Regulation no. 1775/2005 of the European Parliament and Council of 28 September 2005 on conditions for access to the natural gas transmission networks, OJ L 289, 3.11.2005; Regulation no. 1775/2005 has been amended by regulation no. 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks, OJ L 211/36, 14.08.2009.

[18] Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing directive 2003/54/EC, OJ L 211/55, 14.08.2009; Regulation EC no. 714/2009 of the European Parliament and of the Council of July 13 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing regulation EC no. 1228/2003, OJ L 211/15, 14.08.2009; Directive 2009/73/EC of the European Parliament and of the Council of July 13 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211/94, 14.08.2009; Regulation (EC) no. 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) no. 1775/2005, OJ L 211/36, 14.08.2009.

cially with certain Central and Eastern European nations. Poland, for example, is still affected by the legacy of the past, which makes the transposition of the directives and the entire process of energy law approximation more difficult. Until the very late 1990s, regulation was a foreign concept to Polish organisational and legal theory and practice, and an unwanted one to policy makers, who viewed independent regulators as a threat to their control of the economy. For these two reasons, Poland's implementation of the EU rules to create national sectoral regulation and the regulatory authorities to go with them has been difficult. An additional reason is that EU laws, particularly in the telecommunication or the energy sectors, tend to be vague. They provide general goals; however, in the spirit of deferring to the traditions and cultural particularities of the individual Member States, they typically leave it to the national legislative bodies to interpret them and find what is the most appropriate way of acting on them given their particular social, economic, and political circumstances.[19] As a result, approximation of laws is not simply a technical legal issue, but also a sociological problem of finding a way to integrate the social fabric of the individual countries with the common European standards and the laws that support them.

These differences are important for understanding the difficulties the Member States have encountered in their legislative attempts to transpose and incorporate the directives into the domestic legal systems. The members of the European Union have not transposed the directives in a uniform manner – some have done that more quickly and more effectively than others. These differences were visible in the infringement proceedings conducted by EU Commission against the majority of Member States, including Poland.

Nevertheless, with all their limitations, directives of the third set improve the legal framework for governing competition in the gas and electricity industries, as they are in the process of becoming increasingly liberalised. Nevertheless, the critical issues of proper and full unbundling, of non-discriminatory third party access to infrastructure, and of the sound operation of the networks remain in need of further attention, as does the role of the independent regulators, whose presence is critical to furthering the development of the competitive market and whose decisions on network access tariffs and other key rules will profoundly shape the development of the energy markets inside the EU. Again, although the directives are not perfect, they have helped make the process of liberalisation irreversible. Any imbalances that have occurred in the unequal opening of the markets, both on the supply side and the demand side, should be addressed either by pursuing infringement proceedings or by amendments to the present legislation. Energy liberalisation, however, will not be fully accomplished without the rigorous enforcement of the present sector-specific rules and a proactive application of the competition rules by the responsible domestic authorities. After all, competition

[19] For more on the regulation in Polish legal system see: W. Hoff, *Polish Energy Regulation in its European Setting*, Warsaw 2007, pp. 63–65.

law should serve the fundamental requirements of the internal energy market – that is free and fair competition.

External aspects of the EU Common Energy Policy

The external conditions concerning energy policy, including the security of supply and the relations with third countries, shall be seen from the perspective of the European Union as a whole or from that of the common energy market, especially in relation to supplies of gas. The common market does offer the possibilities of diversification of energy sources due to closer integration and cooperation of the national gas markets. Therefore, the advantage of the integrated market lies with greater strength and a better bargaining position of the EU energy businesses that ensures sources of energy to global markets, which results in better choice of supply routes and easier access to end users. This is particularly important in the context of the EU's (especially its new members') strong dependence on a single gas supplier. While in 2001, supplies from abroad covered 31 per cent of the EU's demand for natural gas, it is estimated that by 2025, the EU's needs for the import of gas will increase to roughly 60 per cent of consumption.[20] Furthermore, competitive markets, which constitute the aim of the energy market liberalisation, favour the goal of diversification since they are capable of reacting more flexibly to any changes in supply and demand in global markets.[21] However, one serious problem which complicates the efficient operation of an integrated European gas market is that of cross-border connections and the lack of adequate LNG infrastructure in the countries having access to seas. Having such an infrastructure in place would be equal to freeing a given country and the entire European Union from dependence upon a single supplier.

Apart from this technological issue, there is also the fundamental problem of the lack of a common position among the Member States in relation to gas supplies from outside the EU, which seriously handicaps the potential for creating a consistent energy policy, especially in terms of external relations at the EU level.[22] Several EU countries have been involved in negotiating long-term contracts, in most cases with incumbent upstream suppliers. In reality, these countries appear to be motivated by their national political considerations rather than by the

[20] N. Cornwall, *International Trade in Gas and Prospects for UK Gas Supplies* in: *Regulating Utilities and Promoting Competition. Lessons for the Future*, C. Robins (ed.), Northampton 2006, p. 45.

[21] More on this subject – see: B. Nowak, *Energy Market of the European Union: Common or Segmented*, "The Electricity Journal" no. 23(10)/2010, pp. 27-37.

[22] A similar opinion was voiced by Riedel as he wrote about the lack of *'…binding decisions on running a true common energy policy – read stronger, enriched with an element of synergy and group effect – versus extra-Community partners'*; R. Riedel, *Supranacjonalizacja bezpieczeństwa energetycznego w Europie. Podejścia teoretyczne (Energy Security in Europe Gaining Supra-National Dimension. Theoretical Approaches)*, "Zeszyt Centrum Europejskie Natolin", no. 40, Warszawa 2010, p. 10.

concern for the security of supplies as seen from a pan-European perspective.[23] Another point is that the problems of energy security are not seen as the basis of the Community's Common Foreign and Security Policy. Riedel[24] indicates that many proposals for deepening cooperation in this field are met with profound scepticism by certain Member States, which often creates or aggravates the existing divisions among them. It is paradoxical that whilst being in charge of foreign policy from the outset, the European Union does not have to date even one binding document which would specify its entire foreign policy, including that relating to energy security or to the broad foreign dimension of energy policy. As emphasised in the Solana report,[25] the European Union has to face some of its old unsolved challenges recurring in augmented form and some newly emerging ones, such as energy security or climate change. This requires a search for consistent and effective solutions on a European scale. It is within this context that the second strategic energy review, in the form of the Communication from the Commission "On the EU energy security and solidarity action plan",[26] lists increased emphasis on energy-related issues in international relations as one of the EU's five priorities for the area of energy. From the point of view of the new members, it is a declaration on regulating the energy relations with Russia. This seems noteworthy, although inevitably a difficult point of division among the Member States as regards their relations with Russia. Another document that notes the importance of relations with Russia, the European Union's largest trade partner in gas, is the Communication from the Commission "The EU Energy Policy: Engaging with Partners Beyond our Borders".[27] This document highlights the EU's foreign energy policy as being of crucial importance for the creation of an internal energy market. The author of this study does not, however, agree with this statement, considering that it is the common internal energy market that is going

[23] More on this subject – see M. Kaczmarski, *Bezpieczeństwo energetyczne Unii Europejskiej (European Union's Energy Security)*, Warszawa 2010, where the author analyses the threats and challenges for the Community energy security, including various views on the issues of energy security in individual EU Member States and the influence of Russia upon the EU policy in this respect.

[24] R. Riedel, op.cit., p. 12.

[25] A report presented by the EU High Representative for CFSP Javier Solana on the implementation of the Common Foreign and Security Policy. The document, titled *Providing Security in a Changing World* was accepted by the European Council in December 2008. The report evaluates the implementation of the European Security Strategy of 2003, also including proposals aimed at improvement of its implementation and its enrichment with some advisable points.

[26] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Second Strategic Energy Review, An EU energy security and solidarity action plan, Brussels, 13.11.2008, COM (2008) 781.

[27] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, On security of energy supply and international cooperation – "The EU Energy Policy: Engaging with Partners Beyond our Borders", Brussels, 7.09.2011, COM (2011) 539 final.

to determine the development of the external energy policy, rather than vice versa. The common liberalised market acts as a guarantor of free trade in energy products, including gas, within the Union. Free trade in gas among the Member States and free access to infrastructure for all sellers (suppliers) should gradually eliminate the Member States' various dependencies upon imports and encourage them to have similar interests in terms of an external energy policy.

However, in order to achieve this objective, free trade in gas products between the Members States has to be allowed. It should be noted that exports in the gas sector have been dependent on the extraction of the energy carrier. At present, only two European countries, Norway and Russia, possess ample gas resources allowing them to export gas and neither of them is an EU Member State. All Member States of the present European Union have to import gas. While possible, trade between the Member States is restricted by the structure of the national markets, which are protected by dominant entities and destination clauses.[28] Gas monopolies, existing in almost all EU Member States, largely preclude independent players from entering their national gas markets. Furthermore, contracts signed by EU countries (and more specifically, by their energy enterprises) with other global upstream suppliers, especially with Gazprom, mostly include a prohibition of resale of Russian gas by national gas trading companies to other Member States (destination clause). These actions violate one of the fundamental freedoms in EU economic law, namely the rule of free movement of goods within the Union. Perhaps this will change in the foreseeable future, but it will require collective action by the EU countries in conjunction with their other partners. An example which shows that change may be forthcoming can be found in the contract signed by the European Commission (by the Directorate General for Competition) with the Algerian state owned gas company Sonatrach, which waives destination clauses and allows all EU based traders to resell Algerian gas within the EU.[29]

With the above considerations taken into account, a broader context of relations with Russia includes, for example, a plan of negotiating a complex agreement which would replace the partnership and cooperation agreement of 1997 and constitute a solid legal basis for ensuring cooperation in the area of energy. Russia will remain the EU's key partner in the field of energy for a long time to come. Accordingly, efforts should be made in order to develop proper economic relations with Russia within the gas sector. Consolidation in a single legal act of the crucial principles upon which the partnership between the EU and Russia

[28] Destination clauses are clauses expressed in the form of territorial restrictions prohibiting gas resale to customers outside a specified region.

[29] On July 9, 2007, Algeria and the EU finalized an agreement dealing with territorial restrictions, allowing companies of EU member states that import Algerian gas the right to resell it either within their own domestic markets or to third party countries. For more – see E. Waktare, *Territorial Restrictions and Profit Sharing Mechanisms in the Gas Sector. The Algerian Case*, "Competition Policy Newsletter" no. 3/2007, pp. 19-21.

could be founded would be of advantage to both parties. Bearing this in mind, negotiations concerning a new agreement between the EU and Russia[30] could cover a number of pivotal issues, including: access to energy resources, access to transit networks and export markets, protection of investments, prevention of crises, provision of equal conditions of operation, and specification of prices for energy resources. It is also necessary to ensure predictability of the transport of Russian gas to the EU and to clarify the principles with which Russian gas companies could make investments in energy-related activities in the EU. Most importantly, such an agreement with Russia needs to contribute to the development of binding and effective provisions concerning the resale of Russian gas by all European businesses inside the EU, which have not existed to date.

Taking into account the need to create a new agreement between the EU and Russia, one should remember that since natural gas was perceived as an instrument for exerting political pressure, European gas security was put in jeopardy. Indeed, the EU has recently found itself in quite a complex situation because of this. The lack of solidarity or a common policy towards external partners at the EU level gives external suppliers better opportunities for negotiating long-term contracts for gas supplies with individual EU Member States. Unfortunately, it appears that the EU is responsible for this, at least to some extent. It was a mistake, in the author's estimation to allow the EU's momentum in pursuing proper back-up in the gas sector and that of energy-related negotiations with Russia in the late nineties, following the conclusion of the Energy Charter Treaty, to deteriorate. In that period, the prices paid for gas were relatively low and Russia was in a dire need of an inflow of foreign investment.[31] This constituted a perfect opportunity for gas companies from the EU to secure their interests in the field of supply and to begin cooperation with state-owned Russian enterprises. Presently, with the high price of gas (which largely results from the high price of oil), demand increases constantly. This allows Russia to either develop its technologies independently or purchase them from "independent" contractors, without diminishing its resources for the benefit of foreign businesses. In effect, the future of international agreements, such as the Energy Charter Treaty, obliging the states which ratified it to open their energy markets to foreign companies, seems rather bleak, at least while prices of gas in the EU remain high.[32] For Russian authorities – who refused to ratify the Energy Charter Treaty – the main obstacle has been the Energy Charter Protocol regarding transit (Transit Protocol), under which the access to transmission infrastructure takes place in line with internal

[30] A new agreement between the EU and Russia will aim to establish a comprehensive framework for cooperation and will replace the agreement on partnership and cooperation between the EU and Russia, which has been in force since 1997.

[31] More on foreign investments – see in: B. Nowak, *Foreign Direct Investment in the Petroleum Sector in Poland*, "Journal of Interdisciplinary Economics" no. 16(1)/2004, pp. 57-77.

[32] At least in long term contracts. For more see: B. Nowak, *Wewnętrzny rynek energii w UE (Internal Energy Market in the EU)*, Warszawa 2009, p. 44.

tariffs.[33] Ratification of the Treaty by Russia would also allow such countries as Azerbaijan, Georgia, Kazakhstan, or Turkmenistan, which have already ratified the Treaty, to transport oil and gas to the EU via Russian transit networks on the same conditions as those enjoyed by Russian businesses. Therefore, Russia is concerned that the ratification of the Treaty could increase the role of Central Asian countries in the international trade in energy carriers. This could result in the weakening of Russia's control over the transit of energy carriers to the EU and in decreasing the influence and predominance of Russia has in Central Asia.[34] Considering the strong position of Russia in the raw materials market and their use as an element of foreign policy, it seems that the need to develop a common policy regarding solidarity and security of gas supply to the EU has become, at the present stage of European integration, an issue of crucial importance.

Issues of supply security and energy solidarity are at the forefront of the current debate in Central and Eastern European countries (CEE). The sensitive geopolitical situation of these CEE countries coupled with their strong dependence on Russian energy carriers (gas and oil) is additionally complicated by the fact that Russia largely, and especially in the case of the Baltic states, views that part of the EU as the former zone of its influence. However, the CEE countries did not choose to be dependent on just a single supplier. Rather, it is a burden and consequence of having "inherited" from the previous Soviet block the infrastructural network whose supplier sources were situated on the territory of the former Soviet Union. The transit gas pipelines such as Yamal or Brotherhood, which transport gas from the East to the West, that is from Russia to other European countries, have a clearly defined supplier. This way, the inherited infrastructure precisely defines the direction in which gas transit takes place, especially for Central and Eastern European countries. Therefore, the clause concerning energy solidarity in the case of a crisis of energy carriers supply (as expressed in Regulation no. 994/2010/EU) is perceived by leaders of CEE countries as an instrument of protection against Russia's ambitions. Additionally, new EU Member States are much more dependent on Russia as the source of gas supply than the older Member States. This, in turn, determines a different approach to the relations with Russia as the EU strategic partner in gas trade. Historically, relations between Russia and Central and Eastern European countries were fundamentally complex. This can be seen in Russia's present policy towards the Baltic states which has had a negative influence upon the way the new EU Member States perceive Russia as the EU's principal trading partner in gas. Russia is seen as benefitting from its position and its access to energy carriers and as inter-

[33] More on this subject – see: *The International Comparative Legal Guide to: Gas Regulation 2007. A Practical Insight to Cross-Border Gas Regulation Work – Russia*, Global Legal Group, London 2007, p. 208.

[34] B. Nowak, *Forging the External Dimension of the Energy Policy of the European Union*, "The Electricity Journal" no. 23(1)/2010, pp. 57–66.

ested in using gas as a political weapon in its relations with the neighbouring countries.[35]

It appears, however, that the fears of the new Member States are not entirely appreciated or taken into account by the old EU members, which is especially true for Italy, Spain, Germany, and France. For these countries, import of gas from Russia accounts for only 20–30 per cent of their entire imports while in the new Member States this amounts to as much as 60–100 per cent.[36] This difference is quite understandable, considering the relatively advanced projects of gas connections between Southern and Western Europe with Africa. The already existing gas pipelines, such as Green Stream (Libya – Italy), Trans-Mediterranean (Algeria – Italy), Maghreb-Europe (Algeria – Spain and Portugal), are in the process of being supplemented by, among others, the gas pipelines Medgaz (Algeria – Spain), Galsi (Algeria – Italy) and Trans-Saharan, connecting rich deposits in Nigeria with the existing transit gas pipelines in Algeria and towards Europe. The opening of the latter one is scheduled to take place in 2015.[37]

A strict cooperation between Germany and Russia in gas-related issues is hardly acceptable to Poland and to the Baltic states, who fear renewed Russian domination in the region. In effect, the matter of supply security became even more contentious following the German Government's decision to strengthen relations with Russia by forming a consortium responsible for construction of the Nord Stream pipeline,[38] running on the bottom of the Baltic sea. Until recently, the project was perceived as offensive by the decision-makers from Central and Eastern European countries and termed an egoistic solution to the problem faced by the entire Union. In fact, Poland, which was bypassed by the Nord Stream, views this project as a threat to its energy security, as often shown in the opinions voiced by Polish politicians. Some scholars, however, argue[39] that the construction of the Nord Stream pipeline will undermine the idea of energy solidarity and

[35] More on this subject – see B. Nowak, *Gas Market Liberalization and Energy Security. Legal and Institutional Aspects*, Warsaw 2012, pp. 102–107 and B. Nowak, *Forging the External*..., op.cit., pp. 61–63.

[36] On divergent objectives in energy policies of the Member States, especially the United Kingdom, Germany, France and Poland – see O. Geden, C. Marcelis, A. Maurer, *Perspective for the European Union's External Energy Policy*, Working Paper FG 1, SWP – German Institute for International and Security Affairs, Berlin 2006, pp. 5–6 and subs.

[37] More on new gas pipelines – see J. Krzak, *Zaopatrzenie w gaz ziemny. Europa, Polska: problemy dywersyfikacji (Natural Gas Supply. Europe, Poland: Problems of Diversification)* in: *Polityka energetyczna (Energy Policy)*, M. Sobolewski (ed.), Studia Biura Analiz Sejmowych Kancelarii Sejmu, no. 1(21)/2010, Warszawa 2010, p. 155.

[38] The Nord Stream gas pipeline, 1224 km long, will enable its operator to transport 55 billion cubic meters of gas *per annum* from Vyborg in Russia to Greifswald in Germany through territorial waters of Russia, Finland, Sweden, Denmark and Germany.

[39] E. Wyciszkiewicz, *"One for All – All for One" – The Polish Perspective on External European Energy Policy*, "Foreign Policy in Dialogue" no. 8(20)/2007; *Dealing With Dependency. The European Union's Quest for a Common Energy Foreign Policy*, Trier, 11 January, 2007.

become an obstacle to the creation of a common external energy policy at the Union level. However, the reality of such a prospect is diminishing, as the Nord Stream project is increasingly perceived by EU institutions as an investment of strategic importance for European energy security.[40]

From Poland's perspective, the most negative aspect of the construction of the Nord Stream gas pipeline is the fact that Poland will suffer serious losses with respect to its position as a transit country; the status upon which it has relied in its policy of negotiating prices of energy carriers with its Russian partner. Moreover, if and when Nord Stream is finally fully operational, it can be expected that a gradual limitation of gas transit will occur via the Yamal gas pipeline to Germany with a redirection into the Nord Stream. Such a solution will undeniably cause negative consequences for Poland. It appears that if this becomes reality, Poland will face little choice but to decide and access the already completed first line of the Nord Stream project and prompt completion of the LNG terminal in Świnoujście, which will partly diversify supply sources and directions.

In conclusion, the new EU Member States, even though similarly dependent on energy supplies as the older ones, face different challenges stemming from their proximity to and relationship with the EU's principal gas partner – Russia. Generally, there are four areas in which important differences can be seen between the two groups of states: the structure of energy consumption, energy dependence, infrastructure, and the politicisation of the issue.[41] The first noteworthy difference between the energy situation of new versus old Member States concerns the fact that the former have a much higher level of dependence on a single source for energy in Russia than the latter. While in the older countries the level of dependency on a single source of energy barely exceeds 30 per cent, the level of energy dependency by the new countries on Russian gas oscillates between 60 to 100 per cent.[42] The difference between Eastern and Western Europe is further marked with disparity concerning the effectiveness and quality of infrastructure and facilities and the role energy plays in politics. The legacy of strained relations with the former Soviet Union make it very difficult to operate the trade exchange with Russia as if it was trade with any other country. In the case of the new Member States, both mistrust and fear damage the perception of their relationship with their crucial gas supplier, which is an element not present in the relationship between the old Member States and their suppliers, whether it is Norway or Algeria.

[40] See: Decision 1364/2006/EC of the European Parliament and of the Council of 6 September 2006 laying down guidelines for trans-European energy networks and repealing Decision 96/391/EC and Decision no. 1229/2003/EC, OJ L 262/8, 22.9.2006. Moreover, for example it is the opinion of the European Parliament that the Nord Stream is an infrastructural project having extensive political and strategic importance for the EU.

[41] For more on this see A. Rulska, *The European Union Energy Policy: An Initiative in Progress*. Paper presented at the Conference in April 2006 at the Central and East European International Studies Association – University of Tartu, Estonia.

[42] M.M. Balmaceda, *EU Energy Policy and Future European Energy Markets: Consequences for the Central and East European States*, "Oil, Gas and Energy Law Intelligence" no. 1(2)/2003.

Additionally, the role energy plays in politics and the disparity in the relationship with Russia among the EU countries in general makes the entire process of developing and conducting the external energy policy even more demanding. For example, the relations between the UK and Russia are more likely to involve conflicts than in the case of Germany, Italy or France. This became especially evident when the British government declared itself decisively against Gazprom entering the British market through the purchase of assets in Centrica. A similar model of relations can be observed between Russia and Poland, with the latter – driven by concerns for its energy security – repeatedly blocking Gazprom's attempts to acquire assets in Polish energy companies.[43]

Conclusions

The development of the EU's energy policy is of crucial importance, as Europe is heavily dependent on external energy resources. Moreover, the EU's increasing energy dependence, together with a decrease of its energy production and limited contribution from renewable energies in many Member States, add further doubts and increase the feeling of urgency for a common energy policy. A coherent energy policy with security of supply and common energy market as priority areas of the EU's overall energy policy is a key objective. Enhanced security of energy supply in the EU requires diversification. The best way to achieve diversification of energy supplies is through the creation of additional infrastructure and finding new upstream suppliers. Here the establishment of a competitive internal energy market is of paramount importance. Competition fosters innovative solutions, as well as investments in new infrastructure, research and development leading to new technologies. As competition develops, the number of upstream producers supplying EU energy markets will continue to increase, both regarding pipelines and LNG supplies, linking Europe with new supply regions and routes. In fact, the combination of a well-functioning internal energy market and the formation of partnerships with EU's main energy partners-suppliers (especially Russia and perhaps in the future also the Caspian countries) constitutes a solid EU energy policy in its external dimension. However, in order to achieve such a model, the Member States need to speak with one voice. Unfortunately, the EU is not speaking with one voice, for instance, regarding gas supplies. As a result, the Community goals are considered of secondary importance and priority is given to domestic aims, often creating tensions between the Member States. The lack of a common position among the Member States in the area of security of supply or in relations with third countries largely complicates the creation of a consistent, common energy policy. Instead, there is a clear division between the new and the old Member States (i.e. the ones significantly or almost completely dependent on Russian energy carriers and those dependent only to a lesser

[43] For more on this see B. Nowak, *Forging the External*..., op.cit., p. 59.

degree). Another important issue is the size of the deposits of energy resources in the Member States. Some of the countries are producers, such as the UK and the Netherlands, while the majority of them are energy importing countries. As a result, there is great variation in the level of import dependence among the EU countries, which – together with the disparity in the relations with Russia – creates difficult obstacles to energy (especially gas) market integration. Other significant reasons impeding the common approach in energy policy are differences in the energy mixes of the Member States and different structures of national energy sectors. This predetermines different national energy priorities and sets the pattern for respective energy policies such as protectionism. The protectionist trends are for instance visible in France and Poland. The former fears that in an open market it could lose its national champions, and the latter that its energy sector will end up under Russian control, giving rise to doubts concerning its energy security.

These differences and the practice common in the Member States of not consulting important decisions in the area of energy, especially gas, and not analysing the expected effects on other Member States complicate the creation of a common energy policy at the EU level, which further emphasises the lack of a common position on issues of energy security and energy solidarity. Accordingly, in order to overcome the domination of national interests, the EU not only has to develop a common energy policy, in particular in its external aspect, but also, most importantly, the EU institutions together with the Member States have to achieve the creation of a competitive common energy market in the EU. The creation of a common market based upon free trade exchange, accompanied by extensions of necessary infrastructure, should enable member the Member States to hold comparable energy mixes, similar extents of import dependence and therefore also similar interests and expectations as regards the common energy policy. However, in order to make these theories come true, the EU and the Member States not only have to support the application of legal rules, but they also need to construct and extend the energy infrastructure, including LNG terminals, underground gas storage facilities, pipelines, and system interconnections. Additional infrastructure must be built to strengthen the existing networks and ensure the development of cross-border markets, which would improve the security of supply, guarantee a high level of public service and maximise the benefits expected by consumers. In the energy sector, most investments are likely to be funded by private capital and financial institutions. The most important initiative is to create a favourable climate for investment. The role of the state is to establish the political and legal frameworks needed for the energy infrastructure to be developed, in particular by promoting major gas supply infrastructure projects in and outside the European Union.

To sum up, it is the common liberalised market that acts as a guarantor of free trade in energy products within the European Union, especially gas. The abolition of destination clauses in the trade in gas, bringing free commodity exchanges

between the Member States, should gradually eliminate various kinds of import dependencies of the Member States and thereby contribute to similar interests among the EU Member States as regards the common energy policy. Chapter 4, Article 194, of the Treaty on the Functioning of the European Union should give an impulse to act on this matter. It should also become a legal foundation upon which to issue a number of acts, legislative as well as non-legislative, relating to energy security and energy solidarity; an expectation that the Polish value highly. Therefore, the Polish government should enthusiastically support the system of energy security based on market integration and liberalisation, in particular through providing stable legal conditions for investments in the gas sector.

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Przemysław Dubel

EU Regional Policy – Main Directions and Challenges

Introduction

The beginnings of regionalism in the modern meaning of this term are to be found in 19th century France. Regional identity was initially connected with the sense of being different in terms of ethnicity, language and culture, and facilitated economic development through strengthening local business ties and creating market systems, often self-sufficient. The regional systems created at that time were supposed to ensure lasting peace and security in the given region.[1]

In the post-war history of Europe there have been two processes: integration and regionalisation. As the process of creating coherent systems, integration plays an important role in the development of regionalism, which can be approached on two levels: on the international level, as the creation of integration structures by specific groups of states in certain regions of the world (integration within the European Union), and on the national level, as the promotion of development of the individual parts of states or cross-border areas, through efforts undertaken both within these states and within broader supranational structures, a good example of which is the regional policy of the European Union.

For the last decade, regionalism has been characterised by a considerable range, openness to other countries and the striving for greater and stronger economic relationships. Its main objective is to create suitable conditions for the transformation of the economies of technologically underdeveloped countries and for the improvement of their competitiveness. The immanent feature of this model is cooperation allowing for economic integration of countries with highly diverse economies, different traditions and concepts of development.

On the international level of regionalism, the European Union has created a regional organisation with the most advanced integration processes in human

[1] Z. Brodecki, *Regiony (Regions)*, Warszawa 2005, p. 340.

history, affecting almost all the spheres of the political, economic and social life.[2] This makes the European Union not only a regional superpower, having considerable impact on vast neighbouring areas (Eastern Europe, the Mediterranean), but also a major actor in the global arena, which has established the most developed system of supporting regional development – on the level of individual Member States and cross-border areas, as well as on the level of the common regional policy conducted by the entire organisation.[3] However, the development of joint actions exhibits different examples of internal imbalance leading to diversification in the social and economic development. The most visible among these are the excessive concentration of activities undertaken with regard to the course of market processes, at the cost of a policy aimed at lowering regional diversification.[4]

One of the most important mechanisms serving the reduction of inequalities in regional development is the regional policy, the legal basis of which was initially set in the Preamble to the Treaty establishing the European Economic Community (Rome Treaty) in 1957.

The supreme goal of EU regional policy is reducing disproportions in the economic, social and spatial development by means of redistribution of funds from the budget between regions.

It aims at a harmonious development of the European Union, that is eliminating the disparities and achieving cohesion between the individual regions. In this respect, the EU regional policy is often equated with the Cohesion Policy, as its purpose is to reduce the disparities in the level of economic development between individual regions.[5] Furthermore, the Cohesion Policy results in a decrease of the disparities between the EU Member States. It also makes use of an additional financial instrument, that is the Cohesion Fund, addressed to the poorest countries. The regional policy is also equated with the structural policy,[6]

[2] D. Milczarek *Unia Europejska a globalizacja* (*The European Union and Globalisation*), "Studia Europejskie" no. 3/2004, pp. 9–11.

[3] O. Barburska, *Zjednoczona Europa – idea i realizacja w ciągu wieków* in: *Regionalizm, polityka regionalna i fundusze strukturalne w Unii Europejskiej* (*Regionalism, Regional Policy and Structural Funds in the European Union*), A. Adamczyk, J. Borkowski (eds.), Warszawa 2005, pp. 15–22.

[4] M. Ciepielewska, *Polityka regionalna i strukturalna Wspólnoty Europejskiej* (*Regional and Structural Policy of the European Community*) in: *Unia Europejska. Przygotowania Polski do członkostwa* (*The European Union. Poland's Preparations to Membership*), E. Kawecka-Wyrzykowska, E. Synowiec (eds.), Warszawa 2001, p. 383.

[5] This objective coincides with the objective of the Cohesion Policy, that is supporting activities leading to balancing of economic and social conditions in all the regions of the European Union.

[6] Some authors use the terms regional policy and structural policy interchangeably, as more than 90 per cent of funds allocated to structural policy by the European Union is related to regional needs; see e.g.: J. Szlachta, *Polityka regionalna i Fundusze Strukturalne – perspektywa unijna* (*Regional Policy and Structural Funds – the EU Perspective*) in: *Znaczenie funduszy pomocowych Unii Europejskiej dla Polski* (*The Importance of EU Aid Funds to Poland*), Warszawa 2000, p. 27; K. Duczkowska-Małysz, *Wspólna polityka rolna i polityka regionalna Unii Europejskiej szansą*

implemented in the regions in which there are declining branches or sectors of the economy, such as the heavy industry or the textile industry.[7]

This is manifested in the striving after the reduction of disparities in the levels of development between economically underdeveloped regions, regions suffering the collapse of industry, agricultural areas and areas with low population density.[8]

In the theoretical dispute on the influence of regional policy, there are two distinct options: levelling and polarisation.[9] The followers of the levelling variant opt for state intervention, which should be aimed at the poorest regions. The aim of this type of intervention is to restructure the economy, which in turn should contribute to increased dynamism of growth and start the process of 'catching up' with the rich areas (regions).

Those advocating the polarisation variant believe that any intervention would interfere with the market mechanism, which is the most effective, and prefer that the state refrains from interfering in the processes of regional development. The proponents of this option believe that intervention would not only fail to help the weaker regions, but that it would instead contribute to their underdevelopment.[10]

Evolution of the regional policy and of its objectives

One of the key stages in the evolution of the regional policy was the decision of the Paris Summit (1972) on the establishment of the European Regional Development Fund. The increased efforts to improve the significance of the regional policy also involved the admission of three states to the EU in 1973: the United Kingdom, Ireland and Denmark, which increased the gap in living standards of EU citizens. Another breakthrough in the regional policy took place upon the conclusion of the Single European Act (SEA), which established a new legal basis for its implementation, influencing the coordination of structural activities and, consequently, improved the effectiveness of the use of funds. The Single European Act has strengthened the importance of the regional policy in the Community, contributing to the fulfilment of such goals as: establishing the common

dla Polski (*Common Agricultural Policy and Regional Policy of the EU as an Opportunity for Poland*) in: *Strategie rozwoju obszarów wiejskich – zarządzanie projektami europejskimi* (*Strategies of Development of Rural Regions – European Project Management*), M. Duczkowska-Piasecka (ed.), Olsztyn 2000, p. 71.

[7] J. Borkowski, *Wybrane obszary polityki wspólnotowej – Wspólna Polityka Rolna i Polityka Regionalna* in: *Europeistyka w zarysie* (*An Outline of European Studies*), A.Z. Nowak, D. Milczarek (eds.), Warszawa 2006, p. 287

[8] T.G. Grosse, *Polityka regionalna Unii Europejskiej i jej wpływ na rozwój gospodarczy, przykład Grecji, Włoch i Irlandii i wnioski dla Polski* (*EU Regional Policy and its Economic Impact, the Example of Greece, Italy and Ireland and Conclusions for Poland*), Warszawa 2000, p. 7.

[9] J. Bachtler et al., *Longer Term Perspectives on Regional Policy in Europe*, Glasgow 1996.

[10] M. Levison, *Nie tylko wolny rynek. Odradzanie się polityki gospodarczej* (*Not Only the Free Market. The Renaissance of Economic Policy*), Warszawa 1992.

market without borders, achieving social and economic cohesion, strengthening the European monetary system, establishing a European social space.[11]

In the next period, the development of the concept of regional policy was conditioned by the changes in the economic situation of the EU Member States, which was influenced by, among others: a deteriorating economic situation, decreased economic growth rate, considerable increase of unemployment, the effects of the currency crisis, which inspired the members of the Community to make efforts to establish a zone of stable currency exchange rates in Europe in order to become independent from the destabilising influence of the US dollar. On the other hand, this period witnessed the implementation of fundamental principles of the Rome Treaty (the organisation of common institutions, integration in the Community of the essential policies, common market, freedom of movement).[12]

It is generally agreed that the turning points in the development of the European regional policy were the reform of the European Regional Development Fund (ERDF), introduced in 1979,[13] as well as the rule of programming of interventions introduced in 1988 and the departure by the Community from supporting individual projects in favour of co-financing comprehensive, integrated long-term plans.

From the point of view of regional policy, we can identify three distinctive periods, in which a varying number of objectives was realised. In the initial period of the implementation of the European regional policy (1989–1993) there were several objectives, which had real influence on economic development:[14]

Objective 1 – promoting the development and structural adjustment of regions whose development is lagging behind (i.e. whose per capita GDP is less than, or close to, 75 per cent of the Community average),

Objective 2 – restructuring the sectors of the economy in frontier regions seriously affected by industrial decline,

Objective 3 – combating long-term unemployment,

Objective 4 – facilitating the occupational integration of young people,

Objective 5 – reforming the Community's agricultural policy:

a) adapting structures in agriculture,
b) promoting the development of rural areas.

With regard to the global character of the objectives 3, 4 and 5a, which concerned the entire territory of the Community, of importance to the development of regional policy were the objectives 1, 2 and 5b, which concerned regional interventions in problem areas. All Structural Funds could be active under several

[11] Z. Brodecki, *Regiony* (*Regions*), Warszawa 2005, p. 37.

[12] W. Weidenfeld, W. Wessels, *Europa od A do Z* (*Europe From A to Z*), Gliwice 2002, p. 21.

[13] It consisted in reserving 5 per cent of the ERDF's funds for exclusive use of the European Commission, which could spend them on initiatives connected with its own regional priorities.

[14] *Guide to the Reform of the Community's Structural Funds*, Commission of the European Communities, Luxembourg 1989, pp. 13–15.

objectives, which meant that within the framework of one objective, support was provided from several funds at the same time.

In the years 1989–1993, priority in the implementation of the regional policy was given to Objective 1, that is providing support to economically underdeveloped regions, to which as much as 63 per cent of all means available under Structural Funds was allocated within a period of 5 years. Regarding regional interventions, the problem areas which qualified to the support from Structural Funds were identified on the NUTS[15] 2 level in the case of Objective 1 and NUTS 3 in the case of Objective 2.

As a result of the reform of the principles of the regional policy of 1988, many corrections and new components were introduced regarding the various objectives of the Community regional policy for 1994–1999.[16]

Objective 1 – promoted the development and adjustment of underdeveloped regions. The financial intervention under this objective could be applied to regions at the NUTS 2 level whose GDP per capita was no higher than 75 per cent of the average GDP per capita for the entire Community. 22 per cent of the area of the entire Community was subject to activities under Objective 1. The funds were spent mostly on stimulating the economy, investments, development of communication infrastructure and the environmental protection base.

Objective 2 – included (at NUTS 2 level) the restructuring of regions seriously affected by industrial decline. Financial support was provided to regions which suffered unemployment at levels above the Community average due to the collapse of the industry. This concerned regions in which the following branches of the industry were predominant: textile, coal, shipbuilding, steel. The main emphasis was put on supporting investments in the sectors which exhibited prospects for full employment.[17]

Objective 3 – determined the combating of long-term unemployment and facilitating access to the job market to young people and other groups in need of assistance. The 1993 reform amended the wording of Objective 3 and it was merged with Objective 4 – in order to intensify and coordinate the activity of Structural Funds and increase their effectiveness. The new objective had a horizontal character. It provided strong support to the unemployed, especially young people, as well as disabled people, emigrants and socially excluded people. The

[15] Nomenclature of Territorial Units for Statistics (NUTS) is the common statistical system of classification of regions adopted by the Eurostat. The territorial units have been delimited on the basis of planning and administrative divisions in the Member States. Initially, 5 levels of NUTS were established, of which the most important are NUTS 2 and NUTS 3. At the NUTS 2 level, support is provided to problem areas whose development is lagging behind, and at NUTS 3, to regions in need of restructuring and frontier regions. In federal countries the largest, NUTS 1, are based on the constituent states.

[16] K. Głąbicka, M. Grewiński, *Polityka spójności społeczno-gospodarczej Unii Europejskiej* (*The Social and Economic Cohesion Policy of the European Union*), Warszawa 2005, p. 59.

[17] *Die Strukturpolitik der Europäische Union*, European Commission, p. 39.

framework of this objective includes courses, career counselling and job placement services, staff and personnel trainings, actions ensuring equal opportunities for women and men in the job market.

Objective 4 – concerned the adaptation of the workforce to the changes in the production system. The objective was introduced in 1994 and the provided within its framework were mainly spent on researching and implementing strategies related to the possible possibility of changes in the production system. This involved ensuring forecasting about the tendencies in the job market, introducing necessary changes in the education system, aimed at reducing education in useless professions, as well as preparing the personnel to transform the sphere of production into a more competitive and more flexible economic body. The assistance was provided chiefly to small and medium enterprises (SMEs) at risk of closedown. Professional career counselling became an important feature of Objective 4.

Objective 5a – concerned supporting the development of agricultural areas through increasing the pace (at NUTS 3 level) of adapting the agrarian structure under the reform of the Common Agricultural Policy. It allowed for the shaping and monitoring of the farming and the fishing sectors so as to improve their competitiveness.

Objective 5b – concerned the facilitating of development and structural adaptation of rural areas. The regions applying for financial assistance under this objective had to meet the following criteria: low level of agricultural income, agricultural employment accounting for a high proportion of total employment, low population density – on the NUTS 3 level. This objective concerned the agricultural policy, but in regions with coexisting fisheries and agriculture, as in Germany, it was treated as a common objective for both sectors.

Objective 6 – was aimed at supporting areas with a very low population density. It was a result of complementing the already existing principles of regional policy due to the enlargement of the European Union to include Austria, Sweden and Finland in 1995. Due to the low population density in many regions of the Scandinavian states, a new objective was introduced with the aim of supporting areas with a population density of less than 8 persons per square kilometre. The regions in question are usually areas of subarctic agriculture, which are unable to compete with other areas in the Community. However, time has shown that this objective had a symbolic rather than economic meaning. Hard climate conditions, low population density and weak competitiveness were the main problems which were not eliminated in this programming period.

The next reform of the EU public finance of 1999 introduced a new division of funds between the individual objectives of the structural policy, the number of which was reduced from 6 to 3. The aim was to concentrate the expenses with Objective 1, allocating as much as 69.7 per cent of the means available under Structural Funds; 11.5 per cent of funds was allocated to Objective 2 (regional) and 12.3 per cent to Objective 3 (horizontal).

Objective 1 – had a regional character and its main goal was to promote the development and adjust the regions whose development was lagging behind. Therefore, it concerned economically underdeveloped areas belonging to the NUTS 2 group.

Objective 2 – just as Objective 1, this objective had a regional character and concerned regions (on NUTS 3 level) struggling with difficulties resulting from economic and social restructuring. Its main goal was to strengthen the social and economic transformation of these regions. Objective 2 involved both the support for regions suffering problems due to decreased industrial production and the support for fisheries and agriculture.[18] The aims of Objective 2 were set to have the support activate small and medium enterprises, vocational training, the application of modern industrial technologies and environmental protection, as well as contribute to the reduction of unemployment.

Objective 3 – had a horizontal character and concerned the development of human resources, adjustment and modernisation of the education system, support for the job market and reducing unemployment. As a horizontal objective, it supported and coordinated the common policy of the European Union regarding the development of the job market, employment and unemployment.

The last stage of evolution of the objectives of regional policy falls on the period of 2007–2013, for which the Community has set 3 main objectives and 3 instruments for their implementation.[19]

Objective 1 – convergence. The heart of this objective is the propagation of conditions facilitating economic growth and of factors leading to actual elimination of underdevelopment in the least developed Member States and regions. The funds available under the 'convergence' objective amount to 282.8 billion euro, which constitutes 81.5 per cent of the total available funds. The programmes executed under this objective concern states in which the GDP per capita amounts to less than 75 per cent of the EU average. In this context, the principal aim of the Cohesion Policy is to create conditions for increasing economic growth. The fulfilment of Objective 1 will ensure modernisation and diversification of the economic structure of Member States and regions, with particular attention to innovation and entrepreneurship.

Objective 2 concerns competitiveness and employment in regions. Reaching this objective should eliminate the difficulties connected with the restructuring of the economy and assist the populace in preparing for the ongoing economic changes in accordance with the adopted European Employment Strategy. The activities under Objective 2 are conducted by means of national programmes aimed at strengthening the process of introducing and executing structural reforms in the job market, as well at improving social integration.

[18] A. Ryszkiewicz, *Fundusze strukturalne Unii Europejskiej* (*Structural Funds of the European Union*), Warszawa 2000, p. 20.

[19] *Third Report on Economic and Social Cohesion*, European Commission, Luxembourg 2004.

Objective 3 covers the European territorial cooperation. Taking into account the experience drawn from Community initiatives, the European Commission has proposed the creation of a new objective, which would consist in further deepening of harmonious territorial integration of the European Union through supporting cooperation concerning: the development of cross-border economic and social activities, the establishment and development of supranational cooperation, including bilateral cooperation between the coastal regions of the Baltic Sea, the increase of effectiveness of the regional policy through cross-regional promotion and cooperation, creating networks and exchanging experience between the regional and local authorities.

Just as in the previous programming periods, the strategic objective is still Objective 1, the aim of which is to improve economic growth and employment in the least developed regions. It particularly emphasises innovativeness and a knowledge-based society, the adaptation to economic and social changes, the quality of the environment and effectiveness of administration. It comprises all the components of the other objectives because it intervenes in regions struggling socially and economically, taking up almost 70 per cent of the structural budget of the European Union.

In the period when the regional policy was forming, not only its concept was subject to evolution, but also its objectives, which were modified and corrected in different programming periods. Unfortunately, the process of modifying the tasks fulfilled under the regional policy which was adopted by the European Commission concerned macroeconomic results measured on the interregional level failing to take into consideration essential social and economic changes taking place in the sub-regions.

European funds as instruments for the implementation of the regional policy

Social and economic diversification between the individual states and regions of the European Union has contributed to the emergence and development of interventionism, the goal of which is the social and economic cohesion of the EU.[20] This interventionism is chiefly manifested in the regional policy using funds from Structural Funds and the Cohesion Fund.[21]

The Treaty of Amsterdam, signed in 1997, has expanded the provisions concerning regional social and economic cohesion: *'In order to promote its overall*

[20] A.Z. Nowak, *Fundusze Strukturalne Unii Europejskiej jako czynnik mobilizacji gospodarki polskiej* (*Structural Funds of the EU as a Factor of Activation of Polish Economy*) in: *Regionalizm, polityka regionalna...,* op.cit, p. 69.

[21] The Cohesion Fund (a financial instrument of the regional policy not being a structural fund) was established under the Treaty of Maastricht. Its main goal is to strengthen social and economic cohesion. It is not dedicated to individual regions, identified according to the criteria reflecting individual objectives, but to Member States, identified as a whole.

harmonious development, the Community shall develop and pursue its actions leading to the strengthening of its economic and social cohesion. In particular, the Community shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas.'[22]

Article 1 of this Treaty defines the objectives of the funds, the activities executed by them as well as by the Cohesion Fund and other available financial instruments, which should support the achievement of the objectives included in the regional policy of the European Union. The programming of the structural funds is governed by the Council Regulation (EC) of 21 June 1999 laying down general provisions on the Structural Funds. The Regulation identifies the tasks, priority objectives, organisation, as well as the fundamental rules of the use of structural funds.

One of the general rules is the principle of subsidiarity, which means that citizens organised in various systems govern their issues within a state, while the state undertakes only the activities which the citizens cannot or are not able to perform. This principle requires finding balance between civil activity (as unhindered as possible) and state intervention (for the 'common good').

The principle of additionality is controlled and verified by the European Commission. In accordance with this principle, the means provided under EU Structural Funds cannot replace public or other equivalent structural expenses of a Member State. This is to guarantee the achievement of real economic influence with Community assistance, preventing the relocation of the released national funds to other objectives. The Community funds are not to replace national funds, but to jointly create an added value.[23]

The principle of partnership consists in including in the process of making and implementing decisions the appropriate levels of Community and national authorities, as well as local and regional institutions and organisations best informed in the needs and capabilities of their regions. This is one of the principles of the implementation of the European Regional Development Fund, the European Social Fund and the Cohesion Fund.

The principle of programming is the first principle of organisation. It involves the possibility of financing only the projects that are included in comprehensive and integrated medium- and long-term development programmes. Programming is also dependent on the periods for which the EU budget is set. This involves the possibility of a given state negotiating the aid. The programming process differs

[22] Article 158 of the Treaty establishing the European Community (Consolidated version 1997).

[23] On the principle of subsidiarity and additionality see: I. Pietrzyk, *Polityka regionalna Unii Europejskiej i regiony w państwach członkowskich* (*Regional Policy of the EU and Regions in the Member States*), Warszawa 2002, pp. 185–187; K. Głąbicka, M. Grewiński, *Europejska polityka regionalna* (*European Regional Policy*), Warszawa 2003, pp. 73–74.

depending on whether the aid is to be granted under the National (Regional) Initiative or the Community Initiative.

The principle of compatibility regulates the functioning of Structural Funds and is related to striving after cohesion of the regional policy with other Community policies, including especially the policies regarding the protection of competition in public procurement, environmental protection and equal opportunities for men and women.[24]

The main principle of financing is the principle of concentration, the aim of which is to concentrate the financial resources provided from the European Structural Funds for the execution of a limited number of goals, selecting the regions struggling with the most serious problems, concentrating support in the underdeveloped regions of the poorest EU countries of fundamental importance for the social and economic cohesion of the European Union.

The principle of monitoring and evaluation is the fundamental principle of assessment. It consists in systematic gathering and analysing of quantitative and qualitative information regarding the implementation of individual projects and entire programmes. The information collected concern both the financial and material progress in the realisation of the granted forms of assistance. In the process of monitoring on the basis of the collected information, there is the possibility of evaluating the projects and the programme according to previously specified criteria after the implementation is completed.

The abovementioned principles have been introduced by the European Commission with the aim of intensifying and streamlining the spending of Structural Funds, as well as to ensure transparency of the decisions regarding the governance of EU funds and highest possible efficiency of the use of EU funds, understood as the relation between funds provided for the implementation of a given project and the project's products and their direct results.[25]

European Regional Development Fund (ERDF)

The European Regional Development Fund was established in 1975 under a reform connected with the accession of Ireland, Denmark and the United Kingdom to the EU. Among the four funds, this is the most important financial instrument of the European Community – as the one most oriented at providing support to regional development.

The aim of the ERDF is to improve economic and social coherence in the European Union and to eliminate the disparities between the regions. The ERDF provides direct support for investments executed in enterprises (particularly SMEs) in order to create lasting jobs; infrastructure related to research and inno-

[24] http://www.funduszeeuropejskie.gov.pl/slownik/Strony/Zasada_kompatybilnosci.aspx (last visited 10.12.2012).

[25] *Podręcznik zarządzania projektami* (*Project Management Manual*), Warszawa 2006, p. 111.

vation, telecommunications, environmental protection, energy and transport, financial instruments (venture capital funds, local development funds), in order to stimulate regional and local development, as well as to facilitate the cooperation between cities and regions.

European Social Fund (ESF)

The oldest among the European Structural Funds is the European Social Fund (ESF), established in 1957 under the Treaty establishing the European Economic Community. It cofinances the activities of the Member States in the field of employment policy and human resources development policy. Similarly as the other Structural Funds, its particular tasks and mechanics have evolved. The reforms concerned essentially two directions. On the one hand, just as the European Regional Development Fund, the ESF was becoming, to an ever greater extent, an instrument of the Community employment policy. On the other hand, the Fund evolved from being autonomous, independent from the other Structural Funds, to being an integral financial instrument based on coordination and cooperation with the other instruments of the European Union regional policy.[26]

Cohesion Fund

The Cohesion Fund was established under the Treaty of Maastricht (Treaty on European Union) of 1991, which entered into force in 1993. The Cohesion Fund was not considered one of the structural funds, as its formal and geographical extent was defined differently. In the so called First Programming Period (2004–2006), it constituted a financial instrument complementary to the regional policy.

The overriding goal of the fund is to strengthen the social and economic cohesion of the EU through financing large projects creating a coherent whole concerning environmental protection and transport infrastructure.

In the years 2007–2013, the Cohesion Fund became one of the funds fulfilling Objective 1 of the regional policy – convergence.

At present, the Cohesion Fund finances the following initiatives:

- expansion of trans-European transport networks,
- cofinancing of projects related to energy or transport, provided that they involve a considerable benefit for the environment (application of renewable energy sources, development of rail and public transport, supporting intermodality[27]).

The differences in the functioning of the Fund concern programming, management and implementation, because it finances individual initiatives of a minimum value of EUR 10 million. The fund management is more centralised and

[26] K. Głąbicka, M. Grewiński, *Europejska polityka*..., op.cit., pp. 121–125.

[27] Intermodality – transport of cargo using more than one mode of transportation with the use of one cargo unit, e.g. container or exchangeable body, on the entire route.

simplified, which speeds up the procedures and eliminates multistage programming, to which all the other EU funds are subject.

Operational programmes – types and significance for the cohesive development of regions

The strategy, directions and amount of the financial assistance provided under Structural Funds for the realisation of development-related goals are specified by the Community Support Framework (CSF),[28] implemented by means of operational programmes (OPs), the scope of which results directly from the objectives and strategies presented in the national documents (in Poland it is the National Development Plan (NDP)[29] for the years 2004–2006 and the National Strategic

Chart 1. Position of operational programmes in the decision-making process regarding the spending of EU funds

Source: Own compilation based on: R. Calach, H. Janas, *NPR 2004-2006*, "Wspólnoty Euro - pejskie" no. 5 (140)/2003, p. 34.

[28] The document Community Support Framework (CSF) specifies the directions and amount of support provided under Structural Funds for the realisation of development-related goals and constitutes the basis for interventions under the Cohesion Fund. This document presents the strategy and priorities for action of the funds and the Member State, their specific objectives, the contribution of the funds and the other financial resources (for every priority and year). The CSF is implemented by means of operational programmes. The Community Support Framework is adopted by the Commission in agreement with the Member State concerned.

[29] The NDP 2004–2006 was approved by the Council of Ministers on 14 January 2003. The drawing up of this plan was required under EU law. The NDP contains an analysis of the social and economic situation, priority needs, the strategy of fulfilling the set objectives, as well as the planned actions. The National Development Plan is a comprehensive document defining the social and economic strategy of Poland in the first years of its membership in the European Union.

Reference Framework (NSRF) for 2007–2013).[30] The position of operational programmes in the decision-making process regarding the spending of EU funds is presented in Chart 1.

After the European Commission endorsees the Community Support Framework, countries draw up operational programmes specifying the priorities (priority axes) in accordance with the social and economic strategy of the state and are submitted for evaluation and acceptance by the European Commission. The next stage consists in preparing actions for the implementation of the priorities. Furthermore, every priority requires a diagnosis regarding the social and economic situation, as well as the manner of monitoring, the directions of intervention and the financial plan specifying the sources of funds, their allocation and rules of transfer. Once the operational programme is approved and once it is supplemented by the European Commission, the execution stage starts.[31] Not only activities concerning regional development are implemented by means of operational programmes. Each programme includes a description of the rules for the initiation of financial assistance through the definition of the institutional system and the procedures which are to be applied.

Types of operational programmes: case of Poland

Operational Programme 'Innovative Economy' (OP IE)

One of the axes of development fulfilling the objective contained in the Community Support Framework is economic development and increased employment in the sector of enterprises. In the part dedicated to entrepreneurs, the OP IE is a continuation of the Sectoral Operational Programme 'Improvement of the Competitiveness of Enterprises' (SOP ICE 2004–2006), which was the fundamental instrument created to support the development of entrepreneurship and innovativeness with special consideration of the sector of small and medium enterprises (SMEs), using the resources of the sphere of research and development and the benefits related to the application of modern technologies, including information technology and technologies supporting environmental protection.

Effective application of knowledge and scientific research by the industry are the key factors determining the competitiveness of economy at the national and regional levels. This is also why the activities aimed at improving the potential of regions regarding the sphere of innovation and at transforming the structure of involvement of the sector of entrepreneurship in the financing of research and

[30] The NSRF presents the strategy of social and economic development of the country, including the objectives of the Cohesion Policy in Poland in the years 2007–2013, as well as defines the system of implementing EU funds under the Community budget.

[31] J. Skorulska, *Fundusze strukturalne jako źródło finansowania polityki strukturalnej Unii Europejskiej* (*Structural Funds as the Source of Financing for the Structural Policy of the EU*) in: *Fundusze strukturalne w polityce regionalnej* (*Structural Funds in Regional Policy*), S. Narusze - wicz (ed.), Białystok 2005, p. 99.

development are so important.In the programming period 2007–2013, the financial resources allocated to the implementation of the OP IE amount to approx. EUR 8.3 billion. The largest share (34.93 per cent) are investments in innovative undertakings and in the development of the information society for the improvement of innovativeness of the economy (14,45 per cent). The aim of the OP IE is the development of Polish economy on the basis of innovative enterprises. This objective is realised through activities such as: investments in the R&D sphere – personnel and infrastructure, which will help perform best quality research, contributing to the establishment of new innovative enterprises. Supporting the application of information and communication technologies and eServices in business activity will improve the competitiveness of Polish enterprises in the European market.[32]

The need to reach a compromise between the growth in productivity and the restructuring of the economy, combined with the need to create new lasting jobs, determines undertakings with a very high potential for innovation, speeding up the process of building a knowledge-based economy.[33] The strategy was dedicated to the strengthening of the sphere of public services through facilitating business activity by optimum usage of broadband Internet networks. At the present stage of development of the Polish economy, it is advisable to provide enterprises (particularly SMEs) with instruments of direct support, covering subsidies for new investments, support for R&D activities, as well as increasing investment readiness and supporting the promotion of sales in the Community market and beyond.

Operational Programme 'Human Capital'

The Operational Programme dedicated to creating conditions for achieving the highest quality human capital and increasing social coherence, as well as supporting the creation of state administration structures is the Operational Programme 'Human Capital'.

The improvement of employability and professional qualifications in the society is one of the major objectives of the social and economic policy, shaping the image of Poland's regional policy 2007–2013. Individual employability is chiefly determined by professional qualifications, as well as intellectual, social and demo-

[32] *Program Operacyjny Innowacyjna Gospodarka (Operational Programme 'Innovative Eco - nomy')*, Ministerstwo Rozwoju Regionalnego (Ministry of Regional Development), Warszawa 2007, p. 61.

[33] Knowledge-based economy is economy in which knowledge is created, assimilated, passed on and used more effectively by enterprises, organisations, natural persons and societies, facilitating quick development of the economy and society. According to the OECD's definition, the economy is directly based on the creation, treated as production and passion on, that is distribution and practical use of knowledge and information. Consequently, there are three stages constituting the foundation of economic development: production, distribution, implementation. Knowledge is a definite product (an independent entity), which drives development. It is knowledge-based economy that is considered to be of fundamental importance in one of the main development programmes of the European Union, that is in the Lisbon Strategy.

graphic traits, which are influenced by education, access to education, planning of intellectual, professional and social development.

The programmes conducted under the OP HC support employment and social integration, development of human resources and the adaptive potential of enterprises, high quality of the education system, good governance, promotion of social integration, human resources for the economy, as well as the improvement of the levels of education and skills in regions.

Additionally, the achieved degree of allocation (approx. EUR 9.7 billion) allows for the realisation of the commitments resulting from the obligation imposed on the EU Member States under the third priority of the Guidelines for the employment policies, as well as the Community programme Education and Training 2010, which involve the increase of investments in human capital through better education and skills improvement.

The activities conducted under the OP HC have to face up to global competition aimed at the development of information society. Raising the technological level is a constant process which requires the improvement of skills regarding the use of modern information and communication technologies, updating the knowledge on modern forms of management and organisation of work. Consequently, the undertakings executed under this programme will contribute to an increase in the competitiveness of enterprises and, therefore, to an increase in employment.

Operational Programme 'Infrastructure and Environment'

Apart from the ineffective institutional system, the main barrier hampering the economic development of Poland and its regions is the lack of good and working technical and social infrastructure. As a result of this situation, there are few significant foreign investments creating new jobs and, consequently, some regions are marginalised and non-competitive. This is why creating favourable conditions for new investments in Poland by ensuring good and efficient communication is so important. Another important aspect is the development of the remaining basic technical and social infrastructure which contributes to the improvement of the state of natural environment, as well as to the improvement of skills and education of the technical personnel, while at the same time providing possibilities of active recreation.

The Operational Programme 'Infrastructure and Environment' with the abovementioned goals in mind, with the chief aim being the improvement of Poland's and its regions' attractiveness to investors through the development of technical infrastructure. At the same time, it is meant to ensure health protection and improvement of the state of the environment, directly contributing to the development of regional cohesion.[34] The main objective is to be achieved through

[34] *Program Operacyjny Infrastruktura i Środowisko (Operational Programme 'Infrastructure and Environment'),* Ministerstwo Rozwoju Regionalnego (Ministry of Regional Development), Warszawa 2007, p. 89.

investments in the development of transport, the energy industry, the environment, culture, health protection and education.

We can distinguish three essential sectors in the implementation of the Operational Programme 'Infrastructure and Environment': environment, transportation and energy. The environment section involves creating attractive conditions for enterprises and their highly qualified employees, improving the quality of life through, among others, investments leading to the reduction of pollutants channelled with sewage to waters and soil, as well as investments – executed comprehensively together with the aforementioned ones – aimed at providing a sufficient quality of drinking water in urbanised areas, limiting the production of municipal waste and eliminating the threats resulting from the storage of waste.

In the transport sector, the preferred investments are those connecting the major urbanised areas and industrial centres of Poland and Europe by building a transport network adequate to the country's future transportation needs, the development of market relations and the improvement of safety in road transport. The proposal for the Transport Development Strategy specifies the particular goals concerning the construction of motorways and expressways which are part of the trans-European transport network (TEN-T).[35]

Regarding the support for the development of the energy industry, the goal of improving Poland's investment attractiveness will be achieved by increasing the level of energy security, understood as diversification of the market of high quality fuels and energy, the existence or the technical condition of energy infrastructure in certain areas, the level of efficiency in energy production, as well as the influence of the energy industry on the environment.

The largest support (approx. EUR 27.92 billion) will be allocated to the development of transport and the TEN-T, and the investments executed under these actions are to support the construction of municipal ring roads along the communication routes of national roads, which should lead to better balancing of the transport system and decreasing the negative impact of transport on the environment.

Operational Programme 'Development of Eastern Poland'

Yet another operational programme (with approx. EUR 2.27 billion) designed to contribute to an increase of Poland's competitiveness is the Operational Programme 'Development of Eastern Poland' (OP DEP). The financial assistance under this Programme can be used by the following voivodeships: lubelskie, pod-

[35] In accordance with Article 155 of the Treaty establishing the European Community, the Community may support 'common interest' projects which are executed by the Member States. These projects have been defined in the Community guidelines concerning the development of the trans-European transport network. The development of the trans-European network is to contribute to an increase in the effectiveness of the functioning of the common market. The European Union strives after ensuring interoperability of the national transport networks, after the development of intermodality in transport, as well as after ensuring that island and peripheral regions have access to the central regions of the Community or lowering the high costs of transport.

karpackie, podlaskie, świętokrzyskie and warmińsko-mazurskie. The essence of the Programme is to halt the stagnation trends, which cause marginalisation of these regions, as well as to stimulate economic development. The main goal is to create favourable conditions for and improve the social and economic development of Eastern Poland.

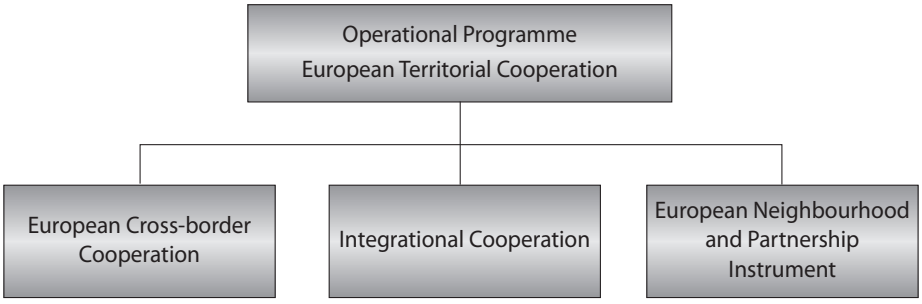
The execution of the OP DEP concerns several priority areas. It is assumed that the chief beneficiary of the Programme will be local authorities, which are required to plan their activities in the Investment Plan for each region. Consequently, in order to start implementing the Project, they first need to properly prepare the projects in terms of quality and produce documentation compliant with the guidelines provided by the Ministry of Regional Development, as well as prove that every executed project is consistent with the principle of sustainable development (in accordance with the guidelines of the EC). Another essential factor will be the budget (drawn up by every voivodeship), which will allow for additional cofinancing of the planned investments.

Operational Programme 'European Territorial Cooperation'

The 'European Territorial Cooperation' is a separate financial instrument, promoting the implementation of international projects in the European Union, and being a separate objective of the Cohesion Policy, aimed at improving cross-border (joint local and regional initiatives), cross-national (territorial integration of the EU) and interregional (exchange of experience and good practice) cooperation.

The implementation of operational programmes concerning the 'European Territorial Cooperation' requires the participation of no less than two states, with at least one of them being an EU Member State. The scope of the activities involves joint preparation, execution and financing of the project. Three types of operational programmes have been distinguished Under the 'European Territorial Cooperation' (Chart 2).

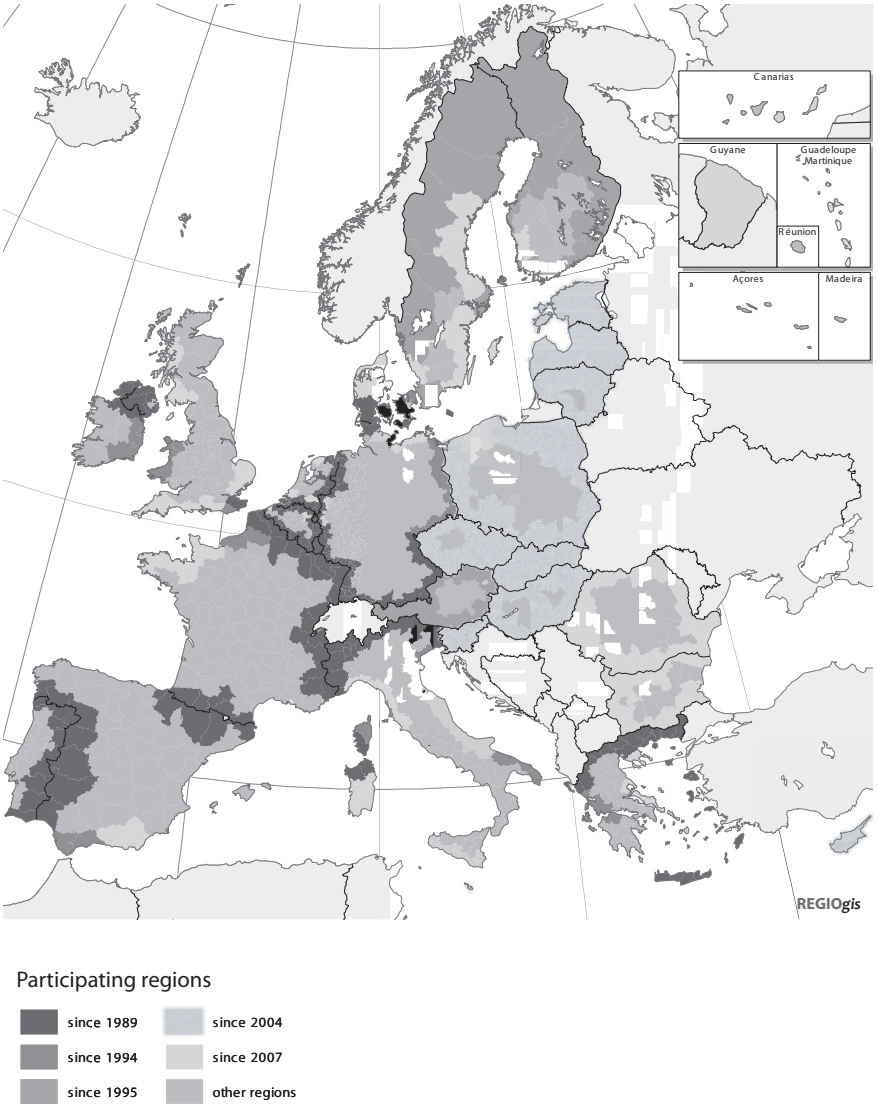
Chart 2. Types of operational programmes under the European Territorial Cooperation



Source: own compilation on the basis of: http://www.ewt.gov.pl/Dokumenty/Strony/ Dokumenty.aspx (last visited 10.12.2012).

As regards cross-border cooperation, projects are aimed at supporting local and regional initiatives promoting economic and social development. For a map showing, how the eligible areas for cross-border cooperation have evolved after several waves of enlargement from INTERREG I through to European Territorial Cooperation see Map 1.

Map 1. Cross-border cooperation 1998–2013



Source: http://ec.europa.eu/regional_policy/information/pdf/brochures/etc_book_lr.pdf (last visited 20.12.2012).

As we can see in Map 1, in Poland it is the frontier subregions that have been covered by cross-border cooperation. One change as compared to the previous programming period is the possibility for the Baltic Sea subregions to participate in the programme. The main objective of cross-border cooperation, that is the promotion of cooperation and environment protection, is executed through actions supporting entrepreneurship, the development of small and medium enterprises, tourism, culture, improvement of access to transportation, information and communication networks, as well as the development and common use of infrastructure, particularly in such fields as health protection and education. As regards administration and social integration, projects are aimed at the promotion of joint actions concerning the job market, development of human resources and R&D.

Map 2. Baltic Sea Region programme area

Source: http://eu.baltic.net/Programme_document.98.html (last visited 10.12.2012).

Interregional cooperation consists in activities supporting the effectiveness of the implementation of the regional policy through the development of knowledge-based economy. Apart from the Member States of the EU, this cooperation covers also Norway and Switzerland. The programme supports innovativeness and the development of knowledge-based economy through strengthening the SME sector and promoting programmes of active assistance for the unemployed.

The European Neighbourhood and Partnership Instrument is an initiative of the European Commission with the main goal being the development of cooperation between the European Union and its non-EU partner countries by ensuring cohesion and sustainable growth. The main support areas include promoting political dialogue and reforms, strengthening national institutions and other institutions responsible for the preparation and effective implementation of policies, supporting policies promoting social development, supporting cross-border cooperation and promoting sustainable economic, social and environmental development in frontier regions, ensuring an effective and secure system of border governance, promoting cooperating between the Member States and partner countries as regards university education, the exchange of teachers, scientists and students, promoting dialogue between cultures and people-to-people contacts. The programme area of the Baltic Sea Region Programme 2007–2013 is presented in Map 2.

Regional Operational Programmes (ROPs)

The new programming period has considerably changed the principles of financing the development of regions (voivodeships). Instead of a centrally governed integrated 'Regional Operational Programme' (IROP), 'Regional Operational Programmes' have been developed in accordance with the principle of subsidiarity.[36] Each voivodeship is executing its operational programme, which should be developed on the basis of social consultations specifying the main directions of social and economic development. The total amount of the allocated funds is approx. EUR 16.5 billion, which can be invested in:

- local infrastructure,
- development of entrepreneurship,
- strengthening municipal and metropolitan functions,
- development of tourism,
- development of local social infrastructure,
- development of information society,
- protection of cultural heritage,
- post-military and post-industrial renewal,
- multifunctional development of rural areas,

[36] One of the key principles of the National Cohesion Strategy 2007–2013. In order to ensure adequate effectiveness of the EU Cohesion Policy, Poland will be striving after decentralisation of the tasks related to programming and managing structural instruments by passing these competences to the lower level of administration.

- promotion of regional products and services,
- flood protection,
- development of application of renewable energy sources.

While developing ROPs, each voivodeship had to take into account the current social and economic diagnosis and adjust the ROPs to its regional strategy. Projects executed under the planned actions are worth approx. PLN 2 million each and have a local impact. Therefore, the main beneficiaries are local governments, the sector of SMEs, universities and NGOs.

Technical Assistance

One priority present in all the discussed Operational Programmes is Technical Assistance, the aim of which is to ensure efficient and effective implementation of the NSRF 2007–2013.[37] The funds which will be allocated to this priority are approx. EUR 0.52 billion.

The programme has a horizontal character and, therefore, its priorities and activities concern the entire process of implementing EU Structural Funds and focus on ensuring effective use of the Community's financial contribution and national funds, compliant with Community policies and law.

In order to ensure the fulfilment of the aforementioned objectives, technical Assistance is aimed at supporting the process of governance, evaluation with the use of studies, analyses and opinions concerning the correct use of funds, promotion of the system of information on the projects which are eligible for implementation, employment of personnel and purchase of computer equipment and software. Technical Assistance of the various Operational Programmes has a complementary character and is aimed at improving the managing and controlling system and the progress in the execution of Operational Programmes. The particular aim of Technical Assistance is to provide the means and tools to meet the needs of the Managing Authority[38] and the Paying Authority[39] as institutions coordinating the tasks of the remaining bodies involved in the process of spending EU funds.

The support of human resources is to guarantee the employment of highly qualified personnel responsible for the drawing up, implementing, managing, monitoring and evaluating the degree of implementation of Structural Funds. The aim of IT assistance is the development of IT systems and the technical support for the execution of the NSRF. As regards communication and promotion, the activities undertaken include the promotion of knowledge on the NSRF and the promotion of good practice.

[37] *Program Operacyjny Pomoc Techniczna (Operational Programmes 'Technical Assistance')*, Ministerstwo Rozwoju Regionalnego (Ministry of Regional Development), Warszawa 2008, p. 21.

[38] The managing authority is the minister or public administration body responsible for the execution of the operational programme or for the supervision of the uses of funds from the EU budget.

[39] The paying authority is one or several national, regional, local institutions or bodies responsible for the drawing up and submitting of payment requests to the European Commission.

To sum up, through supporting the process of information and the development of human resources, the Operational Programme 'Technological Assistance' is to provide the public institutions responsible for the implementation of the regional policy with best possible communication with the beneficiaries of EU funds, which should result (indirectly) in increased effectiveness of the use of EU Structural Funds.

Conclusions

The goal behind the implementation of the regional policy has always been to lower the disproportions in the development of regions, in particular those regions which struggle with many difficult problems. In order to meet these challenges, these regions require aid from the state and EU budgets. Therefore, from 2000 onwards the Commission decided to double the funds allocated to regional tasks, focused on solving those problems which are most important from the point of view of the Community as a whole and difficult to overcome without EU assistance. It is worth stressing that the moneys from Structural Funds do not replace national funds, but only support them within clearly defined subsidy limits.

For Poland, the new programming period (2014–2020) provides yet another opportunity to improve the competitiveness of the Polish economy using EU funds through increasing the effectiveness of the public administration, development of modern economy and innovation. The negotiated allocation amounts to approximately EUR 73 billion and the funds will be spend primarily on improving the use of economic, social and institutional potentials ensuring a fast and sustainable development and improving the quality of life.

To sum up the role and importance of the influence of the regional policy, including the Structural Funds, on lowering the degree of regional diversification, we should say that despite the present financial and economic crisis, it is obvious that owing to EU funds, for the last few years we have been witnessing economic, political and social phenomena favourable to improving the competitiveness of the European economy on the regional scale. The factors which have enabled economic growth and, consequently, increased interregional competitiveness were, first of all, investments in human capital and improvement of the competitiveness of enterprises. The said determinants are conducive to the development of a knowledge-based society able to meet the modern demographical challenges and compete in the globalising European economy.

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Małgorzata Pacek

Migration Policies in the EU in the Context of Demographic Challenges in Europe

Introduction

According to some researchers, the European Union migration policy is forming very slowly. However, if we consider the fact that its foundations were first introduced as late as in 1999, by the Treaty of Amsterdam, the opinion that the process of its development has been slow is not justified. The Member States must overcome their own desire to remain independent, they must give up another piece of their sovereignty to Community bodies and recognise the fact that in the age of the Schengen Agreement, any 'stranger' in one EU country is a stranger in any other Member State. The economic crisis does not contribute to the processes of integration, but rather works towards autarkic closing of economies and societies. Migration policy, however, deserves a long-term perspective, especially in a time of demographic crisis. The integration aspect of migration policy is also noteworthy. Western European countries already experienced the effects of the lack of integration policy regarding labour migration in the 1960s. Repeating these old mistakes can be avoided, but in Europe without borders it can only be done together, even at the cost of limiting the said sovereignty.

Demographic situation in Europe

The Member States of the European Union keep working out new economic strategies, creating new versions of the Lisbon Strategy and speaking of the need for economic growth, growth in employment and development in all possible contexts and forms. Taking such actions and informing the European society about them calms the citizens down and makes them more optimistic. This is by all means justified, as a stressed person works less effectively. However, these problems must be confronted and delaying the debate on them can only become a disadvantage for the social structure as a whole.

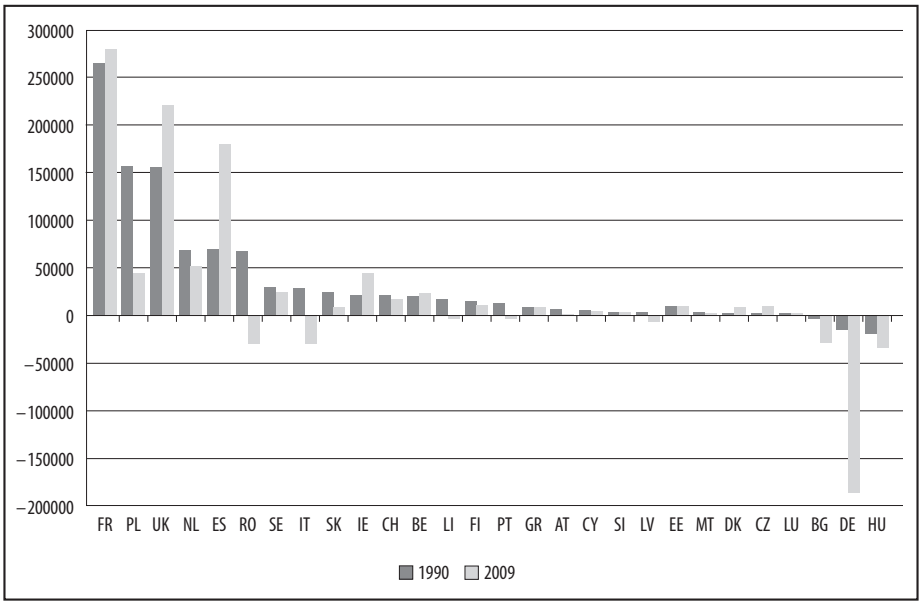
One of these problems is the demographic situation in Europe. In the recent years, or even decades, there has been a systematic deterioration in this respect. European societies are ageing. Walter Laqueur, in his very interesting book *The Last Days of Europe: Epitaph for an Old Continent* predicts that in 50–100 years some European countries might completely disappear. This means that we should seriously consider reforming the European social security schemes, so as to ensure that they are able to support the ever rising number of non-working retired people.

The ageing of societies comprises a number of factors, including: the fertility rate, the reduction in mortality in older age groups, migration of young people, wars. Indirect factors may also include: the level of wealth of the society, the functioning family model, professional activity of women, health protection, state social policy, education.

The charts below illustrate the change in the total fertility rate and the average life expectancy of men and women.

The charts show that demographic[1] changes are not very obvious throughout several years, but they become evident throughout one hundred years. Indeed, the average life expectancy in 1900 was 47 years, in 2000 – 77 years, and the prog-

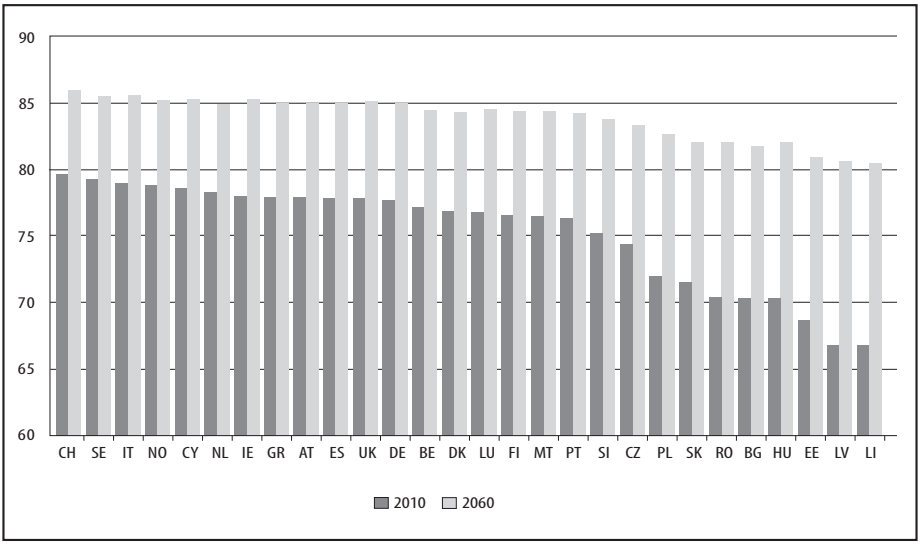
Chart 1. Birth rate (in integral numbers)



Source: Eurostat; http://www.stosunki.pl/?q=content/wyzwania-demograficzne-europy-quo-vadis

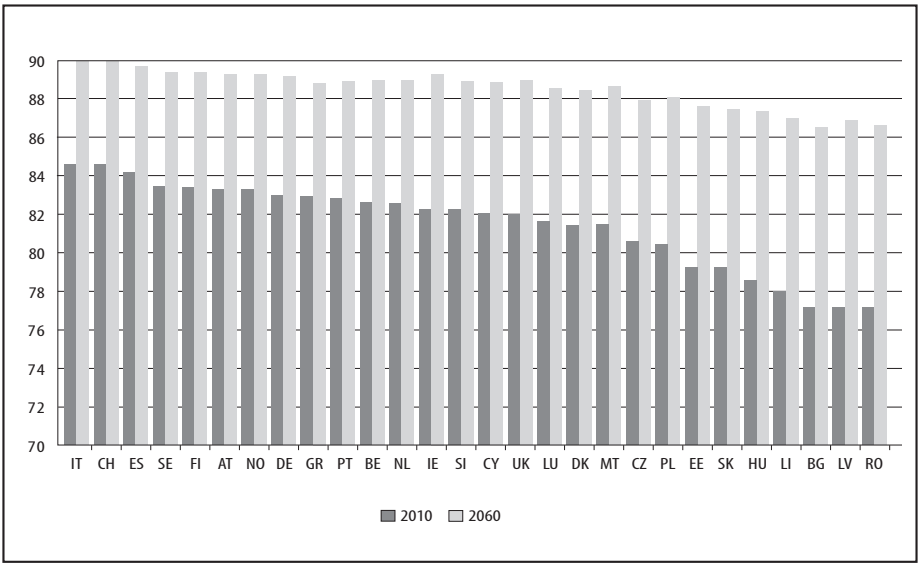
[1] *World Population to 2300*, United Nations, New York 2004

Chart 2. Average life expectancy of men 2010–2060



Source: Eurostat; http://www.stosunki.pl/?q=content/wyzwania-demograficzne-europy-quo-vadis

Chart 3. Average life expectancy of women 2010–2060



Source: Eurostat; http://www.stosunki.pl/?q=content/wyzwania-demograficzne-europy-quo-vadis

noses for 2050 are 81 years for men and 86 for women. In 1900, the average period of retirement was around 1 year, in 1980 – 13 years, in 1990 – 19 years, and today (e.g. 2030–2050) it is 20–30 years.

According to the UN Population Division, there will be 100 million less Europeans in 2050 than today. In 1950, the population of Europe accounted for 21.7 per cent of world population, in 2005 – 11 per cent, within the next 50 years it will fall to 7.2 per cent, and at the end of this century it will be less than 4 per cent. At the end of this century, the population of Germany will fall from 82 to 32 million, the population of Italy – from 57 to 12 million, Spain – from 40 to 11.9 million. The fall in the Eastern Europe will be dramatic as well. By 2050, the population of Ukraine will decrease by 43 per cent, of Bulgaria – by 34 per cent, and of the Baltic states – by 25 per cent.

According to the opinions of experts, in the following years we should expect a further fall in the total fertility rate from the average of 1.22 child per woman at the beginning of this century to 1.1 in 2011 (in 2011–2020 we can expect a slight rise in the fertility rate to around 1.2) and a fluctuation of this ratio around 1.6 in the future (provided that the European countries engage in family policy).

The ageing of societies negatively affects the demographic structure and the labour markets, but also has serious economic and social implications. Growing public spending under the present retirement and pension schemes and social insurance schemes can lead to severe tensions between different social groups. When the majority of the society is getting older, the group of people of the economically productive age, who are ready to work, is shrinking, which leads to problems with finding workforce. Thus, the part of the population which remains within the workforce is encumbered with a growing burden of expenses related to the intergenerational redistribution. Societies experiencing such demographic problems are at risk of growing intensification of intergenerational transfers and of increasing expenses in the medical and health service sector. All these factors, if left as they are, may contribute to a substantial decrease in economic effectiveness and to a fall in income per person.

Looking for a way to improve the demographic situation by opening to immigrants has certain intrinsic flaws. The experience of the Western European countries, which followed this direction during the economic boom at the turn of the 1950s and 1960s, shows that, as put aptly by Max Frisch: *'we called for a workforce, but we got people'*[2]. They arrived from countries which were culturally and mentally different. It was expected that they would come, fill the gap in the supply of workforce, and then return to their countries of origin when they are no longer needed. The migration policy of the 'old' EU countries is a consequence of the inflow of cheap labour force, which enabled high economic growth in the 1960s and

[2] A. Muschg, *Po referendum w sprawie minaretów. Koniec złudzeń, Szwajcario (After refe - rendum on mosques. End of illusions, Switzerland)*, "Gazeta Wyborcza", http//www.wyborcza.pl, (last visited 21.12.2009).

1970s. These immigrants were not homogeneous in terms of origin, culture or religion but they fulfilled the economic expectations of that period. In the United Kingdom they were newcomers from the former colonies (India, Pakistan), in France they came from Northern Africa, mainly Algeria, in Italy – from Morocco, in Germany they were Gastarbeiter from Turkey, Morocco and former Yugoslavia. The inflow of foreigners was much quicker in these countries than any thoughts about finding a place for them in the new societies. Only some short-term measures were applied, which solved the existing problems *ad hoc*, while the tensions and conflicts grew and amassed, and finally burst out in an uncontrollable way, like the fires started in the houses of Turkish and Moroccan workers.

Today, the 'old' EU-15 countries draw the workforce they need from the culturally close countries of the 'new' Member States. However, the primary goal of the European Union is to even out economic potentials and level regional differences by means of regional policy and Structural Funds. Thus, when the goal becomes closer or is reached, and the potentials of the Member States become equal, the time will come to seek workforce outside the European Union.

The causes and effects of migration

Table 1. Causes of migrations

Motivation for migrations	Factors encouraging emigration	Factors encouraging immigration
Economic and demographic	Poverty Unemployment Low wages High birth rate Lack of medical care Low level of education	Prospects for better wages Improvement of living conditions Personal or professional development
Social and cultural	Ethnic or religious discrimination	Family reunification Migration to the country of ancestors No discrimination Social security
Political	Conflicts Security Violence Corruption Violation of human rights	Sense of security Political freedom

Source: Own compilation.

While making this classification of causes of migration, we should examine it more closely, as it is based on the assumption that there are types of migration essentially different than labour migration. If we focus on the first impulse for

migration, this is true, but if we look at long-term effects, it is not. Because each migration, regardless of the cause, ends with searching for employment in order to earn a living.

Table 2. Effects of migrations

Benefits	Costs
Increase in household income	Disturbing the demographic structure
Improvement of the situation on the labour market	Threat of insolvency of the pension system
Increase of internal mobility	Pressure on the increase of wages
Increased revenues from foreign transfers, which raises the gross national product and stimulates the consumption demand.	Loss of well-educated mobile workforce
New skills and qualifications of emigrants	Actual expenses on the education of emigrants
Investing the earned money in the home country and creating new jobs	Difficulties in finding specialists
New models of professional careers	Transfers – increased threat of passivity

Source: Own compilation.

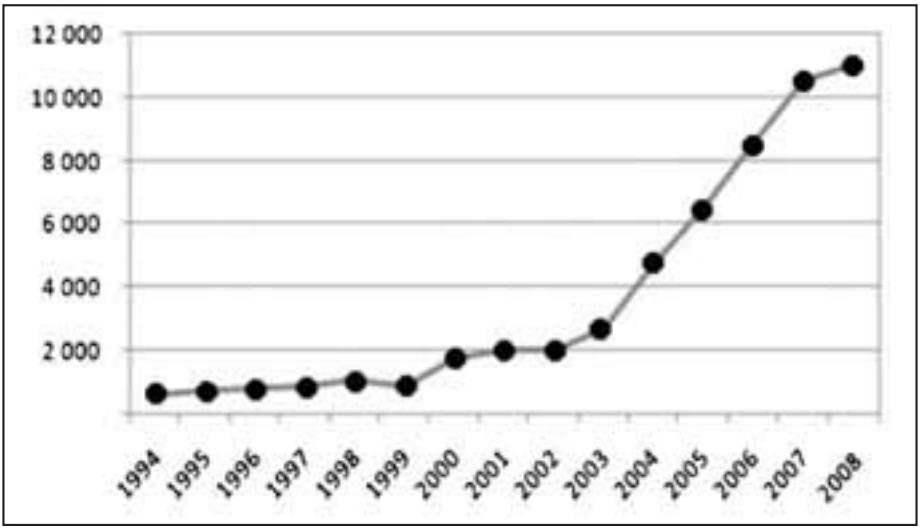
This is how we can present in brief the multifaceted and overlapping effects of migration. We will elaborate on them further in the text – here we will only show the amounts of financial transfers made by migrants to their families.

In 2010, transfers of money, mainly from migrants to their families in their countries of origin, reached USD 440 billion, of which 325 billion went to developing countries – so states the World Bank in the report *Migration and Remittances Factbook 2011*. According to the forecasts of the World Bank, in the next two years the stream of funds from migrants should reach USD 500 billion.

Another conclusion from the study conducted by the World Bank is that 85 per cent of financial assistance received by families from their relatives working abroad is used to meet everyday needs (food, clothes, house or apartment costs), around 5 per cent for education and savings, and only 5 per cent for investments in agriculture or industry.

An interesting example of the effect of migration in the field of transfers of money is Poland. Chart 4 shows changes in the amounts of transfers made by Polish emigrants in the period 1994–2008.

Chart 4. Money transfers to Poland in the years 1994-2008 (mln $)



Source: Own compilation based on the data from the World Bank.

During the first five years from the accession to the EU, Poles living abroad transferred as much as PLN 70 billion to their home country. While the 'old emigration' in the USA no longer helps their relatives as much as they used to, the Poles working in Germany, the United Kingdom, the Netherlands and Norway send a substantial part of their earnings back home. The crisis of 2008 brought about a fall in the amounts of those transfers. In 2007, the transfers from the Poles residing abroad for more than one year reached EUR 4.5 billion, a year later only EUR 3.9 billion, and in the next year the fall was even deeper – the families of emigrants in Poland received only around EUR 3 billion.

Development of the common EU migration policy

According to the current estimates, in the 20th century around 100 million people lost their place of residence as a result of forced migration, and in Europe itself this number reaches 50 million.[3]

The aim of the EU is to work out a balanced approach to legal migration and combating illegal immigration. The efficient management of migration flows is also related to ensuring fair treatment of third-country nationals residing legally in Member States and to enhancing the measures to combat illegal immigration and strengthening cooperation with third countries in all areas.

[3] A. Sakson, *Migracje – Fenomen XX i XXI wieku* (*Migrations – A Phenomenon of the 20th and 21st Centuries*), „Przegląd Zachodni" no. 2/2008.

Perceiving migration policy as a Community problem is a relatively new concept for the integrating European Union. For many years, it remained in the sphere of intergovernmental decisions left to sovereign states and to what we call their national interest. Only since the entry into force of the Treaty of Amsterdam, i.e. since 1999, has it been gaining a more Community character, within the framework of a bigger project – creating the Area of Freedom, Security and Justice.

The Treaty stipulated that the rules concerning entry and stay of nationals of third countries to and in the territory of the Member States, visa procedures as regards long-term visas and residence permits, including family reunification, would be transferred to the level of Community decisions. This meant that these problems were transferred from the Third Pillar (intergovernmental) to the First Pillar (Community). The transition period for these provisions was five years. It did not concern the decisions related to illegal immigration, illegal stay and deportation – these became 'Community matters' from the moment of entry into force of the Treaty.[4]

As a consequence of the Treaty of Amsterdam, there was a European Council Summit in Tampere (15–16 October 1999).[5] The meeting was devoted to problems of justice and internal affairs. It focused on partnership with the immigrants' countries of origin, combating poverty in these countries, improvement of living and working conditions, preventing conflicts and strengthening democracy. In the Tampere conclusions it was also stressed that the Member States should ensure fair treatment of citizens of third countries residing legally in the EU territory, offer them, within the framework of integration policy, rights and responsibilities comparable to those enjoyed by EU citizens. They also mentioned the need for directing migration flows in each phase and the need for reliable information from each Member State about the real possibilities of legal migration and preventive measures against smuggling and human trafficking. They emphasized the importance of cooperation with countries of origin and transit as regards voluntary returns of migrants.

The Tampere programme had two stages: first there was passive waiting – until the terrorist attacks of 11 September 2001, followed by the second phase after this event and the attack in Madrid in March 2004. The initial reactions to the attacks seemed to herald an intensification of joint actions for ensuring internal safety of the EU (European arrest warrant, European list of terrorist organisations, establishing the Joint Investigation Teams – Eurojust and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union – Frontex). As the memories of the

[4] Cf. Treaty of Amsterdam, http://www.eur-lex.europa.eu/pl/treaties/dat/11997D/word/11997D.doc (last visited 15.12.2012).

[5] Cf. A. Gruszczak, *III filar UE po Tampere: wnioski i perspektywy* (*The Third Pillar of the EU after Tampere: Conclusions and Prospects*), http://www.ce.uw.edu.pl/pliki/pw/3-2000_Gruszczak.pdf (last visited 15.12.2012).

tragic events started to fade, national interests were once again becoming more important.

Five years from the entry into force of the Treaty of Amsterdam came the time to verify and review the situation and to deal with things which by then had never been regulated at the Community level. It was the objective of the Hague Programme – worked out in long intergovernmental negotiations and adopted on 11 November 2004. Although it seemed that it provided opportunities for some beneficial changes, in the end it proved non-confrontational, cautious and conservative. Independent police or intelligence structures which were planned before, were forgotten; the programme mentions only better cooperation and exchange of information between the Member States. It restricts the role of Community institutions to the role of coordinator of intergovernmental cooperation. There is no mention of independent decisions and taking over competences of police or prosecuting bodies of sovereign states. What deserves some recognition is the fact that the problem of migration was noticed and included in the programme with the account of a broad causal background of this phenomenon, with special focus on the importance of integration of legal immigrants and repatriation policy, for the purpose of which it is essential to cooperate with third countries. Stepping up in the communitarisation of migration policy was mentioned in the context of joint responsibility and financial burden and better solidarity of the Member States in the face of the emerging problems. It was also considered necessary to send back to the country of origin those immigrants who have lost their right of residence in the EU, including the development of minimum standards for their return and the establishment by 2007 of the European Return Fund. The programme included also some reassuring statements that each country would be free to set the number of admitted immigrants.[6]

An analysis of the next documents on migration policy adopted by the Communities shows how difficult this form of cooperation is. It is characterised by a large divergence of national interests, traditions and needs of the Member States. The big EU enlargement of 2004 and the accession of Romania and Bulgaria in January 2007 once again changed the borders of the united Europe. New groups of immigrants keep appearing, and the problems of those who already live in the Member States, whether legally or illegally, have not been entirely solved. Delaying important issues does not mean that they will disappear. Migration policy, as a subject still awaiting some decisions, will keep returning.

The question which should be the starting point for further actions towards creating an Area of Freedom, Security and Justice[7] is whether it is possible to build common migration policy or whether it is possible to build purely national migration policies.

[6] The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, OJ C 53, 3.03.2005.

[7] As defined by the Treaty of Amsterdam.

Due to the abolishing of internal borders within the EU territory, a national of a third country, after crossing the external border of the EU, may practically move freely and without control around its whole territory. The terrorist attacks in New York, Washington, Madrid and London raised panic among Europeans, who wanted to get rid of all 'aliens' from their territories, although it's not exactly clear what that term might mean. At the same time, the phenomenon present in all European societies – ageing – is becoming more and more visible, giving a new meaning to the term 'the Old Continent', which used to be purely historical and cultural. According to many demographers, Jean-Claude Chesnais among them,[8] the only chance for Europe is selective immigration. The French demographer and economist points out the phenomenon of 'demographic transition' which started in the early 18th century, when the traditional demographic system with high mortality and fertility rates was replaced by a modern system, in which both mortality and fertility are low. Demographers prepare their forecasts based on the age pyramid, which is subject to obvious changes – the number of elders is growing, while the number of births, and consequently of future parents, is falling. By 2050, world population will grow by half, but at the same time the number of old people will triple.[9] After 1965, generation after generation of children of prosperity were born – well-fed, spoilt, comfort-loving, reluctant to make the effort of raising children. The fertility rate fell to 1.4, while the generation renewal threshold reached 2.1

As a direct consequence of this process, the ageing Europe lacks workforce. It seems desirable, in this context, to open immigration channels, which would be controlled in terms of: age, culture, profession. Hence, immigration is and will be in the nearest future a common problem of the European Union countries.

There are no formal obstacles for building a common migration policy. There is, however, one barrier – a deep-rooted centuries-long sense of national sovereignty and national interest. Throughout the history, each Member State opened or closed its borders for foreigners. The migration policy of the 'old' Member States of the European Union is a consequence of the inflow of cheap foreign workforce, which enabled substantial economic growth of these states in the 1960s and 1970s. The immigration was not homogeneous in terms of origin, culture or religion, but it met the economic needs of that time. Regional conflicts (in Africa, the Balkans, Afghanistan, Chechnya) added refugees and asylum seekers to this melting pot. Apart from legal immigrants there appeared illegal ones, seeking better income or a higher standard of life.

Several EU states undertake their own actions for solving the problem of foreigners staying illegally in their territories. France, Italy, Greece, Portugal, and

[8] Jean-Claude Chesnais, *La demographie, moteur en panne de la croissance europeenne*, "L'Expansion", 22.11.2005.

[9] J.-C. Chesnais points out that for Michałowska the first time in history there are less people below 15 than those over 65: e.g. in Italy respectively 14 and 19 per cent, in Germany – 15 and 18 per cent, and growing, see: ibidem.

especially Spain, prepared regulating (legalising) programmes for hundreds of thousands of such people.[10] These actions are often criticised by other Member States, as they believe that such measures encourage more people to make attempts to enter the EU territory, hoping that their stay will be legalised. Spain defended itself by arguing that the European Union has no common migration policy, and the Spanish government is more interested in having legal and controlled immigrants that in the existence of an economic underground.[11] Other EU Member States, located further from the Mediterranean Sea and therefore not facing the problem of refugees from Africa landing on their shores in rafts, do not feel the responsibility of providing assistance to them. Countries like the United Kingdom or Ireland, who opened their labour markets to the nationals of the new EU states and who use the incoming workforce (especially when highly qualified) according to their needs, are sceptical as regards the encumbrance related to the management of unqualified newcomers from Africa, Turkey or Ukraine. Thus, work on common migration policy will surely last several more years, but it seems inevitable for the EU as a whole to make it come true. These 'aliens' – whether wanted or not – appear in the common territory without internal borders, in 'our' territory, no matter how far a given Member State is situated from the point in which they crossed the external borders. The sooner the EU decision-makers and societies of EU Member States realise that, the better. Decisions made under the pressure of this growing problem must be, by definition, temporary and ill-judged.

The meeting which took place on 27 May 2005 might herald a new step on this path, a stage which would be disadvantageous for the communitarisation of the migration policy. In the German town of Prüm (Rhineland-Palatinate) seven EU Member States (Austria, Belgium, France, Spain, Netherlands, Luxembourg and Germany) signed an agreement on stepping up cooperation in combating terrorism and organised crime.[12] The parties to the treaty committed to exchange data on the genetic code and fingerprints of potential criminals. In addition, each of the signatory countries will facilitate the others' access to information about persons suspected of being members of terrorist organisations and will take part in joint actions against illegal immigrants. The Prüm Treaty was signed 20 years

[10] See: D.G. Papademetriou, K. O'Neil, M. Jachimowicz, *Observations on Regularization and the Labor Market. Performance of Unauthorized and Regularized Immigrants*, Washington 2004.

[11] See: I. Wróbel, *Polityka imigracyjna rozszerzonej Unii Europejskiej – w poszukiwaniu od - powiedzi na nowe wyzwania (Immigration Policy of the Enlarged European Union – in Search of an Answer to New Challenges)*, Centrum Europejskie – Natolin, "Materiały Robocze" nr 4/2005, Warszawa 2005; *Regularisation of illegal immigrants' status: The Presidency and the Commission suggest the setting up of a system of mutual information and early warning between those in charge of migration and asylum policies*, Press Release, 11.02.2005, Internet website of the Luxembourg Presidency, http://www.eu2005.lu/en/actualites/communiques/2005/02/11schmit-jai/index.html (last visited 15.12.2012).

[12] http://www.euro.pap.com.pl/cgi-bin/raporty.pl?rap==15&dep=67183&lista=1 (last visited 15.12.2012).

after the Schengen Agreement[13] and was officially named 'Schengen III'.[14] It has some features characteristic of enhanced cooperation, the rules of which are defined in the Treaty on European Union: it is based on the *acquis communautaire*, it is open to other Member States, it requires keeping the Council and the European Commission updated on the progress of cooperation.[15] However, under EU treaty rules, enhanced cooperation should take place only where the objectives of such cooperation cannot be attained 'within a reasonable period' by the Union as a whole, while the preamble of the Prüm Treaty mentions its pioneering role. Does it mean that what we are facing a 'multi-speed Europe' in this area? Are the ineffective meetings and debates in the European Parliament or the Council of the European Union really a sufficient justification for establishing a form of cooperation reaching so far ahead? It may be a little comforting that the signatories of the Prüm Treaty promised to take steps to include its provisions in the *acquis communautaire*. What raises some concern is this 'reaching ahead', lack of understanding between all the Member States. The Prüm Treaty established new standards of cooperation and guaranteeing safety of citizens in the face of the terrorist threat and illegal immigration. From the perspective of the EU as an area still undergoing an integration process, it is also alarming that the debates on this agreement took place beyond EU structures and did not take into account any consultations with the other Member States.[16]

It is difficult to deem the Prüm Treaty explicitly good or bad. On the one hand, a group of states went forward as regards justice and internal affairs, and this should be seen as a positive development. On the other hand, it was an act of breaking out, of creating a 'closer circle' of cooperation, a proof that there is no will to jointly create a common policy in this field, lack of a common denominator which would enable the enhancement of the common policy. When facing a threat (in this case – as a reaction to the terrorist attack in Madrid), it is essential to act quickly together. If there is no will for such an action, the most active states will form a separate group.

From 14 to 16 January 2007, there was an informal meeting of the EU Council in Dresden on the level of Ministers of Justice and Internal Affairs. The aim of the meeting was to establish an action plan in this field. As regards migration affairs, basing on the working document compiled by the UK, the ministers decided that it is necessary to enhance control of migration flows and to define

[13] Schengen I – Agreement of 14 June 1985, see: http://www.refugeelawreader.org/396/Schengen_Agreement.pdf (last visited 15.12.2012).

[14] 'Schengen II' is the implementing convention to the Schengen Convention and was signed in 1990.

[15] See: A. Gruszczak, F. Jasiński, *Układ z Prüm: czy nowe porozumienie o współpracy w zwalczaniu zagrożeń dla porządku i bezpieczeństwa publicznego to właściwy kierunek współpracy w Europie? (The Prüm Treaty: Is the New Agreement on Cooperation in Combating Threats to Public Policy and Public Safety the Right Direction for Cooperation in Europe?*), "Forum EU Justice and Home Affairs", 31.07.2005.

[16] Ibidem.

the goals, principles and priorities of the common migration policy. They also pointed out the need to strengthen Frontex, improve the information exchange between the structures of the Member States and ensure better consular cooperation. They stressed the importance of cooperation with third countries, introducing quotas for immigrants, ensuring the possibility of legal seasonal migration, and at the same time, assistance in incorporating migrants coming back to their countries of origin back into its social and economic life.

The fact that these subjects were discussed proves that there is an awareness and a need to talk about them in their current context. But the fact that everything remains in the sphere of wishes and declarations shows how complex and crucial this issue is.

The next step in building a common immigration policy was the European Pact on Immigration and Asylum – one of the main priorities of the French Presidency of the EU and the flagship idea of Nicolas Sarkozy – the French President and the former Minister of Interior. It is the first document in the EU which attempts to create a global EU immigration strategy. On the one hand, it encompasses legal immigration, and on the other, it proposes an even more active fight against illegal immigrants by sending them back to their countries of origin. The Pact, adopted by the Council in September 2008, specified the main directions of EU migration policy: ensuring legal migration channels, in particular to migrants who exhibit the traits most desired by the Member States, and at the same time, increasing activity as regards combating the problem of illegal migration.

According to the provisions of the Pact, common immigration and asylum policy is based on five pillars, of which three concern immigration:

a) to organise legal immigration to take account of the priorities, needs and reception capacities determined by each Member State, and to encourage integration of immigrants legally residing in the EU territory;
b) to control illegal immigration by ensuring that illegal immigrants return to their countries of origin or to the countries of transit;
c) to create a comprehensive partnership with the countries of origin and of transit in order to encourage the synergy between migration and development.

After the Treaty of Nice, which did not change much in the matters of interest to this paper, and after the failure of the Constitutional Treaty, came the Treaty of Lisbon, under which the migration policy of the Union and their implementation is be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States (Article 80 TFEU).[17] The Treaty came into force on 1 December 2009, ten years after the Treaty of Amsterdam, which provided the basis for establishing the Area of Freedom, Security and Justice, and it vested new powers in the EU institutions to make law in the field of immigration. It confirmed the important objective of creating

[17] Treaty on the Functioning of the European Union, OJ C 83, 2010.

a common immigration policy and introducing a co-decision procedure and qualified majority voting on matters concerning legal migration. Today, ordinary legislative procedure is applied to policies concerning both legal and illegal immigration. Under the Treaty, the EU shares competence in this field with the Member States, in particular as regards the decisions on the number of immigrants admitted by the states (these decisions remain within state competence).[18] The Treaty of Lisbon contains provisions which enable the implementation of measures supporting a Member State in the event of sudden inflow of third-country nationals. It also abolished restrictions regarding the role of the Court of Justice in the field of migration and asylum; the Court is to issue judgements in this area according to the same rules as in matters concerning general law.

The next step towards communitarisation of migration policy is the Stockholm Programme adopted by the European Council in December 2009.[19] The starting point for the programme were the arrangements of Tampere and the Hague Programme. It was prepared for the period 2010–2014 and took into account the Treaty of Lisbon and provided implementing measures for it. The Programme specified the priorities of the European Union in the field of migration, in particular:

a) preparing a Global Approach to Migration of the EU based on real partnership with the countries of origin and transit outside the EU;
b) a concerted policy of the Member States in keeping with national labour-market requirements;
c) a more decisive integration policy, aimed granting to third-country nationals residing legally in the EU comparable rights, responsibilities, and opportunities to those granted to EU citizens;
d) effective policies to combat illegal immigration, effective and sustainable return policy and concluding readmission agreements with countries of origin;
e) covering unaccompanied minors with special protection.

What is striking in the documents described above is the attempt to improve cooperation with countries of origin, i.e. drawing immigrants away from Europe. Gently but effectively, 'Fortress Europe' was closing its gates.

The year 2009 brought an interesting initiative of offering Blue Cards to some groups of migrants. The initiative was expressed in Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. Franco Frattini, the former EU Commissioner for Justice and Home Affairs, the architect and promoter of this proposal, repeatedly pointed out that among the immigrants settling in the USA most are highly skilled, while among the immigrants coming to the EU professionals constitute a very

[18] Article 79(5): *'This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work'*.

[19] The Stockholm Programme – an open and secure Europe serving and protecting citizens, OJ C 115/1, 4.10.2010.

small percentage. In order to improve these ratios on the EU side and to attract more skilled immigrants Frattini decided to use the well-tried American models. The Directive lays down the conditions for the admission of highly skilled workers to work in EU countries: qualifications attested by three years of education at a university or five years of work experience in the profession; having a graduation diploma recognised in the EU; concluding an employment contract by a potential employee for a minimum of one year; a pay not lower than the value of at least 1.5 average wage in the country of employment. The Member States were required to implement the Directive by 19 June 2011, and the date of the first report was set for June 2014. The Directive was criticised for causing a 'brain drain' – which was justified in a sense, although compared to the USA the EU still looks quite innocent in this regard. Only 5.5 per cent of highly qualified migrants from the Maghreb come to the EU, while 54 per cent choose the USA and Canada. On the other hand, the EU admitted the largest share of unqualified workers from the Maghreb (87 per cent). As regards highly qualified workers from all third countries in total, the EU's share is 1.72 per cent, which is also much less than in the other important destinations of immigrants, such as Australia (9.9 per cent), Canada (7.3 per cent), USA (3.2 per cent) and Switzerland (5.3 per cent).[20] Moreover, the Member States made a declarative statement that they should not attract highly qualified workers from third countries in sectors, in which there is or there might be insufficient highly qualified workers in these countries, in particular the health care and education sectors.

Although modelled after the US Green Card, the Blue Card does not yet give migrants as many rights; for instance the duration of the stay is limited. It is designed to function as a residence and work permit for three years with the option of prolongation for the next two years. The Blue Card also allows the workers' family members to reside in the EU and take up work; they enjoy the right to social care in the country of residence.

The effects of the Blue Card can be judged only in a few years. It opens a clearly defined migration channel with a structure beneficial for the EU, though time will show how competitive it makes the EU as a migration destination compared to the USA, Canada or Australia.

Emigration from the countries of the European Union. The case of Poland

When analysing EU documents on migration policy, we have to remember that they concern only one side of this policy – the approach to immigrants, newcomers in the EU territory. But migration policy naturally has a second aspect – emigration, which at this moment seems completely forgotten. And if we look into migration statistics of some Member States, we will notice some unsettling things.

[20] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-// (last visited 15.12.2012).

For instance, 144 815 Germans left their country in 2005 in search of a better life and higher wages.[21] The figures for the UK do not look much better. Only in 2004 the British territory was left by 120 000 citizens (in 1994 – 17 000). Although the migration balance is still positive, the main reason for this is the inflow of nationals of other EU Member States since 1 May 2004 (14 000 in 2003 and 74 000 in 2004).[22] It is also noteworthy how the situation looks like in other Member States. In Poland, we are experiencing a rapid outflow of highly qualified workers to the UK, Ireland and the Scandinavian countries.

Table 3. Post-accession migrations of Poles

Country	May 2002	2004	2005	2006	2007	2008	2009
Total	786	1 000	1 450	1 950	2 270	2 210	1 870
EU-27	451	750	1 170	1 550	1 860	1 820	1 570
Austria	11	15	25	34	39	40	38
Belgium	14	13	21	28	31	33	34
France	21	30	30	49	55	56	47
Germany	294	385	430	450	490	490	415
Ireland	2	15	76	120	200	180	140
Italy	39	59	70	85	87	88	85
Netherlands	10	23	43	55	98	108	84
Spain	14	26	37	44	80	83	84
Sweden	6	11	17	25	27	29	31
United Kingdom	24	150	340	580	690	650	555

Source: http://www.stat.gov.pl/cps/rde/xbcr/gus/rs_rocznik_demograficzny_2010.zip (last visited 15.12.2012).

Among the people who left Poland there were many qualified professionals, e.g. doctors, nurses, engineers. Thus, the term 'brain drain' no longer applies solely to third-world countries. It is becoming an essential problem within the EU as well. The Polish construction industry has also experienced a substantial fall in the number of specialists. The waiting time for construction services has been prolonged and the prices have clearly risen.

After the Polish accession to the European Union, the labour migration of Poles became even larger than expected, as shown by Table 1. But this causes more concern for the Polish authorities than it does for the host countries. Even as much as 1.5 to 2 million Poles left their country for a shorter or longer period, seeking work on the British Isles, in Spain, Germany, Italy, the Netherlands or France.[23] Most are seasonal workers, but a few hundred thousand decided to stay

[21] Statisisches Bundesamt, Wiesbaden 2006, http://www.destatis.de (last visited 10.12.2012).

[22] UK National Statistics, http://www.statistics.gov.uk (last visited 10.12.2012).

[23] M. Winnicki, *Fachowcy odpływają (Skilled man have gone)*, http://archiwum.dlapolski.pl/informacje/readarticle.php?article_id=1023 (last visited 15.12.2012).

permanently. They work in agriculture, industry, construction, restaurants, bars, hotels, cafés and pubs. Many women are also employed as babysitters, carers for elderly people and domestic help.

Almost 60 per cent of Polish emigrants are less than 35 years old. Those leaving the country are increasingly younger and better educated – people with secondary school education constitute up to 60 per cent of present-day emigrants.[24]

The average Gross Domestic Product per capita in the Western part of the continent is higher almost by half than in the East. Consequently, even with rapid economic growth in the new Member States, there will be no dramatic change in the migration flows within the next several years. Depopulation is not only Poland's problem. Latvia, which has only 2 million citizens in total, was left by 50 000 citizens. In this context, it is worth asking again the same question as before: is common migration policy of the EU even possible, if the needs of the Member States seem so different? What in the Western states can be satisfied, to a large extent, by the migration of people within the EU, in the new Member States may require using workforce from third countries. Therefore, these two groups of states may have different interests as regards common solutions.

A labour migration different approaches

There are various approaches to labour migration. Some people see it as the source of money coming to the families left in the country of origin, and then possibly the return of emigrants with capital, experience and economic initiative. Others see it as a process of outflow of the best people, full of initiative, bold and resourceful. Social philosophers ask the following question: Is emigration the way to take control over one's life or quite the opposite – complete loss of control and 'going with the flow'? Answering this question would require thorough research on different groups of migrants in different stages of life.

Experts on migration have been using the terms 'emigrant', 'immigrant', 'migrations' for decades. However, an important question is whether the terms still have the same meaning.

It is a general belief that the contemporary migrations are one of the effects of globalisation. In his exquisite book *Globalization and Its Enemies*, the French professor of economics Daniel Cohen[25] pointed out that today immigrants account for only 3 per cent of the world population, while in 1913 they constituted 10 per cent. If we speak today of the age of globalisation which encompasses and extends to almost all aspects of contemporary life, does it really involve mass migration? Or maybe we are mistaken in making the connotation: globalisation → omnipresent movement → easy travel → mass flows → easy migration.

[24] Ł. Kudlicki, *Nowa wielka emigracja* (*New Great Emigration*), "Bezpieczeństwo Narodowe" no. 1/2006, pp. 90-110.

[25] D. Cohen, *Globalization and Its Enemies*, Cambridge 2006.

D. Cohen says even: *'globalization has become increasingly immobile'* and illustrates it with the fact that products are manufactured and marketed on a global scale, but many inhabitants of wealthy countries know other societies from TV programmes and holidays in other countries, which seem exotic to them. Of course there are ongoing migrations from the South, from Africa, with its deep local conflicts and poverty, from the explosive region of the Middle East. But in order to work in Brussels, one does not need to emigrate to it with the whole family – it is enough to come there from Warsaw (or Paris, Stockholm, Berlin) on Monday and return home on Friday. And in order to provide IT service to an American insurance company there is no need to leave mother town Delhi – it is enough to know how to use a computer and speak the same language as the employer. This makes the seemingly obvious relation: globalisation → an increase in migration, much more complicated. This, in turn, gives rise to the question whether scholars should look for a new language to describe the present world's phenomena in the field of migration. Are migration and mobility essentially the same process, are they similar, or completely different? If we invoke such examples as the employees of the World Bank, 10 000 people living away from their countries and not paying taxes, health insurance or pension insurance in the countries where they work, moving incredibly easily from one corner of the world to another (costs are not important), living in their own perfect world – would we call them emigrants? After all, this concept, which has been functioning in our consciousness for decades, cannot be applied to this group of people. By reviewing the activity in the contemporary world we could distinguish and name many other groups of this kind. It is hard to answer the question whether these people still have an idea of nationality, bonds with their country of origin, its tradition, culture and identity – this would require thorough research. But due to the scale of this phenomenon, it cannot be disregarded in the assessment of demographic situation.

As a result of the profitability aspect of free market economy, whole sectors of production are placed outside Europe. Even today many international companies establish their branches in China or India, where the production costs are substantially lower owing to cheap workforce. Therefore, it is conceivable that future generations of the ageing Europe will start filling the insufficiencies in workforce on their continent in this way. But will it be possible later to reverse these practices? Giving away the know-how may mean a growing dependency on other countries – remote and culturally, mentally and politically very different.

Conclusions

A key to ensuring the success of the common migration policy is proper adaptation of foreigners to the host states. The French model of assimilation, where the authorities expect that immigrants will merge with the host society, is ineffective. As shown by surveys, third generation immigrants tend to look for their

identity and at the same time feel that despite being an integral part of the social system they do not enjoy the same social position as the native French. Germans have put 'their' immigrants on the margin of social life, and this also could not have brought positive results. The model producing relatively least conflicts is the British one – immigrants and the local people live in parallel worlds, in accordance with the rule 'live and let live', in a multicultural world, but it also does not mean that they have properly adapted to the host society. The most desirable model of integration would be a two-way process of gradual evening out of rights and obligations of immigrants with the rights of other inhabitants of the country in the purely legal dimension, as well as in the access to goods, services and possibilities of participating in the civil society under the conditions of equal opportunities and equal treatment. Under this two-way approach, integration concerns not only immigrants but also the host society. Thus, it is not about assimilation of immigrants in the host society, but about integration with this society, sharing skills and culture, learning from each other. So far, it is only a theoretical model.

As mentioned before, one of the reasons for the growing interest in creating a common migration policy were the terrorist attacks in Europe and the USA. The fear of attacks by Muslim fundamentalists has paralysed airports, railway and underground stations. Actions of armed anti-terrorist forces were supposed to give the inhabitants of big cities the feeling of safety and stability in the world where they live. Authorities (both state and international) seemed to guard this safety; it seemed sufficient to strengthen border checks, close the gates to foreigners. The question which should be asked here is whether the terrorism employed by the Muslims had really been brought from the outside. A Dutch film director, Theo van Gogh, was murdered in the streets of Amsterdam by a 26-year old Dutch of Moroccan origin.[26] The attacks on the World Trade Center in New York were prepared by young people of Muslim origin, but living in Germany and studying in universities in Hamburg. What is interesting, the main users of the e-mail service of radical Muslims were over 500 people with Arab surnames living in Berlin, Hamburg, Bremen, Stuttgart and Tübingen.[27]

Reflections on the burning cars in French suburbs and the attacks on German schools also go in the same direction.

Should then the process of building the Area of Freedom, Security and Justice lead to 'Fortress Europe' as the final product? Or maybe it would be more effective to strengthen the structure of civil society – tolerant, open, but also aware of its roots and identity? The debate on this subject should be carried on, but never in the streets, for it is not arguments but rather brute force that count there.

[26] J. Pawlicki, *Śmierć reżysera Theo van Gogha dzwonkiem alarmowym dla Holandii* (*The Death of Theo van Gogh as an Alarm Bell for the Netherlands*), "Gazeta Wyborcza", 3.11.2004.

[27] T. Teluk, *Wirtualna geopolityka* (*Virtual Geopolitics*), http://www.Onepress.pl (last visited 10.12.2012).

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Anna Ogonowska

The Growing Importance of the EU Information Policy

Introduction

The aim of this paper is to present the main problems of the information policy of the European Union. Starting with the definition of this notion, information policy has been presented against the background of the sciences of information, public policy and communication. This constitutes the necessary basis for a discussion of the transformations of the EU information policy, presented later in the paper. The historical outline of this policy, the responsibility for its implementation and its legal basis is followed by a presentation of selected issues related to the policy, such as the notion of openness and transparency, media strategy, the role of the Internet in the information policy and the language policy of the European Union.

The definition of information policy

Information policy is a fundamental term in the information science. Dictionaries and encyclopaedias focusing on this field define information policy broadly as the rules concerning the provision and accessibility of information within an organisation.[1] Thus understood, information policy is essentially limited to the internal affairs of the organisation in question and does not include the passing of information outside. A more elaborate definition of information policy is provided by I. Rowlands,[2] who considers it a set of laws, regulations and policies that encourage, discourage or regulate the creation, use, storage and communication of information. Now, the second definition no longer excludes the passing of

[1] 'Information policy' in: *Dictionary of Information and Library Management*, London 2006, p. 101.

[2] I. Rowlands, *Understanding Information Policy: Concepts, Framework and Research Tools*, "Journal of Information Science" no. 1/1996, pp. 13–25.

information outside. Definitions of information policy often include the term 'organisation' as the field of application of this policy or as the entity on behalf of which actions are conducted. Organisation can be an enterprise or a civil society organisation, or even a state. Treating the state as one among many types of organisations, we can repeat after Ch.R. McClure and P.T. Jaeger[3] that the information policy of a state specifies the following rules regarding information: creation, access, collection and management, exchange and security.

P. Hernon and P.H. Relyea[4] point out that state information policy is the subject of interest of both the information science and the science of public policy, understood as the management of public affairs. The latter allows for a better understanding of the term 'policy', which, in this case, denotes a collection of rules of conduct leading to the accomplishment of a set objective. Considering the aim of the taken actions definitely broadens the list of aspects to be studied in the context of this policy. Hernon and Relyea also point out that speaking of a single information policy is a certain simplification, as in a given organisation there are usually many specific information policies, often fragmentary and inconsistent, or even contrary. This last remark points to the supposition that the term 'information policy', applied primarily to large organisations and treated in a most general way, constitutes a conventional and theoretical view of the organisation's activities regarding the operations on information, while it does not necessarily have to be used by these organisations to describe their operation. This supposition explains the terminological divergences in the descriptions of this policy. Therefore, we might assume that the term 'information policy' will be used to describe the activities of certain organisations, even if the organisation itself applies a different name to this aspect of its activities. The multitude of information policies pointed out by Hernon and Relyea leads to the question about their interrelations. One of the most significant issues in relation to this problem is how to define their hierarchy.[5]

Information policy is often replaced by the term 'information strategy', which refers to the policy of a given organisation regarding its usage of information.[6] Both terms essentially denote the same notion, but it should be pointed out that the definition of information policy focuses more on the organisational and ordering character of its activities, while the definition of information strategy underlines the functional aspect of information. In the case of the latter, the most important element is the goal of the use of information, which can be both ordering the information environment and using information to influence its recipients.

[3] Ch.R. McClure, P.T. Jaeger, *Government Information Policy Research: Importance, Approaches, and Realities*, "Library & Information Science Research" no. 4/2008 p. 257.

[4] P. Hernon, H.C. Relyea, 'Information policy' in: *Encyclopedia of Library and Information Science*, A. Kent, H. Lacour (eds.), New York 1991, vol. 48, pp. 176–204.

[5] M.W. Hill, *National Information Policies and Strategies: An Overview and Bibliographic Survey*, London 1994, p. 5.

[6] 'Information strategy' in: *Dictionary of Information and Library Management*, London 2006, p. 102.

This new element of the meaning of the term 'information strategy' becomes more lucid when the information activities are approached from the point of view of the communication science. B. Dobek-Ostrowska[7] employs the terms informative and persuasive communication referring to the activities aimed at an agreement between the participants in the process of communication. In the first case, the sender of the message does not have any clear intention of influencing the recipient, while in the latter, the sender's goal is to change the behaviour and reactions of the recipient.

The definition of information strategy makes it possible to treat it in many cases as broader notion than information policy. Such a view is even more justified when we take into account the aforementioned opinion of the scholars on the multitude of information policies. In this case, information strategy would constitute a collection of thus understood information policies, although we might also claim that specific information policies constitute a single more general information policy. On the other hand, in a great deal of contexts, information strategy might be considered a narrower term than information policy. In such situations, information strategy mostly refers to sectoral information activities. A good example of such a situation is the strategy of informing the Polish society about the European Union in relation to the whole information policy of the Polish state. We also cannot exclude a situation in which the information activities of a certain organisation are only described by strategies – both general and more specific ones.

In her article on the definition of information policy, S. Braman[8] points out that intensive interest in the formulation of national information policies originated in the 1970s and 1980s. In this period, the governments of some states were trying to define the framework of the national information policy, thus stressing its significance and moving it from low-priority areas to areas of high-priority for the functioning of the state. However, it was rather rarely that this policy was fully worked out in a single government document or a single package of documents. Nevertheless, this does not change the fact that this policy is becoming ever more important in the information society, and that discussions on its form arise every once in a while.

The definition of information policy needs to be verified once more, if we want to apply it to the functioning of a large international organisation, such as the European Union. To start with, we might risk the statement that the EU information policy resembles the national information policy. One argument for this statement is that the Member States have passed some of their powers on to the EU institutions. Therefore, we could say that the European Union is now fulfilling some of the tasks which were previously fulfilled by the individual Member

[7] B. Dobek-Ostrowska, *Komunikowanie polityczne i publiczne* (*Political and Public Communication*), Warszawa 2006, pp. 83–85.

[8] S. Braman, *Defining Information Policy*, "Journal of Information Policy" no. 1/2011, pp. 1–2.

States themselves. Although these competences are not sufficient to recognise the European Union as an entity similar to a state, they are broad enough for some of the problems of national information policy to be reflected also on the EU level. However, to state that the EU information policy is identical to the national information policies would be a huge simplification. First of all, the two policies differ in the consequences of failing to achieve the goals set in them. Just as the national policies, the information policy of the European Union results from its democratic character and fulfils an ancillary function in relation to the other policies, but the consequences of a badly conducted information policy are not the same for both organisations. For a state, the worst thing that can happen with a badly conducted information policy is social discontent and, in consequence, a change in the composition of the government or of the authorities responsible for conducting this policy. For the European Union, the situation is more complex, as social discontent caused by insufficient information is a threat to the existence of the entire organisation. It would seem obvious then that the European Union should inform its citizens about its activities and, consequently, ensure support for itself, since this very support justifies the further existence of this organisation. Although a scenario of the European Union being dissolved due to the citizens' discontent seems rather improbable, there is no doubt that the attitudes among the public constitute a major determinant of information policy for EU institutions.

The differences between the national policies and the EU information policy also consist in the measures that the two organisations have at their disposal. Every state has a network of institutions, which can be used for additional dissemination of information, e.g. public libraries, tax offices, district offices, etc. The European Union does not have such institutions at its disposal and its contact with the citizens is much more difficult to realise, even taking into account the limited competences. What is more, there are also the problems of international movement of information. While the technical aspect of the problem has essentially been solved, there are still many barriers hindering the free movement of information, e.g. the fragmentation of the media markets, the lack of a European public sphere, the various traditions of providing information and communicating, as well as the language barrier.

The result of all these problems is that the European Union's information policy has been looking for new solutions for many decades now. In the recent years, we could clearly see the EU institutions' interests in techniques of political and public communication. As a result, the EU information policy should be also viewed from the perspective of the communication science, which does not employ the term 'information policy', but instead an almost identical term, namely 'communication policy', defined by Dobek-Ostrowska and Wiszniowski[9]

[9] B. Dobek-Ostrowska, R. Wiszniowski, *Teoria komunikowania publicznego i politycznego* (*Theory of Public and Political Communication*), Wrocław 2001, p. 65.

as a set of planned actions for monitoring and managing flow of information and aimed at creating the image of an organisation inside and outside. This is to contribute to the effectiveness of the other policies conducted by the organisation. This definition essentially corresponds to the general definition of information strategy applied in the information science. Without negating the differences between these too disciplines, we should state that in many cases they have much in common, and for the purpose of examining the EU information policy it seems justified to combine the achievements of both these disciplines. The EU's interest in political and public communication does not mean that it resigns from information policy in its traditional meaning, as proven, for instance, by the fact that the European Union itself has been lately referring to this aspect of its activity as the information and communication policy or strategy.[10]

Transformations of the EU information policy

Although information policy has existed in the European Communities since their establishment, its objectives have been changing significantly throughout the decades. An essential role in the establishment of its initial form was played by Jean Monnet,[11] who decided that already the first of the Communities would be communicating with the media in an institutional and continuous manner through its press spokesmen. Nowadays, openness and transparency of the activities of public institutions is self-evident, but in the 1950s there were other standards in international politics and, therefore, Monnet's way of thinking was not very popular. However, the authority of the father of European integration prevailed, thus contributing to the establishment of the first rules of providing information.

A peculiar aspect of the first decade of the existence of the European Communities is that, at that time, the main focus were information activities aimed at non-Member States. Such priority was justified by the need for the Communities to establish a firm position in the international arena. However, the activities aimed at the Member States and their citizens rather soon became equally important and today they absolutely dominate the external actions. This change was caused mainly by the internal crises in the Communities and the European Union.

In the first decades, information policy was perceived as solely ancillary towards the other policies of the Communities. It was considered a necessary or

[10] cf. Communication from the Commission to the Council, European Parliament, Economic and Social Committee, the Committee of the Regions on a new framework for co-operation on activities concerning the information and communication policy of the European Union, Brussels, 27.06.2001, COM(2001) 354; Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on an information and communication strategy for the European Union, Brussels, 2.10.2002, COM (2002) 350/2.

[11] M. Dumoulin, *What Information Policy?* in: *The European Commission, 1958-72: History and Memories,* M. Dumoulin (ed.), Luxembourg 2007, pp. 507–531.

even compulsory activity, but in terms of importance, it usually occupied the last or one of the few last ranks. This is proven, for instance, by the position it occupied in the Communities' annual reports. Its main task was to provide information on the activities of Community institutions. The situation began to change in the 1970s and 1980s, when, as already mentioned, the information policy started growing in importance in the world of politics. This phenomenon was also taking place in the European Communities. The transformations in political communication in the 20th century, caused to a large extent by the development of the methods of mass communication, as well as the problems with ensuring support for the next stages of European integration, have made the European politicians and officials aware of the importance of information activities. In the history of the European Union, this is the moment when the transformation of information policy into information and communication policy took place.

Terra[12] points out that the process of transforming the information policy into the communication policy began already in the 1970s and was continued in the 1980s. One manifestation of this process was the interest in the results of the opinion polls concerning issues related to European integration. The results of these polls were considered unsatisfactory in the Community institutions, which resulted in the first ever verification of the tasks of information policy. Since then, it was not only informing, but also shaping the citizens' attitude towards the Communities.

However, the main event, which acted as a catalyst for deep changes in information policy, were the difficulties with the ratification of the Treaty of Maastricht (1992). From the perspective of the history of European integration, this was only one of many crises suffered by the Communities and the European Union, but it was essentially different from the previous ones. The main change consisted in the fact that this crisis ended the period referred to as the 'permissive consensus' regarding the process of European integration.[13] This meant that for the first time in history, the societies of the Member States, in this case of Denmark and France, largely rejected the pro-European views of their elites and expressed their concern with the direction of the proposed changes. This did not automatically imply that the public in the Member States became an opponent of the entire European project. A significant majority still supported the membership of their states in the EU, although between 1991 and 1997 the support dropped by as much as 25 percentage points[14] in the scale of the entire EU. Since then, EU

[12] A.L. Terra, *From Information Policy to Communication Policy: First Steps towards Reaching European Citizens in the 1970s and 1980s* in: *Public Communication in the European Union: History, Perspectives and Challenges*, Ch. Valentini, G. Nesti (eds.), Newcastle upon Tyne 2010, pp. 49–66.

[13] L. Hooghe, G. Marks, *A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus*, "British Journal of Political Science" no. 1/2009, p. 5; R.L. Buhr, *The Purported Demise of the Permissive Consensus and Evidence of its Survival*, Paper presented at International Studies Association Conference, New York 15–18.02.2009.

[14] *Support for European Union Membership*, "Standard Eurobarometer" no. 49/1998, p. 18.

institutions had to take into account the possibility that social disapproval of further stages of European integration would once again appear. And, indeed, the last two decades have seen examples of such disapproval several times.

Scholars[15] who try to explain the reasons for and the mechanics of the changing attitude of the public towards the European Union have a hard nut to crack, since none of the proposed hypotheses seem to comprehensively and fully explain the changes of the societies' moods. The simple hypotheses linking the successful development of economies with the acceptance of integration can be applied only to the period predating the ratification of the Maastricht Treaty, while after 1991 the situation became definitely much more complex. We should also remember that the attitudes of the public in the individual Member States are changing under different dynamics, which significantly hampers interpretation of the results for the whole European Union. Nevertheless, this proves that the public has become active and that it views the ongoing process of integration with a critical eye.

This event has had a profound influence on the information policy of the European Union. First of all, we should note that EU institutions were, in a way, trying to explain the reasons for the rejection of the Maastricht Treaty by the Danish. Analyses have confirmed the belief that the main culprit was the low level of knowledge on the subject of the European Union and this particular treaty. The Union's response to this problem was an increased number of publically available information materials. The milestone in the popularisation of the information on the European Union was the establishment of EU websites and the television channel 'Europe by Satellite'. Of no small importance for the entire format of this policy was also the charge of secrecy levelled by the Danish against the EU decision-making process, which has given rise to a long-lasting process of opening up of EU institutions. Among the many analyses which, in the end, led to the redefinition of this policy, a very interesting report was prepared by a group chaired by a Belgian MEP, Willy De Clercq.[16] In this paper, the experts called for the use the techniques of marketing and public relations in order to promote the European Union as a 'good product'. The report has caused a lot of consternation in EU institutions, as it came really close to calling for a propaganda. Nevertheless, even though EU institutions have never admitted to following De Clercq's advice on this particular issue, some of his ideas have been implemented. A good example of this is the PRINCE programme (PRogramme d'INformation des Citoyens Européenes), under which every year funds are reserved in the EU budget for information campaigns.[17]

[15] Cf. R.C. Eichenberg, R.J. Dalton, *Post-Maastricht Blues: The Transformation of Citizen Support for European Integration, 1973–2004*, "Acta Politica" no. 2/2007, pp. 128–152.

[16] *Reflection on Information and Communication Policy of the European Community.* Report by the group of experts chaired by Mr Willy De Clercq Member of the European Parliament, March 1993.

[17] A. Ogonowska, *Kampanie informacyjne programu PRINCE Unii Europejskiej* (*The European Union's PRINCE Programme Information Campaigns*), "Studia Europejskie" no. 1/2010, pp. 139–159.

The crisis caused by the course of ratification of the Maastricht Treaty has emphasized yet another weakness of the European Union, namely the democratic deficit. An institutional system in which the parliament fulfils only marginally the role of a traditional parliament and the legislative power is held by representatives of the executive power, coming from various Member States, significantly differs from the traditional and commonly accepted division of power into the legislative, executive and judiciary. Due to the uniqueness of the European Union's institutional system, it is rather difficult to reform this organisation and simply eliminate the problem; therefore, alternative solutions are being sought for. One way to do it would be the cooperation of national parliaments with the European Parliament,[18] which would ensure greater control over legislation. Another solution would be to encourage the citizens of the European Union to participate in European debates and in the dialogue with EU institutions.[19] This solution constitutes a very important subject of communication activities of the European Union. Yet another solution is making the decision-making procedures more public. Through increasing the range of information available and through greater openness in providing information the effects of the democratic deficit can be mitigated.

Elements of communication were added to information policy gradually. What is important is that since 1993 the documents of the European Commission have been using the term 'communication' next to the term 'information', and information and communication policy replaced the earlier information policy.[20] It should also be noted that EU institutions have not been attaching a lot of weight to distinguishing between these terms and have often used them interchangeably.[21] A trend towards communication is also apparent in the names of the institutions responsible for conducting the information policy of the European Union. In his first term as President of the European Commission, Jose Manuel Barroso created the office of Vice-President for Institutional Relations and Communication. Furthermore, the Directorate General for Press and Information was renamed the Directorate General

[18] It should also be noted that this solution required the creation of special information tools making a rational cooperation of these bodies possible. A good example of this is the IPEX database (http://www.ipex.eu/IPEXL-WEB/home/home.do).

[19] Presidency Conclusions – Brussels European Council, 21/22 June 2007, p. 2, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/94932.pdf (last visited 09.08.2012); Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Communicating Europe in Partnership, Brussels, 3.10.2007, pp. 6–7, COM (2007) 568.

[20] Cf. The Commission's information and communication policy – a new approach. Communication from Commissioner Joao de Deus Pinheiro, 22 June 1993, SEC(93) 916/9.

[21] Cf. e.g.: Resolutions of the information policy of the European Community, OJ C 268, 4.10.1993, pp. 192–196; Communication from the Commission to the Council, European Parliament, Economic and Social Committee, the Committee of the Regions on a new framework for co-operation on activities concerning the information and communication policy of the European Union, Brussels, 27.06.2001, COM (2001) 354.

for Communication (DG COMM). The objectives of information and communication strategy are essentially the same as in the 1970s –providing information on the European Union and shaping the citizens' attitudes towards it. However, while 40 years ago the European Communities had the luxury of being able to treat the latter task lightly, for the last 20 years the EU institutions have been certain that their future probably depends on public feeling.

While evaluating the achievements of the EU's communication activities, we should point out that they were usually not a spectacular success. At a certain point, the campaign conducted before the introduction of the euro was considered a huge success, but, as opinion polls seem to show, the crisis in the euro area has effectively undermined the confidence in the EU institutions and in the European Union itself.[22] The main structural problem of the EU's communication activities is the difficulty in reaching the national media in the Member States.

Responsibility for the EU information policy

Before we deal with the problem of responsibility for the information policy of the European Union, we should first ponder a while on its legal basis. First of all, we should note that the information policy is not a policy under the Treaty definition; it does not equal in significance to, for instance, the agricultural policy or the foreign policy of the EU. The information policy is a consequence of the democratic nature of the organisation, but for several decades it has not been mentioned at all in the Treaties. In the present version of the Treaties, provisions referring to selected elements of information policy can be found in Article 1 of the Treaty on European Union,[23] which includes the imperative of taking decisions as openly as possible. This is further elaborated on in Article 15 of the Treaty on the Functioning of the European Union, which specifies the rules of access to documents and openness of the meetings of EU institutions. Openness and transparency are the constituents of information policy. While giving thought to why the entire EU information policy has not been included as separate, clear provisions in the Treaties, we might arrive at the conclusion that the reason for this is its communicative nature. Adding a provision stipulating that the European Union has the right and obligation to influence the citizens' attitude towards itself would constitute a gateway to overt propaganda, to which many Member States would surely not give consent.

The main institution responsible for the execution of information policy is the European Commission. Since the late 1960s, it has had a separate Directorate General responsible for these activities. At present, it is the Directorate General for

[22] For the first time in the history of Eurobarometer surveys, the majority of respondents stated that they did not trust the major EU institutions and the EU itself. Cf. *The European Institutions*, "Standard Eurobarometer" no. 76/2011, pp. 60–68.

[23] Consolidated version of the Treaty on European Union, OJ C 83, 30.03.2010, pp. 13–46.

Communication. However, this does not mean that the other DGs have not been conducting information and communication activities. In fact, every department in the Commission is conducting information activities on issues which are within the scope of its responsibilities, but DG COMM acts as the coordinator of the entire process and the chief author of information activities. In the early years of Romano Prodi's Commission (1999–2004), DG for Communication was degraded to the level of a Service and the responsibility for information activities was divided equally between all the remaining Directorates General. This was a mistake, as such broad information activity requires central coordination. A few years later, Romano Prodi recognised the mistake and corrected it by reinstating the Directorate General responsible for information policy.[24]

The European Commission is the main executor of the EU information policy, and its main initiator. However, it is not the only institution to influence its format. The Council of the European Union and the European Parliament have a lot to say in this matter as well. In the 1960s, there was a conflict of competence[25] concerning the extent to which the European Commission was allowed to conduct this policy independently. When the dispute was settled, it was agreed that the Commission is dependent on the Council's decisions. Nowadays, disputes like this no longer arise. The European Commission makes decisions on information activities with significant freedom and independence, while the Council limits its input in this policy to framing general guidelines. The European Parliament, however, has taken a different position regarding this policy. Like the Council of the European Union, it provides guidelines to the European Commission, but, at the same time, it has a significant influence on the 'information' budget and the settlement of this budget.[26] Still, the role of the European Parliament in the information policy of the European Union has undergone a considerable evolution since the time of the first direct elections. The MEPs, dissatisfied with what they considered to be a low[27] voter turnout, decided that the Parliament would conduct its own information activities which, in contrast to those of the Commission, would focus on providing information on the activities of the Parliament.[28]

[24] A. Ogonowska, *Polityka informacyjna Wspólnot i Unii Europejskiej w sprawozdaniach za lata 1958-2007. Część 2. (Lata 1993–2007)* (*European Community and Union Information Policy in the Light of the Commission's Annual Reports for the years 1958–2007. Part 2. (1993–2007)*), "Studia Europejskie" no. 1/2009, pp. 125–126.

[25] The dispute was a part of the 'empty chair crisis'. Cf. M. Dumoulin, *What Information Policy?* in: *The European Commission, 1958–72: History and Memories,* M. Dumoulin (ed.), Luxembourg 2007, p. 518.

[26] A good example of meticulous monitoring of the Commission's activities is blocking some funds for information policy in the EU budget for 2012. Cf. Definitive adoption of the European Union's general budget for the financial year 2012, OJ L 56, 29.02.2012, pp. II/667–II/696.

[27] The voter turnout in the first direct elections to the European Parliament, held in 1979, was so far the highest. In every subsequent elections the turnout was dropping.

[28] Resolution on the information policy of the European Community, of the Commission of the European Communities and of the European Parliament, OJ C 28, 9.02.1981, pp. 74–81.

In principle, greater involvement of one of the large institutions in the process of providing information should have a positive influence on the effectiveness of information policy, but we should also consider a different point of view. During his term of office in the European Commission, Romano Prodi performed a thorough analysis of the information and communication policy of the European Union and identified the elements which had significant influence on the effectiveness of this policy.[29] One of these elements was inter-institutional cooperation. The multitude of actors involved in the implementation of the information policy could also become a reason of its weakness. EU institutions dedicate a lot of time and effort to defining the rules of cooperation as regards the information policy. But the longer the debates on this take and the more documents are produced, the more we should be asking the question whether this is truly a testimony to the effectiveness of cooperation, or rather to its deep problems. The fact that the dialogue between the institutions is not an easy one is proven by the establishment of the Inter-Institutional Group on Information.[30]

Considering the issue of responsibility for the information policy of the European Union, we should also present the role of the Member States in this respect. It should be clearly stated that no Treaty, the Treaties of Accession included, imposes any obligations on the governments of the Member States as regards providing information. Any activities undertaken in this field are voluntary. For many years, the European Commission has been aware that the effective information activities must be as decentralised as possible and must be conducted on the local level. Without the assistance of national authorities, it is virtually impossible. Therefore, since the first decade of the 21st century, the European Commission has been signing 'management partnership' agreements with the governments of the Member States, which constitute the basis for joint information activities. However, it should be stressed once more that these are voluntary agreements, under which the Member States have considerable influence on the disseminated content. One exception from this rule are the regulations of the European Union requiring the Member States to provide information to the public on particular subjects through clearly specified methods and means – for example, regulations governing the European funds; obligations concerning the provision of information are imposed on the states who use these funds and they cannot be evaded.[31]

[29] Communication from the Commission to the Council, European Parliament, Economic and Social Committee, the Committee of the Regions on a new framework for co-operation on activities concerning the information and communication policy of the European Union, Brussels, 27.06.2001, COM(2001) 354, pp. 4–11.

[30] Ibidem, p. 7.

[31] A. Ogonowska, *Polityka informacyjna państw członkowskich o Unii Europejskiej na przykładach okresów wzmożonej działalności informacyjnej* (*Member States' Information Policy on the European Union – A Case Study on Period of Increased Information Activities*), "Studia Europejskie" no. 3/2011, pp. 127–129.

Constituents of the EU information policy

As previously mentioned, some researchers believe that while studying large organisations one cannot speak of a single information policy, but rather of many specific policies, regulating certain sectors or problems related to information. It is also the case with the European Union. In the information policy of this organisation we can distinguish the following elements: the strategy of production and distribution of printed and electronic materials, the strategy of using the Internet, the media strategy, the strategy of using the network of information centres, as well as the policy of openness and transparency, together with the regulations on the access to documents and the archiving policy. Due to the international character of the information and communication processes, the language policy should also be considered as one of the constituents of the information policy. There are also separate constituents, such as sector-related information activities, e.g. disseminating information on the Economic and Monetary Union and the euro, or on the agricultural policy. The documents of the European Commission concerning the information and communication policy rarely refer to all these issues at the same time. The major problems of this policy are discussed below.

Principles of openness and transparency

The EU principles of openness and transparency of both documents and the institution meetings have the greatest influence on the format of information policy. Jean Monnet, who first defined the principles of functioning of the information system of the European Coal and Steel Community in the 1950s, would be deeply surprised at the contemporary principles of openness. Even for a visionary of European integration like him it would be unheard-of that a common citizen should be allowed to monitor the manner in which the politicians make their decisions.[32] It should be strongly emphasized that the last 50 years have seen an epoch-making transition in the approach to the issues of openness of the political life. These changes are also visible in the European Union and the last 20 years are a clear proof of this.

The approach to the issue of openness in the European Union has not changed as a result of an internal transformation of EU institutions, but much rather of external factors. The Danish 'no' for the Treaty of Maastricht has contributed to the popularisation of some critical remarks concerning this organisation. One of these was the charge of secrecy of the decision-making process. When overcoming the 1992 crisis, for the first time the European Communities undertook to change this situation. The second important factor which significantly contributed to choosing the path of openness by the EU was the accession of Sweden. Famous for the most liberal law in the world as regards access to public documents, it is

[32] M. Dumoulin, *What information policy?* in: *The European Commission, 1958-72: History and Memories,* M. Dumoulin (ed.), Luxembourg 2007, p. 508.

a huge proponent of the principles of openness and transparency. Under Sweden's influence, since 1997 the EU treaties have included provisions concerning the principles of openness and access to documents.

The almost tangible resistance of the EU institutions and the Member States in the implementation of the principles of openness in the activities of the European Union results, to a large extent, from the traditional way of perceiving international relations. Most countries have relevant regulations which allow for secrecy of certain matters in the fields of foreign policy, international relations and diplomacy. This exception is rationally justified and, in principle, never questioned, but its automatic application at the EU level can give rise to a certain amount of anxiety. If we consider the institutional structure of its organisation, we can clearly see that the main burden of the EU's legislative power lies with the Council of the European Union; the European Parliament, whose competences have been gradually increasing in the last decades, is still not the leading institution in this regard.[33] In order for the legislation process to be considered fully democratic, it should be subject to social control, i.e. it should be characterised by, among others, openness and transparency. There are no problems in this respect in the European Parliament, but the activities of the Council are still not fully open. Greater openness and transparency, which was supposed to be a remedy for the democratic deficit of the European Union, is often confronted with arguments such as the need to make an exception from these principles in the interest of international negotiations.[34]

Throughout the last 20 years, the European Union has made considerable progress in the policy of openness, but this does not mean that the issue is done with. There is a disagreement between the citizens of the European Union and the EU institutions and the Member States on where the line should be drawn between what is public and what is secret in matters concerning the EU. This dispute is waged in the courtrooms of the General Court (formerly the Court of First Instance of the European Communities), involves the European Ombudsman, and is even partially visible in the legislative process on the amendment of Regulation no. 1049/2001.[35]

Media strategy

The media strategy of the European Union can be divided into two parts: the strategy of producing and distributing own audiovisual materials and the strategy

[33] This thesis is proven by the results of a search in the database of EU legislation 'EUR-Lex'. At the moment (August 2012), out of all the EU's legal acts in force, 1268 were passed by the Parliament, and 8299 by the Council of the European Union. 1092 acts were passed jointly by the Parliament and the Council.

[34] These arguments were used by the Polish government in 2011, when it proposed to limit the citizens' right to access the documents related to the representation of Polish interests in the Council of the European Union.

[35] The Court and Ombudsman investigate complaints concerning the access to EU documents. Cf. Regulation (EC) no. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, pp. 43–48.

of encouraging the existing media to popularise the information concerning its functioning. The main barriers in the development of own media are the costs of production and the difficulties with remaining in the European market. In the past, various enterprises and organisations made several attempts to create pan-European televisions, but in most cases it came out that the costs of such television cannot be sufficiently compensated by the revenue from advertisements. The reason for this was the fact that such televisions usually had problems with acquiring and keeping a sufficient number of viewers.[36] Pan-European press suffered a similar fate. The main obstacles in the successful execution of such undertakings are the language barrier and diverse media traditions in the various states.

For a long time, these reasons have discouraged the European Union from creating its own television. Europe by Satellite, launched as late as 1995, initially broadcasted only by satellite and later also in the Internet. However, we should remember that the programme of this TV station differs greatly from the programmes of traditional channels. The materials broadcasted there are meant for radio and TV stations and journalists, and not for the private viewers. In 2008, the European Parliament launched Europarl TV. However, calling this service a television is rather not justified, as the station does not have any broadcasting schedule with fixed dates and times. It is rather a certain multimedia library, allowing its viewers to watch any material at any given time. Furthermore, the European Union has never had its own radio station and there is no equivalent of national daily newspapers among the magazines published by the EU. In consequence of all this, the EU treats the production of own audiovisual materials as a complimentary solution, with the main role still played by national media.

Every institution of the European Union has its press spokesmen and the communication with journalists usually takes place during press conferences. In Brussels, several hundred journalists from all over the world are accredited to the European Commission, and special radio and television studios were organised for them. Additionally, the European Parliament Information Offices and the European Commission Representations in the Member States undertake countless initiatives aimed at encouraging the national press to write on European events. Another form of cooperation with the media is the commissioning of television and radio programmes. Since 1993, the European Commission has been paying the European Broadcasting Union for broadcasting programmes on the European Union in EuroNews.[37] Since 2008, it has been commissioning selected radio stations to broadcast cyclical programmes dedicated to European issues.[38]

[36] K. Williams, *Media w Europie* (*Media in Europe*), Warszawa 2008, pp. 173–193.

[37] Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on implementing the information and communication strategy for the European Union, Brussels, 20.4.2004, COM (2004) 196, pp. 18–20.

[38] These activities take place under the EuRaNet (http://www.euranet.eu/).

The results of studies of the content of TV information programmes and the national press in the Member States for European issues show a very diverse interest in issues connected with European integration. No studies on the comprehensive total state of Europeanisation of television and press have ever been conducted; however, many studies point out that European issues make the front pages and become the first news in information programmes only when they concern the most important EU events. On an everyday basis, they usually loose to national issues.[39]

Use of the Internet in the information policy

The Internet plays a very important role in the information policy of the European Union and we could even claim that its development has resulted in important transformations. It has already become the main medium of information and communication for EU institutions. Eurobarometer analyses[40] show that television still remains the chief source of information on the European Union, but it might soon be replaced by the Internet. The emergence of the new universal carrier of information has resulted in significant changes in the policy of producing, distributing and archiving EU information. Throughout the recent years, printed publications have been replaced to a large extent by their electronic counterparts, available in the Internet. Eliminating charges for the materials and for the databases available in the Internet was yet another important step towards popularisation of information on the European Union. The increased bandwidth of telecom connections allowed for including audiovisual materials in the information disseminated through the Internet. Using images, audio recordings and films has become a common practice, also in the communication activities of the European Union.[41]

The archiving policy has also undergone a transformation. The European Commission executed two large digitalisation programmes and has made all its

[39] P. Bijsmans, Ch. Altides, *'Bridging the Gap' between EU Politics and Citizens? The European Commission, National Media and EU Affairs in the Public Sphere*, "European Integration" no. 3/2007, pp. 323–340; H.G. Boomgaarden, R. Vliegenthart, C.H. de Vreese, A.R.T. Schuck, *News on the Move: Exogenous Events and News Coverage of the European Union*, "Journal of European Public Policy" no. 4/2010, pp. 506–526; C.H. de Vreese, *'Europe' in the News. A Cross-National Comparative Study of the News Coverage of Key EU Events*, "European Union Politics" no. 3/2001, pp. 283–307; M. Brüggemann, K. Kleinen-von Königslöw, *'Let's Talk about Europe'. Why Europeanisation Shows a Different Face in Different Newspapers*, "European Journal of Communication" no. 1/2009, pp. 27-48; L. van Noije, *The European Paradox: A Communication Deficit as Long as European Integration Steals the Headlines*, "European Journal of Communication" no. 3/2010, pp. 259–272.

[40] *Sources of information about the European Union*, "Standard Eurobarometer" no. 50/1998, p. 91; *Sources of information about the European Union*, "Standard Eurobarometer" no. 65/2006, p. 113; *Sources of information about the European Union*, "Standard Eurobarometer" no. 67/2007, p. 134.

[41] A. Ogonowska, *Internet w polityce komunikacyjnej Unii Europejskiej* (*Internet in the Communication Policy of the European Union*), "Studia Medioznawcze" no. 2/2012, pp. 100–114.

archive publications[42] and the entire archive of the 'Official Journal of the European Union'[43] available in the Internet. As a result of the popularity and domination of the Internet, the EU has also adopted the regulation on acknowledging the electronic version of the Official Journal as the only authentic source of EU law.[44] The transformations of the distribution and archiving policy have had a profound impact on the functioning of the EU networks of information centres. Their traditional task – providing access to printed publications of the EU – has been replaced by providing assistance to navigating Internet sources.

The second generation of Internet services, known as Web 2.0, led to the development of interactive services. The European Union is using these possibilities provided by the Internet in the process of public consultations, public debates and information campaigns. And even though it has been criticised because of the manner in which it uses them,[45] we have to admit that the European Union is actively searching for the right solutions.[46] A good example of this is the decision to go with the information and communication activities beyond the field of EU websites and to take advantage of social network services.[47]

The Internet has become a very important tool for the implementation of the EU's policy of openness. In fact, nowadays it is rather hard to imagine how this policy had ever been successfully implemented without the Internet. In this respect, the European Union has achieved a significant success, as the amount of information made available in the Internet is truly impressive. The Internet has also changed the traditional approach to political communication. Under the influence of social network services, EU politicians, officials and diplomats are departing from conduct in conformity with regulations, codes, habits and common customs. Allowing ordinary officials to participate in debates on the European Union is an example of this trend.[48]

Language policy

The language policy of the European Communities, understood as the principles of using different languages by Community institutions in relations with each

[42] They are available in the EU Bookshop http://bookshop.europa.eu.

[43] See: EUR-Lex (http://eur-lex.europa.eu/JOIndex.do?ihmlang=en).

[44] Council Regulation (EU) no 216/2013 of 7 March 2013 on the electronic publication of the Official Journal of the European Union, OJ L 69, 13.03.2013, pp. 1–3.

[45] So far, the use of the Internet to establish a dialogue with the citizens of the European Union has remained an unused opportunity. Despite many declarations, this idea has not been implemented on a broader scale, despite the fact that the available Internet tools make it possible.

[46] Interesting deliberations on this topic can be found in the EU budget for 2012. Cf. Pilot project – Connecting Europe in: Definitive adoption of the European Union's general budget for the financial year 2012, OJ L 56, 29.02.2012, pp. II/680–II/681.

[47] *Use of Social Media in EU communication*, approx. 2011, European Commission, http://ec.europa.eu/ipg/go_live/web2_0/index_en.htm#N100F4 (last visited 14.08.2012).

[48] *Communicating with the outside world. Guidelines for all staff on the use of social media*, approx. 2011, European Commission, http://ec.europa.eu/ipg/docs/guidelines_social_media_en.pdf (last visited 14.08.2012).

other, with the Member States and with their citizens, was defined in the 1950s and, essentially, has not changed ever since.[49] With the contemporary form and format of the European Union, the principles which seemed to be good and rational for a small number of states and an organisation with limited competences now give rise to many controversies, since the organisation employs the highest number of translators in the world. It has 23 official languages[50] (and three different alphabets) – compared with no more than six official languages used by all other organisations with global or regional extent. As a result of the above, the European Union has often been called the Tower of Babel.

A thorough revision of the existing language system is long overdue, but changing is would not be a simple task. The EU Treaties require the consent of all the Member States in these matters. Another difficulty in stopping the unbridled increase of the number of official languages (from four in 1958 to 23 in 2007 and 24 in 2013) is the legal system invented for the European Communities and the European Union. Direct effect of certain legal acts published in the Official Journal requires that they be published in the official languages of the Member States. If this requirement is not fulfilled, they would not be applicable in most of the Member States. What further complicates the issue is that the citizens of the Member States are referred to as the 'citizens of the European Union'. With this, the European Union reminds everyone that it has assumed some of the powers of the Member States and, consequently, that it should communicate with its citizens in their languages.

These special conditions result in very high expectations towards the information policy, which the European Union is unable to meet due to financial concerns. In an ideal situation, all information on the EU should be available in all the official languages used by this organisation. However, this is rather rare. Only selected publications, databases and other information materials are produced in that many language versions. This is especially true for the most important documents of the European Union and promotion materials. The rest is produced in a limited number of language versions. The liming of the number of publications available in all the official languages has been particularly visible after the enlargement to the east, which has almost doubled the number of official languages from 11 to 20.

The European Commission provides translations of its press conferences into two languages, expecting journalists to provide an account of the event, as well as translation into all the other languages. The full context of EU websites is seldom available in more than two language versions. The same is true for databases. In most cases, the language in which the most information is available is English, the second being French.

[49] Cf. Regulation No. 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, pp. 385–386; Regulation No 1 determining the languages to be used by the European Atomic Energy Community, OJ 17, 6.10.1958, pp. 401–402.

[50] With the accession of Croatia on 1st July 2013, the 24th language was added.

Conclusions

In the last 50 years, the information policy of the European Union has undergone considerable transformations. Some of these were caused by changes taking place in the organisation itself and some constituted a natural evolution of this policy. The manner of conducting information activities has been greatly influenced by the EU embarking on a policy of openness and transparency in the 1990s. This has considerably expanded the extent of information activities. The opening of the PreLex database, the Legislative Observatory, or the registers of internal documents of the various EU institutions to all interested is only one example of information activities undertaken as a result of those decisions. The second important transformation of this policy was the expansion of communication activities. This step can be treated as an attempt to solve the numerous European problems with the public. The use of public and political communication was supposed to solve, or at least mitigate, the crises in this organisation. However, it should be noted that this line of the EU's activities has not brought about the expected results and the declared dialogue with the citizens still remains largely a marketing slogan.

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Supporting an Important Business – The European Union's Policies in the Sphere of Tourism

Introduction

In the modern system of international relations the European Union can be considered as a unique and very complex phenomenon. There has been no other association in the history of mankind which could resemble the modern European Union, therefore no one knows how it will develop and evolve in the future. Today, the EU is the most important and influential actor of the modern processes of policy-making and governance in Europe.

With the deepening and expansion of integration within the European Union, issues of development and implementation of common policies have gained increasing importance for the research of the European integration. Attention is drawn to the possibility of the joint efforts of the EU in various fields.

Currently, one of such areas is tourism because global interest in the European Union as a tourist region is growing every year. The concept of the common policy of the European Union in the sphere of tourism is quite new and interesting. Tourism is a very promising and profitable activity, especially for those countries which have the necessary resources. Thus, the implementation of joint actions in this area and the forming of common policy will contribute to the strengthening of the EU's position on a global scale, will establish cooperation between the Member States and improve relations with third countries.

Due to its economic importance, tourism sector is an integral part of the European economy and, therefore, requires measures to help organise and develop it. From the European point of view, tourism policy is also a way to maintain common political goals in employment and economic growth.[1]

[1] О. Краєвська, *Концептуальні засади та інституційні механізми політики Європейського Союзу у сфері туризму*: Автореф. дис... канд. політ. наук: 23.00.04, Львівський національний ун-т ім. Івана Франка, Львів 2007.

The purpose of this article is to investigate the formation and implementation of the European Union tourism policy, its instruments and institutional support.

History of the formation of the EU policy in the sphere of tourism

The European Commission, recognising the important role of tourism in the European economy, has been increasingly involved in tourism since the early 1980s, in cooperation with the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions.

An important step forward was taken with the establishment of the Tourism Advisory Committee in 1986, the role of which is to facilitate exchange of information, consultation and cooperation on tourism. At present the Advisory Committee, which is composed of representatives from all Member States, provides information on the measures taken at the national level in the area of tourism. This Committee meets several times a year.[2]

The decision of the Council to declare the year 1990 'The European Year of Tourism' was designed to emphasize the role of tourism and to develop a coherent policy approach.[3]

Following its 1995 "Green Paper on the Role of the Union in the Field of Tourism", in order to stimulate a debate on the Union's role in tourism, the European Commission adopted (30 April 1996) a proposal for a Council Decision on a First Multiannual Programme to assist European Tourism. The Commissions' proposal received a favourable opinion of the other European institutions – the European Parliament, the European Economic and Social Committee and the Committee of the Regions; nevertheless the Council was not able to reach an unanimous agreement and the Commission formally withdrew its proposal in April 2000.[4]

The Community activities representing tourism were thus embedded in the Tourism and Employment process. On 4–5 November 1997 a joint Presidency/ Commission Conference on Tourism and Employment was held in Luxembourg on the subject of tourism and employment (Conference on "Employment and Tourism: Guidelines for Actions").[5]

In order to give a practical orientation to the results of the Conference a High Level Group on Tourism and Employment was set up. The Group's mandate was

[2] *Community's Commitment for Tourism*, http://www.ec.europa.eu/enterprise/sectors/tourism/promoting-eu-tourism/community-commitment-tourism/index_en.htm (last visited 15.12.2012).

[3] Council Decision 86/664/EEC establishing a consultation and co-operation procedure in the field of tourism, of 22.12.1986. Council Decision 89/46/EEC of 2.12.1988, along with the 1992 three year Action Plan to Assist Tourism (Council Decision 92/421/EEC of 31.07.1992). See: M. McDonald, *European Community Tourism Law and Policy*, Dublin 2003, pp. 49–50.

[4] M. McDonald, op.cit, pp. 69–70.

[5] *Community's Commitment for Tourism*..., op.cit.

to examine the conditions in which tourism could make a greater contribution to growth and stability in employment in European tourism, and to make recommendations. The setting up of the group confirmed the Commission's determination to stimulate the contribution of tourism-related activities to growth and employment.

The High Level Group was composed of qualified tourism professionals from all Member States. Its report was presented on 22 October 1998. Further to this report, the Commission determined the follow-up activities needed to implement recommendations of the Group.

On 21 June 1999 the Internal Market Council adopted comprehensive conclusions, welcomed the achievements, and envisaged further actions on specific topics between the Commission, the Member States, and the industry.

As a consequence, the Commission and the Member States agreed to set up four working groups, each dealing with one of the four topics specified in the Council conclusions:

- to facilitate the exchange and dissemination of information, particularly through new technologies (Working Group A);
- to improve training in order to upgrade skills in the tourism industry (Working Group B);
- to improve the quality of tourist products (Working Group C); and
- to promote environmental protection and sustainable development in tourism (Working Group D).

These groups started working in February 2000. In addition, a special working group managing the impact of new technologies in the tourism sector (Working Group E) started its work in early 2001.[6]

All groups tabled their reports on recommendations in the summer of 2001. These reports were an important material for the Commission Communication "Working together for the future of European tourism". In this Communication the Commission outlined its ideas on how to exploit the European tourism sector's competitive potential. The Communication is the final milestone of the Tourism and Employment process that was launched four years earlier.[7]

On 21 May 2002, the Council unanimously adopted a resolution, based on the Commission Communication, presenting an important step further in the new co-operative approach for the European tourism sector. For the first time, the Council adopted a resolution specifically on tourism, in which it urged closer monitoring of the impact of the EU legislation on the tourism sector, suggested further examination of promoting Europe as a destination, and invited the industry to support the efforts undertaken by the European Community and the Member States.

[6] Ibidem.

[7] О. Краєвська, *Інституційні механізми політики Європейського Союзу в сфері туризму*, Вісник Львівського університету. Серія міжнародні відносини, Вип. 14, 2004, pp. 51–58.

As a follow-up to one of the ten measures that the Commission announced in its Communication Working together for the future of European tourism, the Commission called for an EU-wide drive to enhance the economic, social and environmental sustainability of European tourism in its Communication "Basic orientations for the sustainability of European tourism". This Communication emphasized, in particular, the need to ensure the consistency of various Community policies and measures affecting the sustainability and the competitiveness of tourism industry.[8]

In February 2005, the Commission proposed a new start for the Lisbon Strategy, focusing the European Union's efforts on two principal tasks – delivering stronger, lasting growth and more and better jobs. In order to respond to modern challenges, while making the best use of available resources and taking advantage of all possible synergies, the Commission proposed a renewed European tourism policy' in its Communication "A renewed tourism EU policy: towards a stronger partnership for European Tourism".[9] The main aim of the renewed EU tourism policy is to improve the competitiveness of the European tourism industry and create more and better jobs through the sustainable growth of tourism in Europe and globally.[10]

The document highlights the potential of tourism to generate employment and growth, the two main goals set by the Lisbon Strategy. To this aim, the commission proposes a renewed European tourism policy which involves the Member States' authorities and the stakeholders.

Competitiveness and sustainability are the key points of the Commission's proposal to meet challenges such as changing demography, external competition and the demand for specific forms of tourism. A more competitive and sustainable tourism industry would contribute to confirming Europe's leading position as tourism destination. The Commission also considers dialogue and partnership amongst stakeholders and with the public authorities a fundamental tool to implement this tourist policy. Commission Vice-President Verheugen presented an outline of this policy in his keynote speech at the 2005 European Tourism Forum.

In October 2007, the Commission launched its medium-term strategy for the achievement of a sustainable and competitive European tourism. Thereby, an important message is addressed to stakeholders to undertake the necessary steps in view of strengthening the contribution of sustainable practices to facilitate the competitiveness of Europe as the most attractive tourism destination. The Communication "Agenda for a sustainable and competitive European Tourism" also expresses a message of commitment by the Commission to this 'agenda'

[8] P. Houska, Z. Petru, *Cestovvni Ruch v Pusobnosti Organu EU*, Praha 2010, pp. 35–42.

[9] *A renewed tourism EU policy: towards a stronger partnership for European Tourism*, 2006, http://www.ec.europa.eu/enterprise/sectors/tourism/documents/communications/commission-communication-2006/index_en.htm (last visited 15.12.2012); P. Houska, Z. Petru, *Cestovvni Ruch v Pusobnosti Organu EU*, Praha 2010, pp. 42–52.

[10] *Community's Commitment for..., op.cit.*

process. Furthermore, the Communication builds the framework for the implementation of supportive European policies and actions in the tourism domain as well as in all other policy areas which may have an impact on tourism or on its sustainability and competitiveness.

European Tourism Days have been held in Brussels on 7 October 2008, during the Open Days events, and on 8 October 2009 (Square Brussels Meeting Center).

In its Communication "Working Together for the Future of European Tourism" of 13 November 2001, the Commission proposed an operational framework and measures to be undertaken with the aim of strengthening European tourism. To improve the interface between European tourism stakeholders, one of the measures provided for an annual European Tourism Forum, which was held for the first time in December 2002 in Brussels.[11] Between 2002 and 2012 eleven European Tourism Forums were organised, where the important issues of European tourism policy were discussed.[12] The 2012 European Tourism Forum took place on the 25–26 of October in Nicosia (Cyprus).[13]

The European Tourism Forums normally bring together leading representatives from the tourism industry, civil society, European Institutions, national and regional authorities dealing with tourism, and international organisations to discuss the challenges of the sector. Every year the Forum focuses on specific themes of interest, such as quality, sustainability and competition.

European policies for tourism

Although the Community has no direct competence in tourism, European policies in a number of areas have a considerable and even growing impact on tourism. Moreover, a number of actions related to tourism are supported through EU programmes, including in the fields of education, vocational training, youth, culture, consumers and regional policy.[14] Here is the list of various EU programmes, schemes, funds, initiatives and actions of interest to the tourism sector and internet links to the homepages of the relevant programmes.[15]

1. Structural Funds: The Commission has foreseen the possibility of funding sustainable tourism-related projects through the European Regional Development Fund (ERDF) in support of social and economic development.

[11] *Європейський Союз: політика, економіка, право*. Навчальний посібник, За ред. Н.В. Антонюк, М.М. Микієвича, Львів 2005, pp. 292–300.; М.П. Мальська, Н.В. Антонюк, Н.М. Ганич, *Міжнародний туризм і сфера послуг*, Підручник, Знання 2008, 661 с.

[12] European Tourism Forum, http://www.ec.europa.eu/enterprise/sectors/tourism/promoting-eu-tou rism/european-tourism-forum/index_en.htm (last visited 15.12.2012).

[13] European Tourism Forum 2012 (Nicosia, Cyprus), http://www.ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_id=6194&lang (last visited 15.12.2012).

[14] О. Краєвська, *Механізми взаємодії політики у сфері туризму з іншими соціально-економічними політиками ЄС*, Вісник Львівського університету. Серія міжнародні відносини, Вип. 15, 2005, pp. 159–163.

[15] *European policies for tourism*..., op.cit.

Under its three objectives, 'Convergence', 'Regional Competitiveness and Employment' and 'European Territorial Cooperation', the ERDF shall support more sustainable patterns of tourism to enhance cultural and natural heritage, develop accessibility and mobility related infrastructure as well as to promote ICT, innovative SMEs, business networks and clusters, higher value added services, joint cross-border tourism strategies and inter-regional exchange of experience. Environment and transport infrastructures, both of utmost importance for tourism, are also financed by the Cohesion Fund.

2. Tourism development, given its potential for creating employment, is an important domain of the European Social Fund (ESF) intervention. Amongst others, the ESF co-finances projects targeting educational programmes and training in order to enhance productivity and the quality of employment and services in the tourism sector. The ESF provides also targeted training combined with small start-up premiums to tourism micro-enterprises. These actions tend to be very effective in creating economic activity and employment. It also co-finances actions that support professional mobility.
3. Following up on a European Parliament initiative for the introduction of a specific measure under the Leonardo da Vinci programme (part of the new Integrated Lifelong Learning Programme) in the form of a mobility programme for apprentices and young persons in initial vocational training, the Commission launched, in 2005, a preparatory series of studies with an objective of identifying the main features of possible European apprenticeship-training models and offer greater insight into the possible obstacles to mobility in vocational training. Tourism has been identified as a possible pilot sector. This should lead to specific proposals for solutions which will form the basis for a programme of specific actions to be implemented in phase two of this pilot project.
4. Rural areas have become more attractive and offer many environmental amenities, thus making rural tourism, in the last decades, an important source of diversification of the rural economy, well integrated with farming activities. This may become an important opportunity for new Member States and candidate countries. The new European Agricultural Fund for Rural Development (EAFRD) will provide support for:
   - improving the quality of agricultural production and products;
   - improving the environment and the countryside;
   - encouraging tourist activities as part of the diversification of the rural economy objective;
   - studies and investments associated with the maintenance, restoration and upgrading of the cultural heritage.
5. The European Fisheries Fund (EFF) introduces as a new priority theme for the period 2007–2013 'the sustainable development of fisheries

areas'. It aims to alleviate the socio-economic effects of the restructuring of the fisheries sector and to regenerate fisheries-dependent areas through diversification and the creation of employment alternatives. One of the areas to which fishermen may redirect their activities is eco-tourism. Small-scale fisheries and tourism infrastructure will also be supported through the EFF. The Fund also supports schemes for re-training in occupations, besides sea fishing, which may relate to tourism.

6. The Competitiveness and Innovation Framework Programme supports the competitiveness of EU enterprises and especially SMEs.
7. Research supported under the 7th EU Framework Programme for Research, Technological Development and Demonstration activities may result in benefits for the tourism sector as for example, research on information and communication technologies, satellite applications, cultural heritage and land use.[16]

In order to develop tourism in the EU, some different kinds of programs, projects and initiatives of the European community that are directly related to tourism development in all Member States and their cooperation with the third countries were used. These projects include the initiative '50,000 visitors' and such programmes as EDEN, Philoxenia, Calypso and others.[17]

Peculiarities of the EU tourism policy

A great number of private and public stakeholders at international, European, national, regional and local levels are involved in the development of tourism. Given the complexity of tourism which is not easy to separate from other economic sectors, the stakeholders must develop partnerships if they want to stay ahead of competition. The success of the renewed EU policy depends therefore on the active involvement of all tourism stakeholders.

The policy focuses on three main areas:[18]

1) Mainstreaming measures affecting tourism;
2) Promoting tourism sustainability;
3) Enhancing the understanding and the visibility of tourism.

The globalisation of the markets has opened up new opportunities, with tourists from new markets able to afford high value vacations. Attracting them to Europe would enhance the development potential of the European tourism industry and support the creation of growth and jobs in the EU. The Commission works together with the Member States and other tourism stakeholders on projects such as the European Tourist Destinations Portal and the preparatory action on European

[16] *European policies for...*, op.cit.

[17] *A renewed tourism EU policy...,* op.cit.

[18] *EU tourism policy*, http://www.ec.europa.eu/enterprise/sectors/tourism/promoting-eu-tourism/to urism-policy/index_en.htm (last visited 15.12.2012).

Destinations of Excellence and, at the same time, promotes synergies with all stakeholders in order to improve the visibility of tourism.

Tourism is a key sector of the European economy. It comprises a wide variety of products and destinations and involves many different stakeholders, both public and private, with areas of competence very decentralised, often at regional and local levels.

The EU tourism industry generates more than 5 per cent of the EU GDP, with about 1.8 million enterprises employing around 5.2 per cent of the total labour force (approximately 9.7 million jobs). When related sectors are taken into account, the estimated contribution of tourism to GDP creation is much higher: tourism indirectly generates more than 10 per cent of the European Union's GDP and provides about 12 per cent of the labour force.[19]

Following its 2010 communication on tourism, the Commission has developed a rolling implementation plan, outlining major tourism-related initiatives to be implemented in close cooperation with national, regional and local public authorities as well as with tourism associations and other public/private tourism stakeholders.[20]

The contribution of tourism to employment and regional development as well as to other important EU objectives, such as sustainable development, enhancement of the natural and cultural heritage and the shaping of European identity, has been recognised by all EU Institutions on numerous occasions.

Enhancing the competitiveness of the EU tourism industry plays an important role for the attainment of the EU's Growth and Jobs Strategy goals. In this context, it is crucial for the tourism sector to successfully address a number of challenges, including ageing society, growing global competition, sustainability concerns and evolving demand patterns for specific forms of tourism.

The Commission has so far carried out a variety of actions related to tourism within the framework of various policies. The renewed EU tourism policy, building on past achievements and setting priorities, should help the European tourism industry face the challenges and thus create more and better jobs through the sustainable growth of tourism in Europe.

Under the previous treaties the EU did not, in fact, have any formal tourism powers. The Treaty Establishing the European Community referred only to *'measures in the sphere* (...) *of* (...) *tourism'* as one of several common policies and activities designed.[21]

It went no further than this. There was no EU budget line for direct tourism activities. The only official body dedicated to tourism in the European Commis-

[19] *Supporting European tourism*, http://www.ec.europa.eu/enterprise/sectors/tourism/index_en.htm (last visited 15.12.2012).

[20] Ibidem.

[21] N. Markson, *The EU's Role in Tourism – Policy and Powers*, "Tourism insights" 2008, http://www.insights.org.uk (last visited 15.12.2012).

sion was the Tourism Unit, a team of about a dozen people housed in the Directorate-General for Enterprise and Industry.

The lack of direct powers, however, does not mean that there has been no EU tourism policy. As the recent flurry of strategies from the Commission (EC) demonstrates, it is a policy which nails tourism firmly to the mast of sustainability in all the senses of the word – environmental, economic and social.

This is hardly surprising. Sustainability is hugely important to the current political agenda, whether in the EU, domestically or internationally. Both the TSG report and the EC's own 2007 Agenda recognize this.

For all that, many of the policy ideas put forward are aspirational. The EU is limited in what it can do itself, even given the Tourism Unit's growing skill in identifying support mechanisms from other policy areas that can be used to tourism's benefit. Yet recent developments show how the EU institutions are trying – in their own very different ways – to come to grips with this situation and change the terms of the debate.

Treaty of Lisbon and tourism

In December 2007 the new EU treaty was signed in Lisbon. The Lisbon Treaty does contain something absolutely new for tourism: the EU powers for direct tourism activity. The Treaty gives the European Union the power to carry out actions *'to support, co-ordinate or supplement the actions of the Member States'* in tourism.[22]

The reference to tourism is contained in article 176 B. It reads as follows:[23]

1. *'The Union shall complement the action of the member states in the tourism sector, in particular by promoting the competitiveness of Union undertakings in that sector. To that end, Union action shall be aimed at: (a) encouraging the creation of a favourable environment for the development of undertakings in this sector; (b) promoting cooperation between the member states, particularly by the exchange of good practice.*
2. *The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish specific measures to complement actions within the member states to achieve the objectives referred to in this article, excluding any harmonisation of the laws and regulations of the member states'.*

The EC is enthusiastic about the new powers that it was given by the new Treaty. The Commission's Vice-President, Günther Verheugen, who has specific responsibility for tourism, encouraged those present at the 2007 European Tourism Forum to *'speak out for this Treaty which we need for Europe. You are*

[22] P. Houska, Z. Petru, op.cit., pp. 8–10; N. Markson, op.cit.

[23] Treaty of Lisbon (Treaty on the Functioning of the European Union), the treaty text can be found at http://www.europa.eu/lisbon_treaty/full_text/index_en.htm (last visited 15.12.2012).

best placed to explain to citizens the added value it would have for tourism'. While Mr Verheugen offered no detailed explanation himself of the added value that is being offered by the vague treaty article, he did speak of the EU being given more opportunities to help *'with the basic objective to promote the competitiveness of European tourism undertakings'*.[24]

The European Parliament is also keen, and not least because the new article gave it, for the first time, a formal right to influence the EU's tourism activities. Before the Treaty of Lisbon, the MEPs had the right to be consulted by the Member States and to comment on tourism policy whenever they wished to do so – but they had no right to insist that the decision-makers (in other words, the Member States) should take their views into account. The new Treaty means that no tourism policy decisions can be taken without the assent of the Parliament.[25]

For all the earlier developments and initiatives, the European Union's tourism policy had arguably little impact on the daily lives of tourism professionals across the continent. Far more important were other legislation and initiatives in other policy areas that touch on tourism.

Of the recent innovations, it is the new treaty article that has the most potential to change this. For all the vagueness of the wording, there does now seem to be a commitment at European level to take the sector more seriously. The greater powers for the European Parliament will increase the accountability – and 'lobby-ability' – of the European institutions on tourism matters.

If these developments help those involved in the sector to put across their messages about the need for true coordination, a legislative light touch and responsiveness to market and consumer needs, useful progress will have been made.

However, sectoral representatives will also be watching developments very closely for signs of the sector's new 'official' status being used as a pretext for political interference and new legislation which will hamper its ability to provide the services its customers want. Officialdom's interpretation of the new treaty reference to a 'favourable environment for the development of undertakings' may well not be the same as that of the undertakings themselves. Sustainability must be seen to be about economics as well as the environment.[26]

Problems and perspectives of the tourism policy in the European Union

Nowadays there are some obstacles that prevent the active development of tourism policy and the cooperation of the Member States within its framework. There are some problematic aspects, such as visa issues and customs controls, the

[24] N. Markson, op.cit.
[25] Ibidem.
[26] Ibidem.

risk of negative impact of tourism on the environment, changing the structure of demand and changes in the demographic situation in Europe. Also more and more countries in the world compete with the European Union for the leading place in the list of the most attractive tourist centres.[27]

Despite these problems, the prospect of the EU policy in the sphere of tourism is very bright and expected. The European Union is a very attractive tourist region with an interesting historical past, rich and unique culture, colourful traditions and geographic diversity. At this stage it can be argued that the EU is one of the most visited tourist destinations in the world.

With such amount of projects, initiatives and programs, the European Union is able to reduce unemployment, improve the provision of travel services, establish and improve cooperation and contacts with the third countries. The European Union is strengthening its position in the world by sharing experiences, information and new technologies among the Member States, it builds up the tourism infrastructure and increases the competitiveness of the EU.

In addition, the EU begins to actively develop such types of the tourism as: rural tourism (because the transfer of production outside the EU and the caring attitude of the Member States to the environment, promotes stable ecological environment) and cruise tourism, outstanding development takes social sciences (kind of tourism designed for specific social groups, namely young people, pensioners and disabled people).

The cooperation in the sphere of tourism: case of Ukraine

Investigation of common policies, and particularly tourism policy, is also of considerable importance for Ukraine, because as a result of the recent enlargements of the EU the borders of our country became closer to the European Union. The tourism area was recognised as a priority in Ukraine and its development will determine the specialisation of our country in the future. This is why the issue of tourism policy in Ukraine is also very important. In addition, cooperation with highly developed countries and their experience will ensure the success of the policy strategies in tourism and promote the establishment and improvement of Ukraine's relations with the European Union.

Ukraine attaches great importance to the cooperation with the EU because of the opportunity to promote national tourism product to the European market, bringing information, best practices of tourism, strengthening European integration processes in our country. Ukraine has a chance to become one of the leading European tourist centres due to its large tourist and recreational potential.

[27] О. Краєвська, Присяжнюк Ю. *Сучасний стан та перспективи розвитку туристичної політики ЄС*, Вісник Львівського університету. Серія міжнародні відносини, Випуск 29. Частина 1, 2012, pp. 170–178.

On 22 April 2005 Ukraine was invited to join the European Travel Commission. On 18 October 2005, Ukraine was admitted to the European Travel Commission at a meeting of the General Assembly of this organisation.[28]

The development of international tourism cooperation was the main feature and the primary direction of the Ministry of Culture and Tourism, under which the State Service of Tourism and Resorts operated, its activities aimed at building the legal framework, execution and implementation of intergovernmental and interdepartmental agreements on cooperation in other international treaty regulations, protocols, periodic plans and future programs of expansion of international tourism cooperation, development of institutional relations on a bilateral basis within relevant bodies (intergovernmental commissions, interagency working group on tourism, etc.) and on a multilateral basis within international tourism organisations, and implementation of European objectives in tourism, organisation of international events in Ukraine and overseas institutional, scientific, practical and informational advertising (appointments, meetings, visits, seminars, exhibitions, etc.).

Today, after the reorganisation of all ministries, committees and public services and agencies responsible for the development of tourism, the Committee on Family Matters, Youth Policy, Sports and Tourism of Ukraine and the State Agency of Ukraine for tourism and resorts are responsible for the tourism policy in Ukraine.

Bilateral cooperation is built on the basis of annual meetings of the interdepartmental working group on tourism and participation in the work of intergovernmental commissions, particularly from the countries, the legal framework of cooperation and implementation of bilateral intergovernmental and interagency programs and protocols for long-term and medium-term partnerships are established with.

Ukraine is interested in continuing and deepening the European integration trend, especially considering the problem of adaptation of Ukraine's tourism-related directives and standards, liberalisation of border and customs formalities for travellers from Ukraine and the EU Member States that are generating profit for Ukraine tourism market, bringing quality travel services to international standards, harmonisation of standards and certification companies and tourist resort areas that offer accommodation and food services in Ukraine with the EU norms, to attract financial and technical assistance from the EU in the tourist and resort industry of Ukraine implementation of priority projects of tourism development, including the regional level in the field of rural tourism, small and medium tourism business, cross-border cooperation and infrastructure development for tourism transport corridors and promote a positive tourist image of Ukraine in the European market.

[28] О. Краєвська, Присяжнюк Ю. *Співпраця України та Європейського Союзу у сфері туризму: політико-правовий аспект*, Вісник Львівського університету. Серія міжнародні відносини, Вип. 24, 2008, pp. 269–279.

Conclusions

The sphere of European tourism is related to the maintenance, coordinating or complementary actions of the EU, together with the protection and improvement of human health, industry, culture, education, youth, sport and vocational training, civilian protection and management cooperation.

Every year the Member States pay increasing attention to the possibility of implementation of joint activities in areas that are important to them and require joint efforts. At the present time, the sphere of tourism in the European Union draws the attention and reinforces the cooperation between the Member States, as the interest of the international community in the EU as a tourist region is growing every year.

Another positive factor which should be noted is the existence of the relationship and cooperation between Tourism Policy and other EU policies: transport policy, the policy of social cohesion, consumer protection policy, competition policy, environmental policy, social and cultural policy. All these common policies intersect and are somehow interrelated, and contribute to the development of the EU. A variety of mechanisms and instruments of cooperation was created within the cooperation of the EU common policies.

Thus, one could argue that the notion of common policies of the Member States in the field of tourism is quite new, interesting and promising. The development of this area in the past, and partly today, refers to the prerogatives of national governments, but the EU institutions are now more and more involved in coordinating the processes which are taking place in the Member States and are taking control over them.

The tourism sector of the European Union is an integral part of the European economy and has its own economic weight. That is why the sphere of tourism requires joint action to help organise and develop it. Tourism policy also means supporting the political goals in employment and economic growth.

Before the entry into force of the Treaty of Lisbon, there was no legislative basis for European Tourism Policy. The Treaty provides a legal basis specifically for tourism.

Because of its diverse nature, tourism policy is related to the provision of free movement of people, goods and services, small and medium enterprises, consumer protection, environment and climate change, as well as transport, regional and even space policy.

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Part VI

International Dimension of the European Union

Dariusz Milczarek

Foreign and Security Policy – A Challenge for the European Union

Introduction

One of the major challenges faced by the European Union nowadays is the need to develop a consistent and effective foreign and security policy, since the area of broadly understood relations of the EU with the external world is gaining more and more in importance. This is reflected not only in the increasing role of trade and economic exchange with foreign countries, determining to a large extent the development of European economies, but also in the ever greater significance of the issues connected with the foreign and security policy itself. The proof for this are the clearly visible weaknesses of Europe, particularly evident in comparison to the USA, as in many cases the Old Continent does not have the political and military means to influence the key international events, including the prevention of crises.

To begin with, it should be noted that the European integration processes which have been taking place for the last half a century, first under the European Communities and now under the European Union, were conducted in two main dimensions – apart from the best-known and doubtlessly most important economic integration, there was also integration in the field of foreign and security policy.

A comparison of the essential characteristics of the two trends reveals significant differences between them. While economic integration has achieved a high degree of advancement and has largely become the domain of the Community, integration in the field of foreign and security policy has not progressed much, relying chiefly on the principles of intergovernmental cooperation. These differences should be explicitly highlighted, as they are of key importance for the understanding of the specificity of the issues in question.

Among the many reasons for this particular curse of events in the field of foreign and security policy, perhaps the most important one has been the reluctance of the members of the European Communities to cede their sovereign competences in these crucial areas, commonly considered decisive for the very existence of

every state, to supranational bodies. As a result, integration in the field of politics and security rather followed the confederal model, which involves integration on the basis of a union of independent states keeping their fundamental competences and engaging in intergovernmental cooperation. It was, therefore, different than in the case of economic integration, which was to a much larger extent based on the federal model, the goal of which was to establish a supranational 'European federal state' taking over a considerable portion of the Member States' powers.

European integration in the field of foreign and security policy has always been a multistage and multi-layered phenomenon. In terms of subject, it covers the entire set of issues related to the relations and distribution of power in the European Communities/European Union, where there are significant differences in opinions and contradictory interests. This is also true for the relations with other political and military organisations operating in Europe and connected with the EU, such as the NATO.

In these brief deliberations, we will focus only on the most important processes, phenomena and facts, presented according to the division into two basic stages:

- political and defence cooperation within the European Communities,
- foreign and security policy of the European Union.

1. Political and defence cooperation within the European Communities

Origins

The very difficult political, economic and social situation in Western Europe after World War II favoured the development and implementation of integration ideas. The principal motives behind European unity were, among others:

- the striving to reject the catastrophic policy of nationalism and totalitarianism and to consolidate the democratic system;
- the desire to consolidate peace and achieve a sense of security;
- hopes for reclaiming – thanks to the joining of national potentials – at least some of the influence and political power that the European states had lost to the new superpowers: the United States and the Soviet Union;
- fear (strongly affecting Western European policy until the early 1990s) of the growing military potential of the USSR and its East European allies.

The principal manifestation of these trends was the initiation of integration processes in the field of economy, which has been the foundation of European unity ever since. However, at the same time, there were also some undertakings initiating political and military cooperation between the countries of Western Europe. On 17 March 1948, France, the United Kingdom, Belgium, the Netherlands and Luxembourg signed the so called Brussels Treaty concerning mainly military cooperation. The next step taken by the signatories of that treaty was to

establish, half a year later, the Western Union, which was to carry out a common security policy, at that time understood primarily as protection from a rebirth of German militarism and the growing threat in the East.

Of decisive importance in this field was the conclusion on 4 April 1949 of the Washington Treaty, a military and political agreement establishing the North Atlantic treaty Organization (NATO), the original members of which were ten European countries, the USA and Canada.[1] However, this organisation should not be treated – particularly due to its composition and the dominant role of the USA – as purely European, even though it has surely been playing an important role on our continent.

Among the concepts of expanding integration processes in Europe to the area of political and military affairs, we should mention the proposal to establish a European army presented by W. Churchill in 1950. The idea had a follow up in the form of a plan proposed on 26 October 1950 by the French Prime Minister R. Pleven to establish the European Defence Community (EDC), under which an integrated West-European armed force would be created and in which the German forces would participate. In the end, the agreement establishing the EDC was concluded on 27 May 1952 by the Member States of the European Coal and Steel Community (ECSC), established a year earlier: France, Germany, Italy, Belgium, the Netherlands and Luxembourg. Approximately at the same time, plans to create the European Political Community (EPC) – a sort of political superstructure to the EDC – were put forward as well. The EPC was to constitute a supranational structure with relatively broad competences (including the coordination of the foreign policy of its members) and combine the activities of the EDC and ECSC. At that time, the inclination towards political integration was so strong that there was even a proposal for the establishment of a European Community which would combine the activities of the ECSC, the EDC and the EPC, that is the economic, political and military aspects of European integration was put forward.

However, the fear of transferring too much of national sovereignty to supranational institutions was too strong in some countries. In 1954, the French parliament rejected the treaty establishing the European Defence Community, which put a definite end to it; further work on the establishment of the European Political Community was ceased as well.

Nonetheless, the fiasco of the EDC and EPC projects did not imply that attempts at increasing political and defence integration would be completely abandoned, as a proposal of the British Foreign Minister A. Eden was, indeed, implemented. It concerned the establishment of a military organisation, which, however – in line with British views on the essence of European integration –

[1] The European NATO founding members were: France, United Kingdom, Italy, Belgium, the Netherlands, Luxembourg, Norway, Denmark, Iceland and Portugal. The organisation was later joined by Greece and Turkey (1952), West Germany (1955), Spain (1982). In 1999 Poland, the Czech Republic and Hungary joined as well, and in 2004 and 2009 another 9 Central European states.

would consist in intergovernmental cooperation. On 23 October 1954, the signatories of the Brussels Treaty, the UK and their former enemies – West Germany and Italy – signed the so called Treaties (Protocols) of Paris. The Treaties put an end to the occupation and remilitarisation of Germany, but also modified the Brussels Treaty, establishing the Western European Union (WEU).[2] The organisation replaced the Western Union and since it was not connected to the Community system, for several decades – that is up to the 1990s – it failed to play any significant role, as it did not have its own armed forces and was completely dependent on the cooperation with the NATO.

The rapid economic success of the two new Communities established in 1957: the European Economic Community (EEC) and the Euratom, provided inspiration for the development of projects extending the integration processes to the area of political cooperation. In 1958, one of the 'Fathers of Europe', J. Monnet, appointed a special Action Committee for the United States of Europe (ACUSE), one of the main objectives of which was to draw up plans of a political union for Western Europe. Despite the fact that those ideas were supported by most Member States of the European Communities, and particularly Germany, they were opposed by France, who believed that integration processes should take place in accordance with the principles of confederalism rather than federalism (the most telling example of this was the concept of a 'Europe of Fatherlands' presented by de Gaulle at the turn of the 1950s and 1960s, as well as the concept concerning the whole continent, which seemed rather improbable at that time, namely the idea of a 'Europe, from the Atlantic to the Urals'). The French proposals caused concern with smaller countries, who were afraid that it would lead to the weakening of Community structures; however, it has not prevented the commencement, in 1959, of a tradition to convene, regular consultations of the foreign ministers of all EC Member States.

In 1961, the French Foreign Minister prepared the so called Fouchet Plan. It concerned the establishment of a political union called the Union of European Peoples, which was to be a structure with relatively broad competences in various areas of integration, but of an explicitly confederal nature and, what is more, was supposed to supplant the Community system in the long term. Two versions of this plan were presented one after the other and both were heavily criticised by France's partners, but they also gave rise to a broad debate which resulted in a series of complementary proposals and counterproposals authored by various politicians. However, as a result of significant differences of opinions, all negotiations on this topic were ceased in 1963. At the same time, de Gaulle once again spoke explicitly against Community concepts, reaffirming his support for the idea of a 'Europe of Fatherlands'.

[2] In 1990, the seven founding countries of the WEU were joined by Spain and Portugal and in 1994 by Greece. 16 states maintained relations with this organisation as associated members, observers or associated partners.

Simultaneously, France took intensive actions aimed at strengthening the ties with Germany, offering them the establishment of an actual political and military union. On 22 January 1963, France and Germany signed a treaty on cooperation, called the Elysée Treaty. By symbolically cementing the French–German reconciliation, the agreement contributed greatly to the overcoming of the aftermath of past events and to consolidating security and peace on our continent, de facto constituting one of the cornerstones of the entire edifice of united Europe (President Ch. de Gaulle and Chancellor K. Adenauer personally contributed to this great work).

The turn of the 1960s and 1970s was the start of a period of turbulent institutional and territorial development of the European Communities, including the development of political cooperation. The reasons for this were many and diverse; some, however, are more important than others. In the 1970s, there appeared the need for better coordination of the positions of EC members regarding the broadly understood relations with the external world, including mainly the major international groups of that time, such as the communist states (under the so called policy of détente) or the countries of the Third World. This also concerned the allies of Western Europe: the United States and Japan, with which the EC countries were connected through a complex network of relations consisting in both cooperation and competition (which, with regard to the United States, was particularly emphasised by France).

Furthermore, the Communities had more and more possibilities in the field of internal policy, although in this period, due to the lack of any effective political instruments, they disposed mainly of various economic tools, including the Common Commercial Policy. This was reflected in the growing role of the EC in world economy, as shown for instance by the indexes referring to the ever greater share in global production, global trade, etc. However, at the same time, Europeans gradually became aware of the increasingly evident disparity between the increase of the Communities' economic power and their low political and military status in international relations, out of keeping with their economic position.

In other words, the fundamental and still existing problem of the development of the entire European integration – summed up in the much telling expression that the European Communities are an economic giant but a political and military dwarf – gradually started to increase.

European Political Cooperation

In response to the abovementioned challenges, in December 1969, at the Hague Summit, the EC Member States decided to establish political cooperation. On 27 October 1970, under the so called Davingnon Report (also known as the Luxembourg Report) – produced by a group of experts headed by the Belgian Foreign Minister E. Davignon – they formed the European Political Cooperation (EPC). The characteristic feature of this structure was that its principles and functioning were based solely on intergovernmental cooperation, that is on the confederal model of integration (initially, it was positioned outside the institutional system of the EC and had no treaty basis). It should also be stressed that it

involved a clearly delimited division of competences – the EPC's tasks comprised only explicitly political tasks, while the area of foreign economic relations remained with the Communities.

Another characteristic feature of the EPC was that its tasks and objectives, as well as organisational structures and operating mechanisms had not been fully and precisely defined straight away, but were forming for a relatively long time by means of evolutionary transformations and adaptation. Concrete solutions were adopted during consecutive meetings, starting with the Summit in Copenhagen in July 1973. Under the Copenhagen Report adopted at this summit the goals of the EC and EPC were to be identical; it also stated the need for mutual consultations before making key decisions. Half a year later, the 'Declaration on European Identity', which officially announced that the EPC members took the responsibility for Europe's place in world politics, was adopted at a meeting in Copenhagen. The London Report, adopted in October 1981, expanded the European Political Cooperation by adding security aspects and specified the rules of functioning and of cooperation with Community bodies. Of great significance was also the European Single Act (ESA), modifying the formal and legal status of the EPC.

What finally emerged was a structure the main goal of which was, in fact, not to conduct a common foreign policy of the EC Member States (which would be an unfeasible task), but rather to establish a common plane allowing the Communities and their members to effectively jointly act in the international arena. This was to take place – as provided for in the European Single Act – through consultations and sharing of information, so as to ensure close or even harmonised positions through coordination and to realise joint actions.[3] In practice all this meant that all decisions should be made by consensus.

The functioning of the European Political Cooperation was to be ensured by a rather extensive organisational structure which included, among others, a President (the country holding the Presidency in the EC), a Presidium, a Secretariat, a Political Committee and groups of 'European correspondents' (specially delegated officers of ministries of foreign affairs). The European Council played an important role and some Community bodies – the European Commission, the European Parliament and the Council of Ministers – also played a specific part in the work of the EPC.

One proof of the growing role of the European Communities in the international arena was the fact that in 1974 they were granted the observer status with the UN. Therefore, in consequence of the Détente processes, which allowed for the summoning of the Conference on Security and Co-operation in Europe in 1973, the need for greater harmonisation of the positions of the Member States regarding foreign policy was becoming an increasingly pressing issue. During the Conference, which lasted until 1975 and was crowned with the adoption of

[3] Additionally, the EPC was to perform the function of protection the interests and security of its members, as well relieving the Communities of stricly political tasks.

the Helsinki Final Act, the Communities along with the EPC played a very important role (the act was also signed by a representative of the EC).

Furthermore, of significant importance to the functioning of the EPC was the formation of a new body in 1974, namely the European Council, which consisted of heads of states and governments of the EC Member States (formally, the Council existed since 1961). Even though, in formal and legal terms, the European Council was not a Community body, it has always been of great importance, as its main task is to consult and make decisions concerning major issues regarding the functioning of the Communities, including the main directions of foreign policy. In this context, the European Council was the key element in the functioning of the European Political Cooperation.

New initiatives

Parallel to the institutional development of the Communities, some ideas od a far more advanced integration appeared, advocating the creation of the European Union. The idea of establishing such a structure is relatively old, but the first concrete proposals were put forward in the 1970s. In 1975, the Belgian Prime Minister L. Tindemans presented a special report, named after him. Despite the fact that it was phrased in a rather cautious tone, it contained postulates of relatively deep integration – not only economic, but also political, including a proposal to first introduce extensive coordination of the EC Member States' foreign policies and grant to the European Council the right to define their main directions, and then introduce a common foreign policy.

In this period, we can observe an increasingly clearer domination in the Communities of their three most important members: France, Germany and the United Kingdom. In many cases, these countries alone decided on some issues, which, naturally, largely suppressed the tendencies to collective solving of problems.

However, this did not limit the slow but consistent consolidation of the structures of political cooperation. In 1974 they were complemented with informal weekend meetings of foreign ministers, held on the initiative of Germany (the so called Gymnichs). In 1977, the institution of the 'Troika', comprising the current, previous and future President of the EPC was established. This solution was very effective and has been applied in the entire Presidency system.

In 1978, at the order of the European Council, three eminent politicians – B. Biesheuvel, E. Dell and R. Marjolin – produced a special document (the so called Report of the Three Wise Men) analysing the process of European integration from the point of view of its principal models: federalism and confederalism. The report emphasised the uniqueness of the said processes de facto taking place in accordance with the principles of both models and pointed out the need to maintain this state of affairs, especially with respect to political cooperation, based on proven intergovernmental cooperation.

The concepts of creating a political union based on the principles of this kind of cooperation were still vivid. The most zealous proponent of such ideas was still

France (continuing de Gaulle's political line), which renewed the proposal to establish a European confederacy in 1978. However, the proposal was not picked up by the other members of the EC.

The year 1981 saw the emergence of a series of proposals to speed up political integration, related to the earlier concepts of the European Union. They were submitted by, among others, the European Council and the governments of Italy and Germany, who presented a joint proposal developed by their foreign ministers on 14 November – the 'Genscher-Colombo Plan'.

The first part of the Plan was particularly important and constituted a sort of draft treaty on European Union, which provided not only for the preservation of the existing Community system, but also its expansion by means of a stronger European Political Cooperation, with closer ties to the EC, and, along with the European Council, with a legal basis provided for in the Treaties. The Plan also entailed including security issues in the EPC competences, which was a new development, as it meant that strictly military issues would once more, after a very long period (i.e. since the collapse of the idea of the European Defence Community in the 1950s) be included in the group of issues essential for European integration.

Despite a certain dose of controversy, the latter concept was accepted at the EPC Summit in London in October 1981, at which the aforementioned London report was adopted as well. The document concerned the expansion of the European Political Cooperation to include security issues, its inclusion in the workings of the European Commission, reinforcing the requirement for consultations, cooperation with the European Parliament, as well as strengthening the position of the President of the EPC.

In order to break the deadlock in the integration processes of that time, on 19 June 1983 in Stuttgart, the European Council passed the 'Solemn Declaration on European Union'. However, this document, although containing a rich programme, failed to propose any far-reaching, concrete solutions – for example, while it showed the desire to coordinate positions in issues related to the political aspects of security, it did not propose directly connecting the EPC with the Community system. A more daring proposal was put forward by the European Parliament, which on 14 February 1984 passed a resolution containing the 'Draft Treaty establishing the European Union'. The Treaty was to serve as a kind of constitution of the united Europe and contain far-reaching solutions of federal nature, including the proposals for close tying of the EPC to the Community system and the creation of a common foreign policy.

The intensive works on a reform of the Communities conducted in this period covered also political and security issues. The report of the Ad Hoc Committee for Institutional Affairs (named the Dooge Committee after its chairman) produced in 1985, once again postulated closer ties between the EC and the EPC regarding foreign policy, as well as gradual replacement of the principle of consensus with majority voting in the decision-making process.

The proposals to establish a deeper political union, especially one consistent with the principles of federalism, were at that time accepted only by some of the EC Member States. They were opposed by some influential countries, like the United Kingdom, which in 1985 presented its own draft treaty on European Political Cooperation. On the other hand, West Germany and France proposed a draft treaty on European Union. It should be noted that both documents called for greater cooperation between the Communities and the EPC in the field of foreign policy.

European Single Act

An agreement on the principal provisions of a treaty amending the Founding Treaties was finally reached in the mid-1980s. Cooperation between France and Germany played a crucial role in this respect, as both these states, despite the opposition of the UK and several other Member States, consistently pursued the idea of a closer political union (although the French were still distrustful of any extensive federal conceptions).

This resulted in the signing of the European Single Act in February 1986. In the field most relevant to this paper, of greatest importance was the establishment of the legal basis for the European Political Cooperation. It was officially included in Community structures and revolved around the issues of broadly understood security. Among many other important provisions, the ESA included the principle of equality of the EC and EPC – although keeping them separate – in the process of pursuing their common goal, i.e. the establishment of the European Union. Apart from that, the ESA also confirmed the major agreements and solutions contained in the previous reports (Luxembourg Report, Copenhagen Report and London Report), as shown by the provisions concerning the principles of operation and organisational structures.

The concrete solutions adopted in the European Single Act were in many aspects insufficient and did not address all of the major reform proposals prior to the ESA. As a matter of fact, they were largely limited to accepting or sanctioning the actual state of affairs. However, on the other hand, there is no doubt about the fact that the adoption of the ESA provided a new impetus for the processes of European integration by, among others, considerably extending the area of interest and the scale of these processes, including the field of political and defence integration. With regard to these issues, the concepts of establishing a political union were not abandoned, although a compromise was very difficult to achieve, considering the deep differences in opinions between the countries.

Autumn of Nations

The field of political and military integration was gaining additional importance due to the fact that at the turn of the 1980s and the 1990s, the European Communities needed to face new challenges resulting from the general changes in international relations, especially the radical change of the distribution of power in Europe.

The latter was mainly the result of the collapse of the communist system in the eastern part of the continent and the emergence of new democratic states. These states desired close political and economic relations with the Communities. This trend, though thoroughly positive in itself, posed serious challenges to the West-European integration structures, particularly as regards the development of suitable forms of cooperation.

What is more, after the Autumn of Nations (the Revolutions of 1989), Germany was reunited in 1990. This caused certain anxiety regarding the possible repercussions of this event, once again raising the issue of involving Germany, now even stronger, more deeply in the structures of European integration, including political and defence integration.

At this point, we should also consider the new situation in the field of European security. The understanding of this issue underwent considerable changes, as it was no longer perceived mainly as armed defence against the military threat of the USSR and its allies. The 1990s brought many new threats, especially in the form of local conflicts and crises, international terrorism and organised crime, ecological crises, etc.

What proved to be the most dangerous local conflict was the civil war in the former Yugoslavia. On the one hand, it showed once again that the charges against the communist system have been justified in that it was only able to 'suspend' political and ethnical tensions and conflicts. On the other hand, the war also showed that without appropriate political and military instruments the European Communities were not able – despite their attempts to stop the escalation of the conflict – to guarantee peace and security even in regions as close as the Balkans.

All this was objectively forcing the Communities to undertake efforts aimed at developing new forms of political integration, allowing them to speak with a stronger and more united voice in the international arena, for the transformations described above extended the list of issues which had to be taken into account. Political integration now included not only issues concerning foreign and defence policy (perceived in strictly military terms), but also broadly understood security in terms of politics, economy, ecology, etc.

The development of new forms of integration was all the more necessary, as the shortcomings of the European Political Cooperation were becoming ever more clear because it was becoming ineffective not only in the face of the new international challenges, but the old, lesser problems in the field of foreign policy (however, we should stress the high activity of the EPC in approaching various international issues).[4]

[4] A good example of the EPC's ineffectiveness are the failures in formulating a common position of all member states concerning such issues of the 1980s as the British involvement in the Falklands, the tensions between Greece and Turkey, or the introduction of martial law in Poland. At the same time, the list of issues with which the EPC dealt was very extensive and included the major problems of the world at that time (in many cases, e.g. Iraq's invasion of Kuwait, sanctions were swiftly imposed on the aggressor).

The introduction of new solutions was hampered by the essential difference in opinions between the United Kingdom – playing the role of the chief opponent to the extending of the supranational competences of future integration structures – and Germany and France, who favoured stronger economic ties in the form of an economic and monetary union, as well as the foundations for a political union (although with a yet unspecified basis). Thus, the process of negotiations which took place in 1990–1991 and which was to lead to the harmonisation of different positions of states was divided into several stages, marked by important initiatives and meetings at the highest levels.

These included the adoption of the Martin Report by the European Parliament in 1990. The Report formulated the conditions for the establishment of a political union based on federal principles. France and Germany also put forward a joint proposal (developed by President F. Mitterand and Chancellor H. Kohl, who were both deeply involved in this issue) concerning to the expansion of the scope of cooperation in the field of foreign policy under a political union. Ireland even proposed establishing such a union by 1 January 1993.

The work on reforms introducing further, more advanced stages of integration in the form of an economic and monetary union and a political union was clearly intensified and sped up. The result of this was the 1991 Intergovernmental Conference which was dedicated to issues concerning both the economic and the political union.

2. Foreign and security policy of the European Union

On 7 February 1992, in Maastricht, Netherlands, twelve EC Member States signed the Treaty on European Union (Treaty of Maastricht). It was, undoubtedly, of historical importance, as it determined the shape and directions of integration processes in Europe up to the 21st century.

By establishing the European Union, the Treaty of Maastricht neither replaced the Founding Treaties, nor dissolved the existing Communities, which remained legal entities under international law. One characteristic feature of the Treaty was its structure, divided into three pillars: the first one covered economic integration which remained the domain of the Community, and the third pillar concerned intergovernmental cooperation regarding internal affairs and the judiciary.

Common Foreign and Security Policy

The second pillar, which is of most interest to this paper, concerned the newly established Common Foreign and Security Policy (CFSP), replacing the European Political Cooperation. Due mainly to the Member States' undiminished fears of giving up their sovereign rights, the new policy was essentially still to be conducted (just as the EPC) as intergovernmental cooperation – despite its name which suggests that it is a Community policy, just as the Common Agricultural Policy – although, indeed, some elements of supranational competences appeared as well.

The Treaty of Maastricht stipulated that one of the main goals of the European Union was to reaffirm its identity in the international arena by conducting the CFSP and, ultimately, to formulate a common defence policy leading to the creation of a common defence system.[5] What was also specified were the objectives of the new policy, that is: protection of common values, fundamental interests and independence of the EU, consolidating security of the EU and its members, preserving peace, promoting international cooperation and democracy and the rule of law. The instruments which were to be used to achieve these goals were: systematic cooperation of the Member States, as well as common actions and common positions (unanimous decision-making).

As regards the organisational and formal principles of the Common Foreign and Security Policy, the Treaty of Maastricht stipulated the following rules: the principles and general guidelines of the CFSP were to be specified by the European Council and constitute the basis for the activities of the Council of the European Union, which was responsible for the implementation of the CFSP; the operational management of the policy remained in the hands of the Political Committee; it was to be represented by the Presidency within the Troika, together with the European Commission, which was responsible for consulting and informing the European Parliament; furthermore, the CFSP budget was included in the EC budget. At the same time, the division between the Common Foreign and Security Policy and the economic foreign relations of the EU was preserved, as the latter remained in the first pillar, that is within Community competence.

An important new element was the recognition of the Western European Union as an integral element of the development of the EU, even though it still remained a separate organisation which should develop a suitable format of cooperation on its own. A declaration of the WEU states of 10 December 1991 attached to the Treaty refers to the Western European Union as both the defensive component ('the armed forces' of the European Union and the European pillar of the NATO; this assumption has been criticised as unrealistic, since there are countries in the EU which are not members of the NATO). It also specifies in detail the tasks, procedures, structures of and measures used by the reformed Western European Union, including the rules of cooperation with Community bodies and the rules of developing own military potential (among others, in the form of detached, combined units from the Member States, being at WEU's disposal).

Another important event was the adoption of the so called Petersberg Declaration on 19 June 1992 by the WEU Council of Ministers. The declaration set the so called 'Petersberg tasks', covering new tasks resulting from the new, changed understanding of European security emerging in the 1990s. The list of Petersberg tasks specifies various activities aimed at preserving peace (peace missions), sup-

[5] It should be emphasised that the common defence policy, based on established principles and procedures, does not necessarily imply common defence, which requires the military potentials to be combined.

pressing crises by military means, including the restoration of peace in case of armed conflicts, as well as humanitarian and rescue missions, such as in the aftermath of natural and ecological disasters.

All these solutions – although very important in many aspects, especially institutional and organisational – have not resulted in any qualitatively new transformation in the political and defence integration within the EC. It was still essentially based on intergovernmental cooperation, despite deeper involvement of Community bodies. What is more, all major decisions were to be made unanimously (or, in the minority of cases, by qualified majority), which means, in fact, that they were to be made by consensus whenever possible – just as under the European Political Cooperation – which greatly limited the CFSP's effectiveness. Apart from that, the Treaty of Maastricht also failed to coordinate the entirety of the Union's external policy.

As en mentioned in the introduction to this paper, the processes of political and defence integration in the European Communities have always been closely correlated with an entire spectrum of issues concerning the complex relations with the other entities involved in European security – first of all the NATO. The establishment of the CFSP has enriched these relations, but at the same time it has also made them more complex.

This refers mainly to the ever clearer aspirations of the Europeans to have their own, independent foreign policy and defence instruments. Naturally, this involved a gradual evolution of alliance within the NATO, which had taken place even before the 1990s, but was particularly visible in that particular period. Largely due to the changes in the distribution of power in Europe, as described above (resulting in the disappearance of the major military threats which used to justify the American 'defensive umbrella' over Western Europe), the European partners of the USA wanted to gain greater political and military independence as well as to be an equal partner in the NATO – while not disbanding the still vital alliance. Faithful to the ideas of de Gaulle, who withdrew his country from the military structures of the NATO in 1966, France has always been a particularly fervent proponent of this course of evolution of the transatlantic relations.

What might be considered one of the first official documents concerning political and military independence of Europe is the Platform on European Security Interests adopted by the WEU member states in 1987 in the Hague. However, the most important phenomenon was the development of the concept of European Security and Defence Identity (ESDI). This rather general concept consisted in European states accepting greater responsibility for their defence and security, but – which should be underlined – within the NATO. So it was defined in the first document to containing the concept of ESDI, that is the Rome Declaration on Peace and Cooperation, adopted at the summit of the North Atlantic Council in Rome on 8 November 1991. The aforementioned declaration of the WEU states, issued a month later and attached to the Treaty of Maastricht, also spoke of the

development of a common defence policy in the EU which could, in time, lead to establishing common defence within the NATO.

As mentioned previously, pursuant to the provisions of the Treaty of Maastricht, the reformed and revitalised Western European Union was to play an important role in the functioning of the CFSP. One of the manifestations of this was the implementation of the provisions of the Petersberg Declaration concerning the designation of detached forces to the WEU by the member states to form the so called Forces Answerable to WEU (FAWEU).[6] These forces could be used not only the Western European Union, but also by the NATO.

One of the first instances of effective application of the common activities under CFSP provided for in the Treaty of Maastricht was the implementation of the so called Stability Pact in Europe. The establishment of this Pact was proposed in 1994 by the French Prime Minister E. Balladur (the so called Balladur Plan) and carried out in the following year. It imposed obligations on the countries from East and Central Europe associated with the EU, as regards, among others, respecting of borders, protection of ethnic minorities and peaceful settlement of disputes.

What proved to be a barrier to the development of the CFSP were the divergences in the arrangement of the complex relations within the triangle: the European Union – the Western European Union connected both with the EU and the NATO – the NATO, dominated by America. The situation was further complicated by the accession of three new members to the EU in 1995: Austria, Finland and Sweden – countries with a long tradition of neutrality, unwilling to take on any commitments of military and political nature.

However, several agreements made it possible to remove the major barriers and find the formula for the development of European military potential. This concerned in particular the forces at the disposal of the WEU under the European Security and Defence Identity, which were to act in accordance with the procedures agreed by the Western European Union and the NATO. In January 1994 the NATO (in fact, the USA) accepted the concept of Combined Joint Task Forces, which would allow the WEU to undertake 'separable but not separate' operations employing NATO resources even beyond the organisation's area of activity (and with possible participation of non-NATO states) even if the USA chose to refrain from participating in them. The governing principles of this concept were defined at the meeting of the North Atlantic Council in Berlin in June 1996.

Treaty of Amsterdam

As a result of the aforementioned deficiencies of the Treaty of Maastricht, even the Treaty itself mentioned the need for continuing the initiated reforms. In

[6] Among the forces at direct or indirect disposal of the WEU, the most famous was the Eurocorps, comprising approx. 50 thousand soldiers and established in 1992 on the initiative of France and Germany (the Eurocorps was later joined by Belgian, Luxemburgish and Spanish forces).

June 1994, half a year after the Treaty entered into force, it was decided that preparations for another Intergovernmental Conference would be commenced in order to amend the Treaty. The responsibility for developing the proposals was given to a team of experts (the so called Reflection Group) headed by the Spanish diplomat C. Westendorp.

The report presented by this group contained a series of proposals in the field of foreign and security policy, that is, among others, the proposals to: create a single external policy of the Union by combining external relations with the CFSP (which would be greatly facilitated if the EU was made a subject of international law), limit the principle of unanimity in the process of conducting this policy, further develop the ESDI, and establish the institution of the Representative for the CFSP. In the context of the relations between the European Union and the Western European Union, four options were considered, reaching from full inclusion of the WEU in the EU, through intermediate solutions (such as cooperation in the execution of the 'Petersberg tasks'), to strengthening the partnership while retaining full institutional autonomy of the two organisations.

During the sessions of the Intergovernmental Conference (launched in March 1996 in Turin and ended in June 1997 in Amsterdam), relatively much attention was paid to the issues of foreign and security policy. In this context, the debates concerning the relations between the European Union and the WEU were considered particularly important. The concepts presented there coincided to a large extent with the options formulated in the Reflection Group report. And even though the results of the Intergovernmental Conference were not satisfactory to all the parties involved, they led to the amendment of the Treaty of Maastricht by the Treaty of Amsterdam, signed on 2 October 1997.

The most important provisions of the Treaty regarding our field of interest were those acknowledging the Common Foreign and Security Policy as EU competence (in contrast to its previous status as a shared competence of the Union and the Member States), although with many far-reaching safeguards limiting its Communitisation and protecting the sovereignty of the Member States. Furthermore, the Treaty confirmed the possibility of including the Western European Union in the European Union, although it was not a universally accepted idea. It did, however, provide for the participation of the European Union in the executions of the 'Petersberg tasks', which was a considerable extension of the scope of the EU security policy.

In terms of organisational and procedural issues, the existing instruments – common positions and common actions – were defined anew and new ones were introduced: common strategies agreed upon by means of qualified majority voting, but with the observance of the principle of unanimity in issues of key importance. The Treaty also introduced an important institution of constructive abstention, allowing individual states to refrain from participating in a given action, but without blocking it and, thus, without preventing the other partners from executing the action.

An important change was also the establishment of the institution of the High Representative for CFSP, held by the Secretary General of the Council of the EU. Together with the representative of the current Presidency, it would be the High Representative's task to represent the position of the entire Union, which, finally, provided potential opportunity for the EU to speak with a single voice in the international arena (the first High Representative appointed was J. Solana, former Secretary General of the NATO). The High Representative was to supervise a special Policy Planning and Early Warning Unit at the Council of the EU, which would monitor the development of the political and military situation in Europe.

Despite all these improvements, it is rather hard to consider the Treaty of Amsterdam a groundbreaking document. Out of many crucial reforms proposed at the Intergovernmental Conference, relatively few were actually implemented and those which were adopted – such as the inclusion of the CFSP in Community competences – did not introduce any effective institutional solutions which would make the execution of these ambitions plans possible. First of all, the European Union did not become the subject of international law (which was very important) and the requirement of unanimity was not sufficiently limited. Once again, the decision-makers did not manage to coordinate the entirety of the external policy, and as a result even such actions as the establishment of the High Representative could cause disputes over competences between the Representative and the European Commission, which is responsible for the external economic relations of the EU. Finally, further consolidation of the position of the European Council as regards the CFSP could lower the effectiveness of the decision-making process of – taking into account that it operated under the principle of consensus.

Despite the deficiencies of the Treaty, the process of improving integration in the field of foreign and security policy continued. The period after the Treaty of Amsterdam proved particularly favourable in this respect, as it brought new concepts and concrete actions.

Two events which took place in 1998 were especially important in this respect: the informal EU summit in October, and the French-British meeting in Saint Malo in December. The documents adopted there, particularly the 'Joint Declaration on European Defence' signed by J. Chirac and T. Blair, expressed the belief that European Union needed tools which would allow it to play a key role in the international arena. It was established that the execution of this goal required equipping the EU with its own, independent military potential, including not only armed forces, but also intelligence and a strong defence industry. The importance of these decisions consisted mainly in the fact that they indicated the need for a significant revision of the foreign policy of the United Kingdom, one of the most important EU Member States, which so far had been rather reluctant to engage in any deeper supranational political and defence integration. At the same time, this meant that one of the greatest barriers to the Common Foreign and Security Policy was finally overcome.

Furthermore, the decisions made at the NATO summit in Washington in April 1999 also played an important role for the adoption of this concept. Once again, Americans expressed their consent for the expansion of the independent European military potential under the European Security and Defence Identity, in accordance with the agreements made five years earlier regarding the Combined Joint Task Forces. This proved that the EU, the WEU and the NATO agreed on the rules of political and military cooperation based on, among others, consultations and coordination, avoiding double activities, as well as using each other's resources – military, logistic, intelligence, etc.

The decisions made at the summits in Pörtschach, Saint Malo and Washington made it possible to take further actions aimed at achieving greater political and military independence of Europe. The EU summit in Köln in June 1999 adopted a declaration establishing the Common European Security and Defence Policy (CESDP).[7] It was complementary to the Common Foreign and Security Policy, and it was meant to serve the execution of the common EU defence policy along with it. Its main objective was defined as preventing and solving conflicts in Europe using the 'Petersberg tasks' in a way which does not collide with the activities of the NATO.

In order to achieve this goal, it was deemed necessary for the European Union to obtain autonomous abilities and tools, including the creation of a suitable, concrete and dedicated institutional and organisational infrastructure, as well as combining the efforts of the European arms industry. It was also decided that the WEU would be included in the EU, but only to such an extent as necessary, which meant that in fact, not all its defensive functions would be taken over, only the 'Petersberg tasks'. The said 'absorption' was to take place by the end of 2000 and result (in relation to the expiry of the 50-year period of validity of the Brussels Treaty) in the termination of the functioning of the Western European Union.

This last issue caused a series of problems concerning, among others, the continuation of the security guarantees included in this treaty. In this regard, the members represented diverging positions: on the one hand, some supported the idea that the EU should take over the commitments in this field, and on the other hand, those who were not and did not want to be involved in military alliances (for instance the neutral EU Member States: Austria, Finland, Ireland, Sweden) objected to this.

Common European Security and Defence Policy

The decisions made at the summit in Köln resulted in a lively debate on the further development of European political and defence integration, held in 1999. The issues raised, referring for instance to the experience from the Kosovo crisis,

[7] The naming of this policy is not consistent (even in official EU documents), the other names being European Security and Defence Policy (ESDP) and Common Security and Defence Policy (CSDP). Initially, it was proposed to make it the fourth pillar of the EU.

concerned mainly the need to move on to the stage of creating actual relevant military and institutional infrastructure for the development of the CESDP, including effective efforts to optimise the potential of the European defence industry.

These issues were largely taken into account during the important summit in Helsinki in December 1999. Its principal achievement was the decision to create of the European rapid reaction forces, comprising troops from all EU Member States and consisting of 50–60 thousand soldiers ready to execute the 'Petersberg tasks'. Starting with 2003, these forces (formed within 60 days and maintained for at least a year) should acquire operational capability, including the ability to redeploy the said contingent, four hundred airplanes and one hundred ships to the area of a potential conflict. Additionally, military and political structures necessary for the application of military and civilian resources under the CESDP were established. These structures included the permanent Political and Security Committee, the Military Committee and the Military Staff.

Other debates focused on the non-military measures (such as humanitarian aid or the deployment of police forces) and stressed the need to allow non-EU states and the other members of the NATO to participate in the process of political consultations and even to get actively involved in possible operations.

The decisions made at the summit in Helsinki were supported at the meeting of the North Atlantic Council held a couple of days later in Brussels, where the NATO presented its own interpretation of the actions taken by the Europeans – consistent to a large degree with the EU's interpretation.

The Common European Security and Defence Policy was, first of all, to contribute – under the concept of the European Security and Defence Identity and together with the Common Foreign and Security Policy – to increasing EU's responsibility for its own security through strengthening its defence potential, but only within the framework of the NATO and as its European pillar. Consequently, the CESDP was treated rather as an instrument of the common defence policy, and not as a system of common defence of the EU. This restrictive interpretation is supported by the decisions made at the summits in Köln and Helsinki, under which the tasks of the CESDP were limited to executing the 'Petersberg tasks'. Furthermore, it was agreed that the operations conducted by the European Union should not to collide with or repeat the actions of the NATO.

Such an approach was, indeed, justified; in fact, Europe did not have a sufficiently developed military potential of its own to be able to pursue ambitious political and defence goals. Comparing the capabilities of the EU and the USA – the leading superpower in the NATO – suffice to say that the joint military budget of the European allies, whose armed force is larger in terms of numbers, is two times smaller and their capability to conduct military operations in the world is ten times smaller.[8]

[8] The EU Member States also spend two times less on armaments and three times less on military research.

A good example of this was the way in which the EU states were able to become involved in the NATO's military intervention against Serbia in 1999. With the objective to prevent the regime of Slobodan Milošević from continuing the ethnic purges in Kosovo, the operation employed virtually only the resources of the US Air Force, as Europeans did not have relevant technologies and equipment. This exposed the military weakness of the European allies and the degree of their dependence on the USA.

However, all this does not change the fact that the turn of the 20th and 21st centuries brought a certain breakthrough in the development of European political and defence integration. Indeed, the process of rapid changes started back then continued, resulting in concrete decisions and solutions concerning the CESDP.

Since 2000, the decisions concerning the establishment of the European rapid reaction forces have been put into practice, starting with the creation of institutional structures. Subsequent summits addressed other issues, such as strategic planning, the practical aspects of establishing common armed forces (including the means of financing them) and solving conflicts with the use of non-military, civilian measures. Such actions were part of the logic of extended 'Petersberg tasks', taking into account the requirements for cooperation with the NATO and with other non-EU states.

At the next Intergovernmental Conference, held in 2000 and focusing on the development of another amendment to the Treaty on European Union, issues related to foreign and defence policy were not touched upon to any significant extent – not because of lack of interest in these issues, but rather because main task of the Conference was to develop institutional reforms necessary for the streamlining of the functioning of the European Union, having in mind the future enlargement. Therefore, only selected issues were discussed, such as the division of competences between Community bodies or the principles of qualified majority voting in the area of Common Foreign and Security Policy. All this was reflected in the provisions of the Treaty of Nice, signed on 26 February 2001.

However, it has not fulfilled the expectations regarding the transformation of the Common European Security and Defence Policy into the fourth pillar of the EU (and it failed to solve the issue of EU's international subjectivity). The Treaty addressed the relations with the Western European Union by removing provisions concerning the WEU from the EU Treaty due to the expiry of the WEU.

With regard to the decision-making procedures, it introduced, among others, the principle of qualified majority voting for the appointment of the High Representative for the Common Foreign and Security Policy, and expanded the applicability of this principle to explicitly defined instances occurring with the conclusion of international agreements within the scope of the second pillar. It also introduced the possibility of using 'enhanced cooperation' in this pillar, but only to a limited extent.

The Treaty of Nice did not introduce any significant changes to the EU foreign and defence policy. Nevertheless, it constituted yet another step towards its

consolidation, mainly due to the small but still important extension of Community competences regarding the CFDP and the establishment of the possibility to continue along this line in the future.

At the Laeken Summit in December 2001, the EU Member States confirmed their willingness to create their own, more effective political and defence structures, particularly as regards solving conflicts by civilian means apart from military means. A special action plan – the European Capability Action Plan (ECAP) – was adopted for this purpose.

New challenges

The terrorist attacks in the United States in September 2001 provided a new impetus to the development of pan-European and transatlantic cooperation in the field of international security. At the meeting in Seville in June 2002, the European Council announced a special declaration concerning the granting of operational capability to the CESDP in the struggle with international terrorism, while at the same time, putting even stronger emphasis on joint actions in this field with the other partners. At first, the counter-terrorist actions taken by the Americans in response to the attack on their citizens – including the military intervention against the Afghan talibs – gained full support of the European Union.

However, the format and extent of the US war with terrorism resulted in ever stronger protests of most EU Member States. This did not stop the Washington administration from launching a military operation against Iraq without a relevant resolution of the UN Security Council. France and Germany were the most serious critics of the American policy and it is between these two EU Member States and the USA that the political conflict became most apparent.

The issue of the Iraq War proved a failure of the European Union. On the one hand, it revealed the weakness of integration in the second pillar, as the EU lacked the ability to influence important international events. On the other hand, it showed the discord between the Member States – and, contrary to what might seem obvious, the most serious discord was not between the 'new Europe', i.e. states that recently joined the EU, supporting the USA, and the 'old Europe' of Member States who were reluctant to agree with American policies.

As a matter of fact, disputes were and, to a large degree, still are waged along other dividing lines and have constituted a part of a greater difference in the Member States' positions concerning the transatlantic relations. On the one hand, we should take into account the impact of the Gaullist idea of a Europe independent in political and military terms (of which France has been a fervent proponent for the whole post-war period). On the other hand, we are dealing here with a tradition of close ties with the United States (in every respect), of which United Kingdom is the best example.

Despite the unceasing divergences, we have to remember that there is the 'Atlantic community' connecting Europe and America as the main representatives of the Western civilisation. In this civilisation, the various internal ties are,

undoubtedly, stronger than any disintegration trends. The two sides are not only each other's largest economic partners, but also play a very significant role towards each other in the political arena. As history shows, for more than half a century the United States have been playing the role of the principal guarantor of security of the unifying Europe, which, in turn, is a natural ally to the USA – and one of great strategic importance. Even the controversies around the Iraq War, although they led to an open political and diplomatic conflict, were not enough to undermine the solid foundation of the transatlantic partnership.

A sign of the fundamental importance of the transatlantic relations to both parties was he conclusion of the Berlin Plus agreement in March 2003.[9] The aim of the agreement was to avoid unnecessary duplication of resources and efforts of the NATO and the European Union for the development and use of the military potential of the two parties. Another characteristic fact is that despite the controversies over Iraq, at the summit in Brussels in December 2003 the European Union confirmed the primacy of the NATO in the field of European security and the willingness to cooperate with the NATO in this respect.

Another politically important event was the adoption by the European Council in December 2003 – for the first time in the history of the European Communities – of the European Security Strategy, developed under the direction of the High Representative for CFSP, J. Solana. The document presented the main international threats and challenges and defined the main objectives and instruments for the EU to deal with them.

According to the Startegy, the main threats to the security of Europe and the entire world were: international terrorism and organised crime, dissemination of weapons of mass destruction, local conflicts over various issues (the list was almost identical to the objectives of the 'Petersberg tasks'). The document strongly emphasised the fact that these threats cannot be addressed only by individual actors in the global arena, but instead by the entire international society, or, in other words, it stressed the need for a multilateral approach.

In this context, the European Union should strive after improving stability and security mainly in its neighbourhood, although it should also consolidate world peace through closer cooperation with the UN and with the other global and regional organisations. It was essential that the European Security Strategy was in favour of the need for the EU to have its own, more effective and coherent instruments of activity, that is more complex military tools.

Hence, concrete actions were undertaken to implement the idea of the European rapid reaction forces. In 2004, due to the modification of the earlier Headline Goal, the Member States adopted new guidelines for their development. According to this goal, by 2010 the Member States should be able to redeploy

[9] The name alludes to the aforementioned decisions made at the NATO summit in Berlin in 1996, when the formal and legal foundation for the military cooperation between the EU and the NATO was laid.

their military contingents under crisis management within 5 days from the decision on the commencement of a mission. In the same year, 13 rapid reaction tactical groups, that is EU Battlegoups, were created simultaneously.[10]

Another essential decision was made in 2004. It concerned the establishment of the European Defence Agency (EDA) – an institution which was supposed to help solve the serious problem of improper functioning of the European arms industry. Despite its large potential, the industry fails to properly coordinate its activities and, as a result, fails to adequately support the development of the military capability of the European Union as a whole. Too many organisations are active in this sector, and their efforts do not bring the expected results, even despite joint undertakings aimed at facilitating the transfer of latest military technologies and the establishment of coproduction, as well as the joint research programmes. The main barrier in this respect is the rivalry between the individual Member States, for which the arms industry is of high political and economic importance (particularly in terms of exports) and which, therefore, are not exactly keen on including this sector in the Single Market. However, at the same time, we should also highlight certain positive trends, such as the concentration of industrial potential which has been going on for several years now.[11]

The activities under the CFSP/CESDP are no longer limited to organisational and legal undertakings, but more and more often take on an operational character. They include, for instance, joint trainings of the EU Member States in crisis management, and especially its civilian aspects. Furthermore, these actions take the form of WU military and civilian operations abroad, opening a new chapter in the history of European integration in the field of foreign and security policy. Their main objectives are the prevention of conflicts, preservation or even enforcement of peace, supporting processes of democratisation, preventing humanitarian disasters, etc.

They were initiated in the Balkans region with the CONCORDIA operation conducted in Macedonia in 2003, the first operation executed independently by the EU. Further operations (such as the ARTEMIS, EUFOR RD CONGO, EUFOR TCHAD/RCA) were conducted in Africa in cooperation with the NATO and/or the UN (a special mechanism of financing from the EU budget named ATHENA was developed in 2004 in order to streamline the execution of missions).

[10] Each battlegroup was to consist of approx. 1.5 thousand soldiers. They were to achieve operational capability in the years 2005–2010 and be able to cooperate with NATO forces or operate independently.

[11] Several organizations are dealing with the activities for the arms sector in Europe, of which the most important are: the Western European Armaments Organisation (WEAO) and the Organisme Conjointe de Coopération en Matière d'Armament (OCCAR). The enterprises active in this sector are true industrial giants, as, for instance, among the 20 largest arms companies in the world, 7 are based in Western Europe. A good example of the concentration processes taking place in this sector is the establishment of the European Aeronautic, Defence and Space Company (EADS), being the third largest aviation arms company in the world.

As previously mentioned, the collapse of the communist system in Central and Eastern Europe, which shattered the traditional distribution of power, was not only of crucial importance to the countries of that region, but also posed a serious challenge to the foreign policy of the European Union. One of its priorities was to find a suitable format of relations with the new Central-European democracies.

The European Communities managed to establish treaty-based relations with these countries quite early, by signing several different international agreements in 1988–1995: the 'first generation' agreements on trade and economic cooperation, and later more extensive association agreements, referred to as the Europe Agreements. They differed from the agreements concluded in the past because they concerned not only economic issues (trade and economic cooperation), but had a political aspect to them as well, under the so called political dialogue. Relatively strongest ties were established with the countries of the so called Visegrad Group (Poland, Hungary, the Czech Republic and Slovakia).

Most Central-European countries saw closer relations with the European Communities as an element of their preparations to acquiring full membership. At this point, it should be strongly emphasised that initially the Communities were far from planning to grant EC membership to the countries of this region. This idea needed some time to mature before it would finally be accepted. Neither the nascent European Union, nor the Central-European states were at that time politically, institutionally and economically prepared to execute such an ambitious endeavour in the nearest future.

However, with time, the Eastern enlargement became one of the key issues in the foreign policy of the European Union. Numerous debates on this issue focused on deciding whether the first step should be to deepen the existing integration, or widen the area of the EU. In the end, pragmatic considerations combining the two approaches prevailed, as it was clear that the two issues were dialectically linked – enlargement forces institutional reforms, which, in turn, are a prerequisite for it.

The concept of eastward enlargement was not universally and unconditionally accepted in the EU. Apart from various international and internal policy-related determinants, the reasons included differences regarding the particular strategic political and economic interests of the Member States. From this point of view, we can distinguish two informal blocs within the EU. On the one hand, there was the Eastern bloc, headed by Germany, who strongly supported the enlargement, hoping that the EU centre of gravity would shift eastwards and thus provide Germany with an opportunity to consolidate its already dominant position.[12] On the other hand, there was the Southern bloc, headed by France, whose

[12] The transfer of the capital of unified Germany from Bonn to Berlin, which, as we all know well, lies only several dozen kilometres from the Polish border, can be treated as a symbolic manifestation of German aspirations.

interests made it rather reluctant towards eastward enlargement, as it was vitally concerned with the Mediterranean region.

Despite this controversy, in 1993, at the summit in Copenhagen, the EU Member States made the essential political decision to allow the accession of Central-European countries to the EU. What was left to settle now was finding practical ways of achieving this goal in accordance with the newly adopted Copenhagen criteria.[13] The diverse financial and economic assistance provided by the EU and many years of candidate countries' efforts towards adaptation to Community standards, finally bore fruit. In early 1998, the negotiations concerning EU membership were launched, which resulted in the largest enlargement in the history of the EC/EU. On 1 May 2004, the following 10 countries joined the European Union: Poland, Hungary, the Czech Republic, Slovakia, Lithuania, Estonia, Latvia, Slovenia, Cyprus and Malta, followed by Bulgaria and Romania on 1 January 2007.

This way, most countries of Central Europe became involved in the Euro-Atlantic integration structures, including the parallel process of enlarging the NATO: in 1999 Poland, the Czech Republic and Hungary became its new members, with the process being continued further.

As a result of the 2004–2007 enlargement, the European Union – along with its foreign and security policy – had to face new challenges. In order to meet them, the EU needed a new treaty.

New treaty foundations

Problems of the foreign and security policy surfaced in the work of the European Convention, which was to develop the principles of the new EU treaty, and then – after the draft was completed – during the meetings of the next Intergovernmental Conference. The controversies concerned such disputable issues as, for instance, the draft of the so called mutual defence clause, which was, yet again, objected to by the neutral states. The individual Member States were also presenting their own positions, especially France and Germany, who were the strongest supporters of the Conventions' proposals concerning the foreign and security policy. At the so called 'praline summit' in April 2003, these two countries, along with Belgium and Luxembourg, suggested a swift creation of an actual general staff of the European forces, independent from the NATO. This proposal was strongly objected to most of the remaining Member States, in particular the United Kingdom.

If the Constitutional Treaty, signed in October 2004, had indeed been implemented, some of its provisions would have had a great influence. It would have introduced new impetus for development to the European political and defence integration. First of all, it would have provided the European Union with legal subjectivity, which would have made it truly an international organisation and would

[13] The criteria concerned, among others, the requirement for the candidate countries to be fully democratic, observe human rights and have a market economy able to cope with the competition in the EU market.

have made it easier for the EU to function in the international arena. Generally speaking, the biggest merit of the Treaty was that it represented an attempt to introduce some flexibility to the area of foreign and political policy, making it possible to search for new solutions which would be satisfying to all parties involved.

As regards the Common Foreign and Security Policy, apart from increasing the loyalty and solidarity requirements for all Member States, the Treaty introduced a very important new element – the position of an EU Minister of Foreign Affairs, who would supervise the issues falling under the second pillar and under the external economic relations. The Minister would have broad powers in the area of representing the EU and ensuring consistency of its actions and positions in the relations with its foreign partners.

As regards the Common European Security and Defence Policy, the Constitutional Treaty introduced the possibility of closer cooperation in the form of the so called structural cooperation, covering the Member States who are interested in deeper development of the defence policy, including the creation of military forces to be used in missions for maintaining and preserving peace. What is more, the treaty contained a provision (although criticised for making the EU a quasi-military alliance) imposing an obligation on the Member States to provide mutual assistance in case of a military aggression (of course, taking into account and guaranteeing the specificity of the defence policies of neutral states and the NATO). This is similar to the solidarity clause, which provides for mutual assistance in case of a terrorist attack or natural disaster. Another point of interest was the official establishment of the aforementioned European Defence Agency.

As we can see, the provisions of the Constitutional Treaty would have introduced certain reforms to the second pillar of the EU. However, it should be also stressed that nonetheless, it the Treaty was still not a decisive breakthrough in terms of transforming this pillar into a more community-oriented EU foreign and defence policy. It is enough to mention the fact that it maintained, as a general rule, the principle of unanimity in the process of decision-making in the field of CFSP/CESDP. What is more, under the 'enhanced cooperation' allowed under the Treaty, the so called 'passerelle clause' – which would allow a transition from unanimity to majority voting – could not be applied with regard to these policies.

The procedure of ratifying the Constitutional Treaty proved to be bristling with difficulties. In the referenda held in May and June 2005 in France and the Netherlands, the citizens of the two countries rejected the Treaty (often, in fact, expressing their opinion on internal political issues). As a result, further ratification procedures were suspended, which, actually, meant that the idea of implementing the Treaty was abandoned.

However, the fiasco of the Constitutional Treaty did not halt or slow down the introduction of reforms improving the functioning of the European Union, also with respect to political and defence integration. The Treaty of Lisbon, signed on 13 December 2007, maintained the essential achievements developed in the Constitutional Treaty. It provided the EU with legal subjectivity and improved its

ability to act in the international arena, e.g. through the establishment of the office of an actual EU foreign minister. The new office combined the tasks of the Commissioner for External Relations and the High Representative for CFSP. It is ranked very high in the hierarchy of EU organs, as the person holding the office is, at the same time, the Vice-President of the European Commission and the chairperson of the Foreign Affairs Council. As part of the process of eliminating controversial wordings, the office was named the High Representative for Foreign Affairs and Security Policy. The High Representative was to have at his or her disposal a dedicated diplomatic service: the European External Action Service, consisting of both EU officials and diplomats from the Member States[14] (the first person appointed to the office of High Representative is C. Ashton).

Just as stipulated in the Constitutional Treaty, the Treaty of Lisbon established the office of the President of the European Council, who is to take actions in the field of foreign policy on the basis of decisions made unanimously by all Member States (the principle of unanimity – as a general rule – concerns the entire EU foreign and defence policy). Furthermore, the provisions concerning the most important achievements of the previous treaty, such as structured cooperation or the solidarity clauses, were preserved as well. We should also point out that by making the European Union a uniform legal entity (through eliminating the division into the EU and the European Community), the Treaty of Lisbon improved the Union's objective capability to act, also in the international arena.

In spite of certain difficulties (such as the negative outcome of the referendum in Ireland in June 2008), the procedure of ratifying the Treaty of Lisbon was completed and the Treaty entered into force on 1 December 2009. It was all the more necessary, as new tendencies and challenges in EU foreign and security policy are constantly appearing. Some of them are positive, but there are many threats as well.

The positive tendencies included the calming of the controversies between Europe and the United States regarding the Iraq conflict, as well as other contentious issues. It has been signalled since early 2005 by American and European politicians, particularly the presidents of USA and France, G.W. Bush and J. Chirac, as well as their successors: N. Sarkozy, F. Hollande and B. Obama. Further proof of a certain 'thaw' in the relations were concrete, joint undertakings, such as the decision of all the NATO members to participate in the stabilisation mission in Afghanistan. Officially, the mission was conducted under the auspices of the NATO, but in fact, it is the United States that played the dominant role there. The involvement of EU states in this mission was significant in that the operation was, essentially, not much different in military and political terms from the intervention in Iraq. But in contrast to Iraq, the European states unanimously and fully backed the intervention in Afghanistan.

[14] Of course, the service in question neither replaces nor makes redundant the national diplomatic services of the EU Member States.

Furthermore, the long-planned process of enlarging the NATO was continued – at the turn of March 2004 and April 2009, another nine post-communist countries from Central and Eastern Europe joined it: Lithuania, Latvia, Estonia, Slovakia, Romania, Bulgaria, Slovenia, Croatia and Albania. This meant that the European integration processes in the field of defence policy already encompassed the larger part of the continent.

At the same time, the EU foreign and security policy had to face certain threats. One of these, a serious test of the unity of all the EU Member States, was the controversial declaration of independence of Kosovo, announced in February 2008. Most Member States supported this move, but many opposed it more or less strongly. Regardless of the reasons for this opposition,[15] the very fact that the EU failed to present a common position revealed the weakness of not only the mechanisms of decision-making, but also of coordination within the political and defence integration of the EU.

Further problems with formulating a common position were caused by the conflict between Russia and Georgia, started in August 2008. NATO showed a relatively explicit unity at that time, as essentially all the European allies supported the position of the USA, strongly criticising the actions of Russia, and more or less enthusiastically supported Georgia. Much more divergence was apparent in the official statements issued by various EU states: the leading EU superpowers, Germany and France (traditionally pro-Russian), took a calmer position, while several other states, particularly Poland and the Baltic republics, severely condemned Russia's actions. In the end, the position of the European Union as a whole remained rather ambivalent – it formally supported the Georgian aspirations to join the NATO and the EU, but on the other hand, it is common knowledge that the actual chances for Georgia to become a member of either organisation are very slim, as most EU Member States are unwilling to degrade their relations with Russia and Europe is dependent on Russian energy resources.

Another example of the lack of unity in the EU was the inconsistent reaction to the events of the so called Arab Spring, which started at the turn of 2010 and 2011. Some Member States, traditionally involved politically and economically in the Mediterranean region, such as France, the United Kingdom and Italy, initially conducted a separate policy concerning the individual hotspots, irrespective of what their partners were doing. Then – also without any cooperation or even attempted coordination within the EU – they tried to interfere, e.g. by organising air raids against the forces of the Gaddafi regime in Libya (formally, the intervention was organised by the NATO and not the EU). There is also no single position of the entire European Union as concerns the most important aspects of development of the clearly deteriorating political situation in this region, and especially in Syria.

[15] The group of opposing countries included Spain, Greece, Romania, Slovakia and Cyprus.

Conclusions

From a broader perspective, an important challenge for the EU foreign policy is the future of a further enlargement of the Union. In this respect, there are still considerable differences of opinion. Most countries of the 'old' EU show far-reaching caution, opting for consolidation and deepening of integration within the recently enlarged EU, rather than the admission of new members, while the new states (especially Poland) strive after continuing the enlargement process. The European Union has, indeed, created special instruments, such as the European Neighbourhood Policy or the Eastern Partnership, but due to various limitations (particularly the lack of membership prospects for most of the partners) they do not bring satisfactory results (for more on these issues, see the chapter on the history of European integration).

Generally speaking, we can say that the integration in the field of foreign and security policy constitutes a very important element of integration processes within the European Communities/European Union. However, at the same time, we should not fail to notice the numerous limitations in this respect: at the different stages of development of European integration, the significance of this element exhibited varying intensity; furthermore, essentially, political and defence integration has not gone beyond intergovernmental cooperation, as, in contrast to the processes of economic integration, it has not passed into the field of competences of supranational Community bodies. Considering this from a broader perspective, it is clear that the situation should change, for with no coherent, effective and truly common foreign and defence policy, the European Union is likely to remain an economic giant but political and military dwarf in the international arena.

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Bogdan Góralczyk

European Union – The Best of Times, the Worst of Times?

Introduction

The European Union is an open question, as it is a subject (actor) of international relations completely different from the other ones. It is neither a state – although there are proponents of a federative format of this entity[1] – nor a typical international organization.[2] This reservation is important and must be made in the very beginning, in order to clearly stress that we are dealing with a project which, firstly, does not easily fit in the old system of norms and institutional solutions, and secondly – is a sort of experiment of which the end result is yet unknown. This experiment has been constantly deepening and widening, resulting in the number of Member States rising from 6 to 28 and in the first monetary (or maybe only fiscal) union of this type (although there had been similar experiments before), namely the euro area. Consequently, the EU has gone, in accordance with the neo-functional theory,[3] through several stages of integration, starting with the lowest, i.e. the creation of the free trade area, and now has obviously come close to the last stage, namely the need to face the establishment of a political union – that is the establishment of some federative body.[4]

[1] For more see: *Unia Europejska. Nowy typ wspólnoty międzynarodowej (The European Union. A New Kind of International Community),* E. Haliżak, S. Parzymies (eds.), Warszawa 2002.

[2] D. Milczarek, *Pozycja i rola Unii Europejskiej w stosunkach międzynarodowych. Wybrane aspekty teoretyczne (Position and Role of the European Union in International Relations. Some Theoretical Aspects),* Warszawa 2003, p. 124.

[3] Under this theory, the crowning achievement of the integration process is the creation of a political community. See: S. Konopacki, *Neofunkcjonalistyczna teoria integracji politycznej Ernsta Haasa i Leona Lindberga (Neofunctional Theory of Social Integration by E. Haas and L. Lindberg),* "Studia Europejskie" no. 2/1998 and 3/1998.

[4] For more on the various federative scenarios in the context of the attempt to adopt the European Constitution, see the study by T.G. Grosse in: "Analizy natolińskie" no. 3/26/2008, p. 2. The author considers the present system of the EU to by a 'hybrid' one, which can be described as a 'intergovernmental confederation'. Regarding the future of the EU, he believes it to become either a 'technocratic condominium' or a 'democratic federation'.

The EU as a new actor in the international arena

The EU has emerged as an independent entity after the Maastricht Treaty in consequence of the process of European integration which has lasted since 1951, i.e. since the creation of the first European Community for cooperation in the fields of coal and steel (at that time, these were the most important resources on the continent, undergoing rapid industrialisation). Gradually the EU has replaced the three Communities with which it coexisted (after the Treaty of Rome of March 1957 the European Coal and Steel Community was joined by the European Economic Community and the European Atomic Energy Community). The process of replacing the Communities has essentially been completed with the Treaty of Lisbon, which entered into force on 1 December 2009; the Treaty has equipped the EU with legal personality under international law and, consequently, established a new entity in the international arena with the ability to independently interact with other entities.[5]

The past course of European integration, initially (1951–1992) conducted under the Communities and after the Maastricht Treaty under the EU, has resulted in many fundamental conclusions and definitional arrangements. We could say that the EU is the result of the process of European integration and is a process in itself as well, for it is an entity which is subject to constant changes – as part of its nature as well as under the constitutional provisions. Another important observation is that as a result of this process a supra-national organism was established, the ultimate goal being the establishment of the first efficient and effective supra-state or supra-national legal entity in human history. This is both the fundamental difficulty and the biggest challenge, for no one has ever tried such a thing. In other words, one could say that the EU is a unique and unprecedented process of establishing an actor in the international arena with the ultimate goal of establishing a supra-national entity. It creates an organism which is still *in statu nascendi*, still in the process of being created, which results in the fact that some (Michael Burgess, studying European federalism)[6] believe it to be an 'intellectual puzzle' and others, including people formerly very influential in its managerial circles, such as Jacques Delors, as a *'politically unidentified object'*.[7] As such, the EU is an intellectual or even philosophical challenge, and not just an institutional or political task. Since no one has ever created such an organism, no one knows how to identify its common interests or how to define its behaviour in the international arena – as the resultant of particular interests, or perhaps as the reflection of the influence of the strongest entities (states) in the EU.

[5] J. Barcz, *Poznaj Traktat z Lizbony (Let's Learn about the Lisbon Treaty),* Warszawa 2008, p. 23.

[6] The author says: '*European integration today is an attempt by the modern state to accommodate and adjust to unprecedented changes in the global political economy*', (M. Burgess, *Federalism and the European Union: Building of Europe 1950-2000,* London 2000, p. 17).

[7] D. Milczarek, *Pozycja i rola...,* op.cit., p. 8.

One other incredibly important aspect of the European integration project is the fact that the EU is a community and organism created on the foundation of certain principles and common values. The said values are quite well-defined in the 'Copenhagen criteria', adopted in 1993 by the highest EU authority, that is the European Council, and formulated for the benefit of the states applying for membership in the organisation. These criteria have been divided into political and economic. The political ones include the following requirements:

- existence of institutions guaranteeing stable democracy;
- rule of law;
- respect for human rights;
- respect for the rights of minorities.

The economic criteria, on the other hand, include requirements of a different kind. They are as follows:

- existence of market economy with the capacity to cope with competition and the free market;
- ability to adopt the *acquis communautaire* (that is the total body of specific EU law, worked out in the long process of integration);
- ability to take on the political, economic and monetary union.

The Copenhagen criteria are reflected in the Amsterdam Treaty (Article 6(1) of the consolidated Treaty on European Union (Maastricht Treaty) and in the Constitution for Europe (Part 1, Article 2: *The Union's values*; Article 9: *Fundamental principles*; and Title VI: *The Democratic Life of the Union*, as well as in the Charter of Fundamental Rights).[8] The progress of every state in the execution of the Copenhagen criteria has been annually (at the end of every year) evaluated by the European Commission and announced in the so called *Regular Report*.[9]

On this basis we can formulate yet another definition of the EU, describing it as an organism and ultimately a supra-national subject of international relations and international law, created on the foundation of common values. A state which does not meet the requirements cannot become an EU member, which excludes non-democratic states, authoritarian states and states without market economy from among potential EU members.

[8] It was given binding force under the Treaty of Lisbon. Only the governments of the United Kingdom, the Czech Republic and Poland asked for the adoption of additional protocols, introducing some restrictions in the internal arena with regard to some of its provisions. See also: M. Muszyński, S. Hambura, *Karta Praw Podstawowych z komentarzem (Charter of Fundamental Rights with Commentary)*, Bielsko-Biała 2001. For a more comprehensive analysis see: J. Barcz, *Unia Europejska na rozstajach. Traktat z Lizbony. Dynamika i główne kierunki reformy ustrojowej (The European Union at the Crossroads. The Treaty of Lizbon. Dynamics and Main Directions of System Reforms)*, Warszawa 2011. For the evaluation of the two years of it functioning in Poland, where there were controversies regarding some of its provisions, see: *Dwa lata Karty Praw Podstawowych*, http://wiadomosci.ngo.pl/wiadomosci/766615.html (last visited 17.07.2012).

[9] W.M. Góralski, *Koncepcja ustrojowa i instytucjonalna II filara Unii Europejskiej* (*System and Institutional Conception of the 2nd Pillar)* in: *Unia Europejska. Tom II. Gospodarka – Polityka – Współpraca*, W.M. Góralski (ed.), Warszawa 2007, p. 125.

The position of the EU in the international arena

As an organism currently consisting of 28 Member States and inhabited by almost half a billion people,[10] the EU has a huge potential – economic and political, as well as scientific and technological, although not military. There is little doubt about the significant soft power, i.e. the soft influence of the European continent in terms of ideas, symbols, culture, and mass media. However, it remains a controversial issue whether it is already a common influence of the EU, or rather more particular influence reflecting the long traditions of the individual Member States.

The EU as a whole plays an increasingly important role in the global arena in the various fields which are most important for the whole world. It is a very important actor in the field of economy and, consequently, politics. It takes and clearly stresses its stand on issues related to the so called global challenges, such as proliferation of nuclear weapons, world terrorism, climate change, or environmental pollution.[11] By creating its own body of law, the aforementioned *acquis communautaire*, it also presents other with own standards and models in many fields.

Economic position

Any deliberations on the EU should start with its undoubtedly most important role, that is the EU's economic significance in the modern world. Among the three Communities preceding the EU, the most significant was the EEC. This gave rise to the rather common and fully justified conviction that the leading aspect of the process of European integration is economic cooperation. Some people have been saying that that the EU is 'an economic giant, but a political dwarf'[12] or pygmy.[13] This is, of course, a certain journalistic simplification, but it has many proponents in various decision-making circles in the world.

That the EU is an economic giant remains fairly certain and obvious. It is enough to look at the available statistics and comparisons to see the magnitude and strength of this entity. According to the data provided by the most important economic organisations of the modern world, that is the World Bank and the International Monetary Fund (IMF), for some time now (since 2005) the EU has been competing with the USA for the position of the strongest economic power in the world. The data of the 'largest economic think-tank in the world', the OECD, also

[10] The precise number quoted is 507 million; see: http://www.europa.eu/about-eu/facts-figures/living/index_pl.htm (last visited 18.07.2013).

[11] E. Landaburu, *Hard Facts about Europe's Soft Power*, "Europe's World", Summer 2006, http://www.europesworld.org/NewEnglish/Home/Article/tabid/191/ArticleType/articleview/ArticleID/21147/Default.aspx (last visited 25.07.2012).

[12] For instance: S. Falletti, *Economic Giant, Political Dwarf*, http://www.europolitics.info/dossiers/eu-asia-relations/economic-giant-political-dwarf-art248119-99.html (last visited 20.07.2012).

[13] http://www.europeanvoice.com/page/eu-studies-fair-2011/2835.aspx (last visited 20.07.2012).

clearly show that the two biggest and most important economic entities in the beginning of the 21st century are the USA and the EU.[14] Also the American Central Intelligence Agency, in the esteemed referential publication *CIA World Factbook*, has been acknowledging the leading role of the EU in this regard for several years now. The current data published by the CIA is as follows:

Table 1. Most important economies in the world (by purchasing power parity – PPP) in 2011

Rank	Entity power	GDP (purchasing parity)
1.	European Union	$ 15,650,000,000,000
2.	USA	$ 15,290,000,000,000
3.	China	$ 11,440,000,000,000
4.	India	$ 4,515,000,000,000
5.	Japan	$ 4,497,000,000,000
6.	Germany	$ 3,139,000,000,000

Source: https://www.cia.gov/library/publications/the-world-factbook/rankorder/2001rank.html (last visited 18.07.2012).

The data concerning production, income and trade prove the huge importance of the EU in world economy. Despite the perturbations in the internal market, and especially in the euro area (comprising only 17 out of 28 EU Member States), being the consequence of turbulences in the world markets after September 2008 and the collapse of some venerable institutions of the American financial system, starting with the Lehman Brothers, the thesis on the EU having become the major and largest economy in the world is becoming increasingly widespread, even within the United States. It is estimated that in 2011 this tendency, which has been observed since 2007, has been maintained. Furthermore, the three presently largest economies of the world, that is the EU, the USA and China, have currently a total GDP of USD 42.33 trillion, which is 53.6 per cent of the total global GDP.[15]

The EU's commercial power is as big as its power in the field of production. At present, the EU – whose exports in 2010 amounted to EUR 1.349 trillion (USD 1.788 trillion) and imports to EUR 1.502 trillion (USD 1.991 trillion), generates

[14] See the organisation's database, http://www.oecd.org (last visited 20.07.2012).

[15] See: K. Amadeo, *World's Largest Economy*, http://www.useconomy.about.com/od/grossdomesticproduct/p/largest_economy.htm (last visited 19.03.2013).

approximately 19–20 per cent of the total world trade.[16] It is in terms of economy and trade – in contrast to many other fields – that the EU often managed to speak with a 'single voice', although even this is still not an ideal state, particularly in relations with its most difficult partners, such as China, which has a large trade surplus in the relations with the EU (virtually with every European partner, except Germany), and Russia, on which the EU is largely dependent as regards energy resources.[17]

Economic shortcomings and turbulences in the EU

After the outbreak of the crisis in the world markets in 2008, the huge and unquestioned economic potential of the EU Member States has been ridden by serious problems which, for the first time in its history, make its future and survival uncertain.

Just like the Copenhagen criteria specify the requirements for membership in the EU, the 'euro convergence criteria' (also known as the 'Maastricht criteria') specify the conditions of functioning of the various economic organisms within the EU. In accordance with these criteria, the Member States should strive for:

1) low inflation;
2) stability of currency exchange rates;
3) stability of long-term currency rates, and, above all;
4) preventing excessive deficit, so that the situation of a given state's government finance is not only transparent, but also stabilised, that is, speaking more precisely, that the budget deficit does not exceed 3 per cent of the GDP and the deficit of the government finance does not exceed 60 per cent of the GDP.[18]

These requirements were to be met not only by the states applying for EU membership, but all the more so by the states applying for membership in the euro area.

Unfortunately, even the official data published regularly by Eurostat prove that the economic situation of the EU is not as excellent as it might seem. Even though inflation in the whole area is relatively dropping – from 4.1 in 2009 to 2.7 in the first quarter of 2012 – and seems to be under control, the level of unemployment, for instance, gives cause for serious concern, as since 2009 it has

[16] For details see: http://www.europa.eu/pol/comm/index_en.htm (last visited 20.07.2012). For an evaluation see: A. Dür, M. Elsig, *The EU in the World Economy*, http://www.ecprnet.eu/ecpr/lisbon/documents/ws11_000.pdf (last visited 20.07.2012).

[17] In the opinion of Anita Orban, who has studied this issue, the EU is in more than 25 per cent dependent on Russian gas and petroleum. Germany is even more dependent (40 per cent) – especially as regards gas – and other countries particularly dependent on Russia are, in this order: Slovakia, Poland, Hungary, and even Austria or Italy. A. Orban, *Power, Energy, and the New Russian Imperialism,* Connecticut-London 2008, p. 1. According to the data of the European Commission, this dependence is even deeper: in 2009 the EU's imports from Russia covered 32.6 per cent of its total demand for petroleum and 38.7 per cent of its demand for gas. *Energy Dialogue EU–Russia. The Tenth Progress Report*, http://www.ec.europa.eu/energy/international/bilateral_cooperation/russia/doc/reports/progress10_en.pdf (last visited 20.07.2012).

exceeded 10 per cent and, what is even worse, it has been slightly rising all the time – to 11 per cent in the first half of 2012.[19] However, what is even more worrying is that there are countries in which the level of unemployment exceeds 20 per cent. This is a particularly large concern in Greece (22.5 per cent in April 2012) and Spain (24.5 per cent in June 2012).

The biggest problem is, however, the fact that many EU Member States seem not to have been observing the requirements resulting from the Maastricht criteria. A special term has even been coined to name them – PIIGS. These states are: Portugal, Italy, Ireland, Greece and Spain. They have the largest deficits, significantly affecting the position of the whole EU. As far as the budget deficit is concerned, after the outbreak of the crisis in the world markets it has significantly risen, from 1 per cent in 2009 to 3.7 per cent in 2011 (thus it has exceeded the set criterion). Moreover, in some Member States it is particularly alarming, as in 2011 it amounted to (starting with the biggest 'rascals'): 13.1 in Ireland, 9.1 in Greece, 8.5 in Spain, 8.3 in the United Kingdom, 6.4 in Slovenia, 6.3. in Cyprus.[20] As we can see, in some states it has exceeded the set limits three times or even more, which has to give rise to serious concern.

What is yet more disconcerting, the situation is even worse as regards government debt. It is constantly and visibly growing as well. In the whole EU area it grew from 62.5 per cent of the GDP in 2008 to 82.5 per cent in 2011 (in the euro area: from 70.1 per cent to 87.2 per cent), and in certain Member States the situation is already nothing less but dramatic. Here, once again, the 'list of sinners' is headed by countries from the PIIGS group. The Member States with the highest deficits are as follows (2011): 1. Greece – 165.3; 2. Italy – 120.1; 3. Ireland – 108.2; 4. Portugal – 107.8; and Belgium is also close to the 100 per cent mark, with 98 per cent.[21]

Data originating with other centres are slightly different, for instance, estimating the government debt in the EU in 2011 at 82.5 per cent, and the budget deficit at 4.5 per cent,[22] but the tendency is quite clear and self-evident and carries a disturbing message – namely that in the early second decade of the 21st century, the EU has found itself in an unprecedented economic predicament. The original reason for and fundamental cause of these difficulties is well known: it is the non-observance of the set criteria (the Maastricht criteria), combined with the increasing difficulties in trade and economy, resulting from a collapse of the largest global market, that is the USA. What is more, the situation in Greece is dramatic enough to be

[19] http://www.epp.eurostat.ec.europa.eu/portal/page/portal/euroindicators/peeis/ (last visited 21.07.2012).

[20] http://www.epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=0&language=en&pcode=teina200&tableSelection=2 (last visited 21.07.2012).

[21] http://www.epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=0&language=en&pcode=teina225&tableSelection=1 (last visited 21.07.2012).

[22] http://www.en.wikipedia.org/wiki/Economy_of_the_European_Union (last visited 21.07.2012).

likely to force the country to leave the euro area, which would clearly constitute a negative signal for the world and would be very troublesome for the EU and the euro area. However, what gives rise to the greatest concern is the economic situation in Spain and Italy, as they are some of the largest economic organisms in the EU and a collapse there – similar to the one we have witnessed in Greece – could cause far-reaching and unforeseeable consequences and effects.

The economic situation in Greece seems particularly dangerous, as this country has been struggling with a deep crisis since 2009 and, so far, none of the predictions that Greece would master the crisis have not come true. For instance, in April 2011 the IMF predicted a 3 per cent drop of the GDP in 2011 and a slight rise of 1.1 per cent in 2012. However, in 2011 Greece experienced a 7 per cent drop of the GDP and the forecasts for the end of 2012 are not encouraging either.[23] The high unemployment, the lack of growth, and the belt-tightening programmes forced on the government in Athens by EU institutions and the European Central Bank caused unrest in the Greek political arena and in spring 2012 almost caused a power change favouring the openly anti-European faction of the Syriza party, openly contesting the European project and headed by the young politician Alexis Tsipras, who rose to prominence due to the crisis. In the end, after repeated elections on 17 June 2012, power was given to the pro-European but artificial coalition – composed of two sworn rivals: the Christian-democrats of New Democracy and the socialist PASOK. Recent events in Greece provoke ever stronger concerns regarding the likelihood that the country will leave the European integration project ('Grexit'), while the chances of keeping it in the EU and in the euro area are considered ever slimmer in mid-2012.[24]

The economic situation in Spain, Italy and Portugal. Even though so far less dramatic than in Greece, is also becoming the source of growing concern and numerous analyses. All of these speak of 'a crisis on a mass scale' or of 'a crisis of huge proportions'. The available data concerning unemployment, inflation, low growth, and even the threat of recession, speaks for itself. Moreover, what should be once again stressed, except for Portugal, all the affected countries are large, heavyweight even in global and not only European terms, as Italy is a member of the elite G7 (G8) and the third economy in the euro area, while Spain is the fourth economy in this area and the 12th in the world. The fact that Spain already required support from the EU institutions and the European Central Bank (ECB) in form of EUR 100 billion and that both Spain and Italy have been balancing on the brink of recession and struggling with huge difficulties for the last three years, make predicting the future of the whole EU and the euro area an extremely difficult task.[25]

[23] D. Baker, *For Greece There is an Alternative to Austerity – As Argentina Proved*, "The Guardian", 30.07.2012.

[24] The Greek crisis evokes a broad international response and has already produced a very rich and interesting literature, which can be found, http://www.greekcrisis.com (last visited 22.07.2012).

[25] J. Strupczewski, *RPT-Euro Zone Crisis Hades for September (2012) Crunch*, http://www.reuters.com/article/2012/07/30/eurozone-crisis-idUSL6E8IT37B20120730 (last visited 22.07.2012).

Extremisms resulting from the crisis

Every crisis brings about the appearance of individuals, groups and even political parties which feed simple solutions and explanations of the crisis to the perplexed or dismayed public. What emerges is a mentality of the besieged fortress, putting oneself in the position of the victim, a division of the public – in the country and in the whole EU – into 'us' and 'them', shifting blame to others, the erroneous but extremely dangerous thinking of a zero-sum game: it's either us or them; either we win or we lose.[26] Observing the domestic politics in some of the EU Member States, pushed out of balance in consequence of serious economic difficulties, we often get the impression as if some almost tribal instincts were emerging there, habits completely at variance with the spirit of integration so far predominant in Europe. There is no doubt that this is a disconcerting, or even dangerous phenomenon.

As previously mentioned, in Greece, the economic crisis gave political force to the eurosceptical Syriza party. This is, however, by far not an isolated case. Everything points to the crisis causing parties which oppose further political and economic integration to emerge in many EU Member States. In France, first in the presidential elections (22 April and 6 May 2012) and then in the parliamentary elections (10 and 17 June 2012), Marine Le Pen's Front National has been very prominent; in the Netherlands, extreme rightist nationalists of Geert Wilders' Party for Freedom are more and more visible; and in Finland, Timo Soini's True Finns are becoming an increasingly important faction. They are all against 'the others', understood as foreign workforce, as well as foreign capital and influence in their country, which is clearly at variance with the spirit and letter of the whole project of European integration.[27]

The syndrome of nationalism and anti-European feelings can be observed not only in the countries of the old EU, but also in many of the new members from post-communist areas. A good example of this is the well-known scepticism towards the European federative projects of the Polish party Law and Justice (Prawo i Sprawiedliwość),[28] or the openly anti-European statements of the Hungarian prime minister Viktor Orbán.[29] What is more, with the crisis in the background, another

[26] See: J. Pisani-Ferry's editorial *Europe's Zero-Sum Poison* published on 30.07.2012 by 'Project Syndicate' in many magazines around the world.

[27] For more on radical and conservative parties in Europe see: A. Antoszewski, *Partie i systemy partyjne państw Unii Europejskiej na przełomie wieków* (*Parties and Party Systems of European Union States at the Turn of the Century)*, Toruń 2008, pp. 209–245 (radical parties), pp. 116–159 (conservative parties, not necessarily anti-European). For more on the True Finns see: http://narodowcy.net/tag/prawdziwi-finowie/ (in Polish; last visited 22.07.2012).

[28] J. Kaczyński, *Nie odtwarzajmy Cesarstwa Niemieckiego* (*Let's Not Return to the German Empire*), "Rzeczpospolita", 8.12.2011.

[29] On the occasion of a national holiday on 15 March 2011, he spoke to the crowds gathered in front of the Hungarian parliament: *'In honouring our oath, we did not submit to the dictates of Vienna in 1848. We rose up against Moscow in 1956 and in 1990, and today we will not let*

openly anti-European, nationalist and even chauvinist party emerged in Hungary – the Jobbik party, basing its programme on anti-Romanies and anti-Semitic catchphrases.[30]

The erosion of democracy is happening in both the western and the eastern part of Europe,[31] while its southern (Mediterranean) part is struggling with unprecedented economic challenges. What is there to be done with the political and economic future of the continent? – it is a question asked more and more frequently. It would seem that the pivot of this increasingly pronounced political dispute in the individual Member States are two fundamental issues. The first one concerns the depth of integration and the possibility of this process resulting in some new federative form. The second one is equally political as economic and emerges at the border of the fundamental (until recently) principle of sovereign equality of nations and the supra-national solutions regarding the economy, finance and capital. In other words, the crisis of the euro area, which became fully evident in the early 2010, has once again put the fundamental dilemma of the project of European integration on the agenda; this time it is not about the 'deepening or widening' issue, but only within the latter: how far can one go resigning from one's own identity, national sovereignty or state independence under the developing supra-national mechanism? It would seem that there is not only no single answer to this in Europe, but that the dissonance in this regard is only increasing, furthered and popularised in the media by the bad news coming since 2010 from most the European markets and from the EU and the euro area as a whole.

Position in the sphere of values and institutions: European soft power

The EU belongs to the group of the privileged in the modern world. It is a member of the Club of the Rich and used to be one of those who dictated terms in the international arena. Of course, this is changing now and the role of the EU

anyone dictate to us from Brussels or from anywhere else'. And these are the words of the head of the government at the moment, currently holding the Presidency in the EU! See: B. Góralczyk, *System Orbána* (*Orbán's System*), "Przegląd Polityczny" no. 11/2012, p. 140. The fact that it was not by accident is proven by Orbán's words spoken exactly one year later, when he compared the bureaucrats from Brussels to the former apparatchiks and military people from Moscov. *Orbán Viktor ünnepi beszéde*, http://www.ustream.tv/recorded/21121069 (last visited 25.07.2012).

[30] *Wiosna radykałów. O radykalnej prawicy na Węgrzech* z politologiem Péterem Krekó rozmawia Dariusz Kalan' *(The Spring of the Radicals. A Talk on Hungarian Radical Right...)*, http://www.kulturaliberalna.pl/2012/07/31/wiosna-radykalow/ (in Polish; last visited 31.07.2012).

[31] In mid-2012, Romania joined the group of countries infringing on the principles of democracy – although for slightly different reasons, but also at variance with the spirit and letter of the Copenhagen criteria – in the context of the fierce struggle for power between the prime minister Victor Ponta and the president Traian Basescu. *Unia karci Rumunów*, "Gazeta Wyborcza", 1.08.2012. For more on the weakness and irresponsibility of the Romanian elites see: A. Bura - kowski, M. Stan, *Kraj smutny pełen humoru. Dzieje Rumunii po 1989 roku (A Sad Country, With a Sense of Humour. The History of Romania after 1989),* Warszawa 2012.

should not be overrated. Immediately after the collapse of the bipolar Cold War order, the EU was only being born, while the unquestioned leader in the international arena were the United States, trying to dictate to the world what it was supposed to do. Even the immensely important – although not subject to the present deliberations – process of globalisation, hastened due to the new scientific and technical revolution, called the computer revolution, which actually overlapped with the process of development of the EU, was for some time, at least until 2008, equated with Americanisation, as it seemed that it is in fact the USA that benefits the most from the changes taking place.

Since its creation, the EU has displayed a softer and more consensus-oriented approach to the events taking place in the international arena than the USA. Robert Kagan, a well-known expert versed in issues concerning both shores of the Atlantic, was right in writing in his eminent essay *'Of Paradise and Power'* that: *'The United States* [...] *resorts to force more quickly and, compared with Europe, is less patient with diplomacy. Americans generally see the world divided between good and evil, between friends and enemies, while Europeans see a more complex picture.* [...] *Americans generally favor policies of coercion rather than persuasion, emphasizing punitive sanctions over inducements to better behavior, the stick over the carrot.* [...] *Europeans insist they approach problems with greater nuance and sophistication. They try to influence others through subtlety and indirection'*.[32]

In the essay, Kagan arrived at the conclusion that the power-using Americans are from Mars, while the consensus-seeking Europeans are from Venus, which evoked a huge response and rather positively affected the reception of the EU beyond its borders. However, Kagan's analysis had one other deeper aspect – it showed that contrary to what people might believe, the partners on both sides of the Atlantic are not identical, that there are serious differences in the conduct of Washington and Brussels.

These differences were particularly clearly revealed in 2003, after the American invasion on Iraq, when the largest European states – Germany and France – openly opposed it, which resulted in serious divisions in the EU. This proved nothing less than the rather commonly known weakness of the EU – the lack of effective and efficient Common Foreign and Security Policy.[33] This weakness was evidently what the Treaty of Lisbon was to rectify, finally establishing the High Representative for these issues and even calling for the establishment of the European External Action Service, that is a true EU diplomatic corps which would speak with a single voice in the name of the EU and deal with new challenges.[34]

[32] R. Kagan, *Of Paradise and Power. America and Europe in the New World Order*, New York 2003, pp. 5–6.

[33] See: the previous chapter of this volume.

[34] Such postulates can be found, for instance, in the report *Upgrading the EU's Role as Global Actor. Institutions, Law, and the Restructuring of the European Diplomacy,* Centre for European Policy Studies, Brussels, January 2011.

However, both the solutions applied ('a quasi minister of foreign affairs') and the person appointed to implement them (Catherine Ashton) haven't so far brought the expected breakthrough. The reactions of the EU to the Arab Spring of 2011 and 2012, for instance, prove that the EU diplomacy is still weak and that there is no single voice in Brussels in important issues.[35]

In other words, the EU often serves its partners as the model of integration processes, suggests new solutions in trade policy, development, environmental protection or combating climate change, and is an important point of reference regarding the legal solutions it applies – the enormous *acquis communautaire*. However, as an independent partner, its partners often consider it weak, divided and not unanimous. In this sense, its diplomatic or symbolic influence is low in comparison to its economic potential. The EU is a model and point of reference in terms of values,[36] but it is seldom an example to follow regarding real politics. The EU is strong in terms of symbols, information, rhetoric, institutional solutions and standards, as well as the so called soft power, but it is not very effective in fighting for its own interests. To cite the classic analysis by Joseph Nye Jr., the EU is using its soft power reaching for the rich resources of its culture, tradition, institutional solutions and standards, but only rarely the resources, concepts and strategies of its foreign policy.[37]

Indeed, the EU has a huge experience and reserves in such fields as development aid, climate change, assistance for migrants, protection of civil rights, healthcare in developing countries (these issues are discussed to a certain extent in other articles in this volume). However, as a true centre of power it is often ambiguous or hesitant.

Position in the world: the EU and the new global order

The crisis in the global markets after 2008 has clearly upset the established hierarchies. The USA has lost the position of the leader in economic terms and in early 2010 the EU has entered a serious crisis centred on the euro area. The literature on the reasons for the outbreak of the crisis is constantly increasing in vol-

[35] The official position can be found on the webpage of the European Commission: *The EU's Response to the 'Arab Spring'*, Brussels, 16 December 2011, http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/918 (last visited 22.07.2012). For interesting evaluations see: T. Schumacher, *The EU and the Arab Spring: Between Spectatorship and Actorness*, "Insight Turkey" no. 31/2011, vol. 13, pp. 107–119; M.J. Totten, *Arab Spring or Islamist Winter*, "World Affairs" January/February 2012. The author stressed that the events on the Middle East and northern Africa of 2011 and 2012 should not be compared to the war in the Balkans on the 1990s or with the events in the former eastern bloc, since, as the author states, 'Cairo is not Warsaw, and Tripoli is not Prague.'

[36] I. Wallerstein, *Europejski uniwersalizm. Retoryka władzy* (*European Universalism. The Rhetorics of Power*), Warszawa 2007.

[37] J.S. Nye Jr, *Soft Power. The Means to Success in World Politics,* New York 2004, p. 142.

ume but the thesis that after 2008 the Washington Consensus, supporting the liberal (neoliberal) solutions in the economy, has collapsed remains essentially out of the debate.[38]

According to many experts and analysts, the second, and not less emphasized, cause of the crisis are structural flaws of the principles of the euro area itself (the euro area has existed since 1 January 1999, while the ECB started operating half a year earlier). The currency has been, to a certain extent, separated from actual interests. The lack of a strict fiscal policy and the budget relaxation observed in many countries, not only in the PIIGS states, have brought about the aforementioned consequences. It is only while combating the real crisis that the ECB and the major European institutions have proposed unconventional solutions, such as the proposal of December 2011 for establishing the fiscal union (the UK has not joined the project and the Czech Republic is reluctant), or the decision of July 2012 to create the European Stability Mechanism, that is a special anti-crisis fund of EUR 650 billion. For months, a heated debate among specialists and the highest-ranking decision-makers in the European Council has been focusing on the issue of establishing a uniform European banking system (a proposal of the head of the ECB, Mario Draghi) and issuing common eurobonds and eurobills.[39]

Struggling with an unprecedented crisis, the EU remains one of the strongest economic organisms in the world, although its role is relatively decreasing. The EU also remains the world leader in fields such as trade (Table 2), foreign direct investment (FDI) or technological development. However, in consequence of the crisis, its power is relatively decreasing, particularly in the context of the challenges coming from the 'emerging markets', recently enjoying a much higher growth rate than the USA or the EU.

The position of the EU is strong, globally – both in terms of economy and trade. The data published by the European Commission slightly differ from the data presented by the World Trade Organization (WTO),[40] but the conclusions would be similar: it is the EU that has currently the largest share in world trade. The EU maintains the position of the leader in global exports (14.6 per cent in 2010), although China is quickly catching up (14.0 per cent, the USA's share being 11.3 per cent). In terms of imports, the USA are the leader (16.8 per cent share in total world imports), but closely followed by the EU, with a share of 16.4 per cent.

[38] This is even admitted – autocratically – by some of the American authors who used to be strong proponents of neoliberalism. See: D. Rodrik, *The Globalization Paradox. Democracy and the Future of the World Economy,* New York-London 2011, p. 22. For a highly critical assessment of the neoliberal course and the Washington Consensus see: N. Klein, *The Shock Doctrine. The Rise of Disaster Capitalism*, London 2008.

[39] Ch. Alessi, *The Eurozone in Crisis*, Washington, July 23, 2012, http://www.cfr.org/eu/eurozone-crisis/p22055 (last visited 30.07.2012).

[40] *World Trade Report 2011*, World Trade Organisation, http://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report11_e.pdf (last visited 25.07.2012).

Table 2. Ten largest economies in terms of trade in 2012

Rank	Trade	Million euro	Percentage share
	World (excluding EU27 internal trade)	16,976,990	
1.	EU27	2,641,875.7	15.6%
2.	USA	2,400,508.8	14.1%
3.	China	2,132,508.2	7.6%
4.	Japan	1,047,214.8	6.2%
5.	South Korea	651,059.9	3.8%
6.	Canada	612,427.8	3.6%
7.	Hong Kong	592,924.0	3.5%
8.	Singapore	476,588.8	2.8%
9.	Mexico	470,392.3	2.8%
10.	Russia	443,344.1	2.6%

Source: European Commission, http://www.trade.ec.europa.eu (last visited 30.07.2012).

However, the processes observed after 2008 seem to indicate that important processes, having significant impact on the global balance of power, are taking place in the international arena.[41] It seems that the most important influences on these changes are as follows:

- in the sphere of economy (although not in the military, political or many other spheres), the USA has ceased to be the 'sole superpower' that it used to be in the period of the 'unipolar moment' (1989–2008);
- the strongest economic powers of the western world, that is the USA and the EU, are struggling with economic difficulties, have a relatively low growth (sometimes even bordering on recession), have problems with growing deficits;
- the 'emerging markets' starting with the large ones, such as China or India – which not only are enjoying a far greater growth, are dynamic and expansive, but also have started playing a much greater active role in the international arena than before, including in the institutional sense, joining en

[41] For more on the outline of the new global order see: B. Góralczyk, *The Search for a New Global Order*, "Yearbook of Polish European Studies" vol. 14/2011, pp. 81–108.

masse the G-20 or cooperating within the framework of BRICS[42] or the Shanghai Cooperation Organisation (SCO)[43] – are becoming a serious challenge to the West.

The fundamental problem, or even a blame against the EU is that so far it has not managed to work out a strategy regarding these latest challenges. It has neither a strategy towards China, nor towards India, nor towards the 'emerging markets' or the BRICS. Also its reactions to the events of the 'Arab Spring' have often proved the lack of any consistent position while its actions were frequently not resulting from a commonly formed and adopted strategy. In this sense, the EU is often belated in many key issues in the current international arena and it conveys the impression that it is not yet ready – mentally and institutionally – to act within the new multilateralism, which has emerged – spontaneously, to some extent – after the fall of the Cold War order, and which is obviously replacing the order based on the domination of the USA.[44]

Conclusions

Issues such as the crisis in the markets, serious concerns regarding the future of the euro area, uncertainty regarding the future of the PIIGS states[45] have

[42] The original name was BRIC (Brazil, Russia, India and China). Since 2011, on China's explicit demand, South Africa has been participating in the works of the group. The term was coined already in 2001 by an analyst of Goldman Sachs, Jim O'Neill. For more see: J. O'Neill, *The Growth Map. Economic Opportunity in the BRIC's and Beyond,* Portfolio-Penguin, New York 2011. The author does not rule out a situation where China would come forward with a proposal to establish economic institutions alternative to the Bretton Woods system (the IMF, the World Bank, p. 188). This prognosis seems to be confirmed by the agreements made at the BRICS summit in New Delhi in 2012, which, in its closing declaration, committed the ministers of finance of the member countries to work out the principles of functioning of a BRICS Development Bank, which – as is assumed – could constitute an open challenge to the Bretton Woods institution. The text of the declaration (on the Development Bank see Article 13) can be found on the webpage of the Ministry of Foreign Affairs of India, http://www.mea.gov.in/mystart.php?id=190019162 (last visited 30.07.2012). For an analysis of the summit see: *BRICS Summit Opens in New Delhi, Focuses on New Development Bank*, "Times of India", 29.03. 2012.

[43] In the USA, the SCO is viewed as an anti-NATO alliance (R. Kagan, *The Return of History and the End of Dreams,* New York 2008, p. 74). To a certain extent, this opinion is shared in the EU. See: B. Góralczyk, *Sojusz anty-NATO woli zająć się zarabianiem pieniędzy* (*The anti-NATO Alliance Prefare Just Collecting the Money*), http://www.obserwatorfinansowy.pl/2012/01/30/sojusz-anty-nato-woli-sie-zajac-zarabianiem-pieniedzy (last visited 30.07.2012). An excellent analysis, unique in Polish literature, of the functioning of this organisation can be found in the paper by K. Kozłowski, *Państwo Środka a Nowy Jedwabny Szlak. Proradziecka Azja Centralna i Xinjiang w polityce CHRL* (*Middle Kingdom and New Silk Road. Post-Soviet Central Asia and Xinjiang in the Policy o PRC*), Toruń 2011, pp. 204–221, 258.

[44] N. Woods, *Global Governance after the Financial Crisis: A New Multilateralism or the Last Gasp of the Great Powers?*, "Global Policy" iss. 1/2010, vol. 1, pp. 51–60.

[45] Where Portugal has recently been replaced by Cyprus, struggling with serious economic difficulties since the second half of 2011 and requiring external assistance. See: M. Salzmann, *Cyprus Prepares for Euro Bailout*, http://www.wsws.org/articles/2012/jun2012/cypr-j13.shtml (last visited 22.07.2012).

greatly stimulated the discussion on the future of the EU and the whole European integration project. What is characteristic of the situation is the fact that questions regarding the survival of this unique undertaking are surfacing more often that the scenarios – once highly popular and seriously considered – of 'Europe *à la carte*', 'multi-speed', 'hard core' or 'variable geometry'.[46] This debate on the future of Europe has forced its most prominent politicians to take an unambiguous position. In the opinion of the German Chancellor Angela Merkel: '*If the euro fails, Europe fails*', and the former president Nicolas Sarkozy of France, echoing her and equally concerned with the future of the continent, predicted grimly in 2011 that: *'If the euro explodes, Europe would explode. It's the guarantee of peace in a continent where there were terrible wars'*.[47]

The fear of the 'era of disintegration', which, unfortunately, might actually come true, significantly affect the position and role of the EU in the global arena. Of course, none among the respectable politicians in Europe would expect a collapse of the integration project, being perfectly aware of the fact that this would have far-reaching and probably – as the Polish Foreign Minister Radosław Sikorski put it – *'apocalyptic' consequences*.[48] Therefore, it would seem that the British magazine "The Economist" was right in advancing in May 2012 the thesis that *'a limited version of federalism is a less miserable solution than the break-up of the euro'*.[49]

In 2012, Europe has entered the most difficult phase in its whole 60-year process of integration. Just as in every crisis period, the opinions on how to proceed vary significantly. The lively debate suggests that there is much more concern about the euro area than the EU itself. In this context, it is worth quoting the words of the Nobel prize winner Robert Mundell: *'What is often missed by economists is that the creation of the euro was a political event of great importance to the future of European integration. Before World War I, Europe was, in Max Weber's phrase, 'the mistress of the world' (he called America 'Europe overseas'). The two World Wars and the end of the Cold War led to the collapse of colonialism and a diminution in European power below its equilibrium and certainly its optimum. The euro is more than just the icing on the cake on the single European market and the European Union (EU), it is the glue that keeps the core of Europe together. Never before has there been a currency union that covers so large a share of the world economy and that has grown so successfully and so rapidly within the space of a decade and a half. This is not to say that*

[46] D. Milczarek, *Pozycja i rola...*, op.cit., p. 28.

[47] T. Wright, *What if Europe Fails*, "The Washington Quarterly", Summer 2012, p. 23.

[48] In a speech delivered in Berlin Sikorski said: *'The crisis of the euro area is a more dramatic manifestation of European impotence, because its founders created a system which can be brought down by any of its members, for which it and all its neighbours will pay a terrible price. A collapse would result in a crisis of apocalyptic magnitude'*. R. Sikorski, *Polska a przyszłość Unii Europejskiej* (*Poland and the Future of the European Union*), "Gazeta Wyborcza", 20.11.2011.

[49] *The Choice. A Limited Version of Federalism is a Less Miserable Solution than the Break-up of the Euro*, "The Economist", 26.05.2012.

there is not a great deal to be done to make it a better currency union. The process of deficit adjustment has to continue, with austerity, structural reform and new investment strategies. Fire engines have to be ready to put out the financial fires that are engulfing Greece, Portugal, Spain, Cyprus and Italy'.[50]

The EU constantly has to remember that the threat of fragmentation is nothing less than moving back, straying off the path zealously followed for the last decades, which has conveyed a sense of security to the Member States and in the international arena, has been admired and envied for its effectiveness and efficiency, treated as a model. Therefore, the way it will master this landmark moment will be defining for its further role in the global area. Although weakened, the EU still has a good economic potential. Its soft power in many important areas is still significant. However, the time has come to seriously consider the future of the 'European project', until recently envied by many non-Europeans. First we have to tighten our belts and look for possible savings, and almost simultaneously, we have to find a common position in such key issues as the role of banks, eurobonds, or fiscal federalism, in order to later deal with even more serious issues, starting with the most important task – creating some form of political federalism.

No one knows whether, in the face of unprecedented challenges, EU leaders will once again muster the courage to escape forward, as it has been many time before. The tasks they are facing are extremely difficult. However, now the alternative could be the collapse of the euro area, or even the EU itself – which is openly spoken of even in the most renowned circles and centres. Nevertheless, it is certain that only when the EU completes this difficult 'homework', it will be able to once again enter the international arena as an actor which – as it was before – is watched closely by everyone.

The expectations regarding such new European activity in the global arena are high in the age of the New Multilateralism, but, unfortunately, they still remain only expectations. In a world returning to an order when, after a short 'unipolar moment' of the USA, several different centres of power are competing once again, Europe needs a new, strong impetus for integration. Without the EU as an independent player the situation would be much worse and, possibly, less stable due to the coalition-forming spirit of EU's activity in the global arena. The process of European integration and its products – the EU and the euro area – were pioneering undertakings. Europeans have often proved their innovativeness and creativity in terms of institutional and conceptual solutions in the international arena. Let us hope that the crisis will provide the impetus for them to take up the difficult challenges once again – for the good of Europe and the whole global arena. For the world needs such an actor. The stakes are high, they are worth playing for – and we can't shy away now.

[50] *Unia walutowa jak sojusz wojskowy (Monetary Union as a Military Allaince),* http://www.obserwatorfinansowy.pl/forma/debata/unia-walutowa-jest-jak-sojusz-wojskowy/?k=debata (last visited 31.07.2012).

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Alojzy Z. Nowak, Dariusz Milczarek

European Union and the World: Case Study of Transatlantic Relations

Introduction

As it has already been mentioned in previous chapters, the European Union is a very important actor in the modern globalised world. This means thatwhile being itself subject to influence of the international environment, at the same time, it significantly influences the phenomena and processes taking place globally. In order to present this very important problem in more detail, it is necessary to describe, at least in short, the relations between the EU and the other most important participants of international relations, including specific countries and regions of the world.

A very good example of this kind of relations are transatlantic relations, which are very importantin all their aspects. In this article, transatlantic relations shall be defined as various bonds between the European Union and the United States. The special importance of these relations stems from the fact that both partners are among the most important actors influencing various processes and phenomena in the modern world. This relates, in practice, to all areas of social life, starting with the area of economy (it is enough to mention that both countries have accounted for 50 per cent of the world's GDP), through politics, security, social affairs, to culture. Accordingly, both the present condition and future prospects for development of mutual relations between the two global players constitute an extremely important factor, determining the situation in the area of international relations. As such, they have been a natural object of interest, not only for politicians or publicists, but also for analysts and researchers dealing with various fields of science, including European Studies.

This way, issues regarding the EU-USA relations have formed the object of comprehensive and multi-faceted economic, political, legal, sociological *etc*. analyses since many years. One of the conceptual approaches which has been quite often applied to the analysis of these relations consists in distinguishing between principal layers of the relations: the area of cooperation and that of

rivalry, in some cases even confrontation. This means that the EU-USA relations have nowadays become a very complex knot of ties and bonds of various nature, intensity and implications. They may assume different forms, from close collaboration, through apparent rivalry, to evident confrontation.

Furthermore, one has to remember that transatlantic relations have largely evolved over the recent years. The most important single milestone in this respect was represented by the decline of the Cold War bipolar system at the turn of the 1980s and 1990s and the resulting disappearance of threat on the part of the USSR and its satellites, as well as consistent consolidation of the united Europe's position in the international arena. Further impulses were provided by the events happening on and after 11 September 2001 which opened up a new era in fight against international terrorism. The fight in which partners on both side of the Atlantic involved deeply. All these factors combined to put into question the hitherto-existing formula of transatlantic partnership between Europe and the United States.

The crucial problems in this respect consisted in the need to redefine the role of the United States and NATO in Europe (NATO understood as an institutional foundation for the US presence in the Old Continent) as well as in determining new principles of economic and political cooperation, which will be transparent to both parties. Accordingly, it was necessary to find a new legal and institutional model of mutual relations. This was based upon a couple of principal documents, including, most of all, the Transatlantic Declaration (1990), the New Transatlantic Agenda (1995, known as the Madrid Charter) as well as the Transatlantic Economic Partnership and the Transatlantic Partnership on Political Cooperation (1998).

One of the mechanisms which aimed at achieving closer collaboration between the parties was that providing for regular dialogue at various levels and in various areas, stipulated for in the Transatlantic Declaration. It consists of summit meetings held twice a year (with participation of the President of the USA, the President of the European Commission and a representative of the EU Presidency), meetings on a ministerial level as well as meetings and works taking place within special topic panels. However, it has occurred quite difficult to work out specific arrangements, due to incompatibility of both partners' decision-making mechanisms. Namely, a complex procedure of making decisions in the EU is in sharp contrast to relatively simple decision-making mechanisms on the American part. This results, among other things, in different expectations about the EU–USA summits: whilst Americans would like to have specific decisions made there, the EU representatives rather tend to regard them as a forum of non-obliging exchange of opinions.

Despite actual operation of such collaboration mechanisms, much still remains to be done in order to achieve the thorough and consummate partnership between both players. Apart from specific manifestations of rivalry or even confrontation (discussed below), a fundamental barrier is the lack – at least from formal and legal point of view – of a single comprehensive document acting as a sort of basis for the whole area of transatlantic relations. Any earlier forms of institu-

tional cooperation, created after 1989 are too weak, the effect being that the most important document binding the EU Member States with the United States has still been the Washington Treaty establishing NATO, signed in 1949. This means that transatlantic relations have really developed and evolved over various layers and facets, not always properly coordinated and related with each other.

Accordingly, the present concise study deals with two principal aspects of the EU-USA relations, concerning: (1) foreign and security policy and (2) economic issues.

Foreign and security policy

Similar to other spheres of transatlantic relations, in the area of foreign and security policy we have to deal with a combination of cooperation and rivalry. Yet, it would be risky to come up with any univocal assessment of which of the elements prevail. Instead, it seems more reasonable to point out some fundamental phenomena or tendencies, which differ, by the way, in case of the specific period or situation.

This relates, most of all, to issues regarding general concepts of global order and international security. These are in fact the issues that form the central point in mutual relations, as it can be evidenced by any sound comparative analysis of both partners' foreign and security policies. Their history is an example of the interesting evolution which has been full of elements of partnership and cooperation as well as those of competition and clashes.

The latter aspect has been manifested over the last two decades, especially when one compares the fundamental areas of the EU's and the United States' international activities. Differences go far beyond the way the parties behave, and reach as far as the very essence – the basic principles underlying that area. Of course, controversies in transatlantic relations are not entirely new when observed from the perspective of the past half of the century. Views and positions of both partners over various political, economic or defence-related matters have always differed considerably and they still do. However, the situation we have to deal with nowadays is something qualitatively new. It is featuring fundamental differences both in doctrine and practice that evolved over the way foreign and security policy is conceived and implemented in the European Union and the USA. (The recent round of enlargement of the EU, rather than provoking such differences, only revealed their existence.)

The main point in this respect regards different attitudes towards crucial problems of the modern life. Robert Kagan, a well-known American researcher, put it synthetically in his famous diagnosis: '*Americans are from Mars; Europeans are from Venus*'.[1] It means that Americans have clearly tended to divide the world into

[1] R. Kagan, *Of Paradise and Power: America and Europe in the New World Order*, New York 2003.

the good and the bad in a Manichean way, preferred firm actions and coercion to persuasion and tended to reach for military power with little hesitation – as could be seen many times.

Another peculiarity of the US foreign policy, which gained importance at the beginning of the 21st century, is its unilateralism which not only can be observed in political practice, but is also reflected in official strategic ideas such as the so-called Bush's doctrine. The latter was announced in 2002 and provided for potential preventive actions to be taken against 'rogue countries', as Americans call them.

On the other hand, the European Union's activities in the global arena– any potential charges of inconsistence or ineffectiveness taken into account – are carried on according to the following principles: the promotion of democracy and human rights, the application of conciliatory and peaceful methods, and the renouncing of military measures which give priority to political and economic instruments, etc. Moreover, Europeans seem quite determined about comprehensive and multi-faceted actions, and prefer to implement them under the authority of the United Nations or at least consult and agree them upon broader forums, such as NATO.

Accordingly, we need to deal with two distinctly different political philosophies in the EU-US relations: a more 'rigid' American and a 'softer' European one. The differences concerned are well illustrated by diverging attitudes as regards one of the most important global problems, i.e. international terrorism. It has been evident that transatlantic partners have had different visions of how to solve the problem. The US part, as could be seen during the intervention in Afghanistan and Iraq, is mostly keen on reaching for military solutions with political actions given a minor role. On the other hand, most of the EU Member States – in particular Germany and France – are quite resolute about the opposite order of action: to use military power only as a last resort, after all the potential of political solutions, especially within the United Nations, has been depleted with no effect. It seems that this really stems, in the first place, from a different political philosophy – as outlined above – represented by European politicians, rather than from the fact that military potential of the EU Member States is vastly inferior to that of the USA, which leaves Europeans with hardly adequate instruments of action.

Such differences of approaches to basic international problems between the EU and the United States seem to reach far beyond the findings of some over simplistic analyses which reduce the problem to just 'a family quarrel' in the core of the Western world. Leaving catastrophic visions aside, one nevertheless has to observe that in the long run the disagreements may seriously undermine the transatlantic alliance. A spectacular example of potential hardships could be seen in a fierce controversy – not only between the EU and the USA but within NATO as well – about the American intervention in Iraq.

At that time, the USA and the EU Member States have already exchanged serious accusations between each other: Americans accusing Europe of passive or even cowardly behaviours in the face of global threats, while charges of political and military irresponsibility and an urge to play the role of 'global policeman'

were going the opposite way. In the opinion of Kagan, who has been quoted above, whilst Americans play the role of sheriffs who actively fight bandits on the global scale, Europeans not only confine themselves to the role of passive onlookers, but sometimes seem to be more anxious of rash sheriffs than they are of bandits. (Another well-known American scholar, George Friedman, has made even harsher judgements).[2] Both actors of the transatlantic relations are partially right, although it seems that the American policy is the one that gives more reasons for argument and concern.

Generally speaking, the present global power arrangement, based upon the US domination, has been increasingly criticised for many reasons: that is, for example, ineffectiveness in providing global stabilisation, little consideration of other parties' interests, *etc*. The European Union, while not being its only critic, is undeniably the most outspoken one, as its general vision of modern international relations, including, in particular, methods used to solve principal problems of global security, are different from American ideas.

Once again the example of controversy about the American intervention in Iraq seems to be the best one to illustrate how those discords grow and consolidate, leading to an political and diplomatic conflict between the EU and the USA. Leaving the inner clashes over that matter in the EU apart, one has to agree with numerous opinions that positions assumed by two driving forces of European integration – France and Germany – have been decisive in that point. Considering this, it would not be fair to conclude that Europe either comes out against the United States as such or in defence of its own interests or hurt ambitions (the latter, while partially true, is only a secondary reason). Instead, it seems that what we really have been facing is a bold attempt to reconstruct a polycentric world, free from an overwhelming US dominance – the world in which Europe (along with other leading global powers) would have more to say in response to American unilateral and lop-sided model.

It is not accidental that the EU politicians have repeatedly emphasised the need to maintain autonomy in relations with their powerful ally. Moreover, Hénri Védrine, former Minister of Foreign Affairs of France – a country traditionally distrustful with respect to the US aspirations at hegemony – described the United States as a 'hyper-power', commenting that '*as long as some counterbalance is not found thereto, its power is going to bring a threat of monopolistic domination*'. Such a counterbalance may only be formed by the EU which '*has gradually come up to consider itself a power*'.[3]

[2] When talking to Europeans in the name of Americans, Friedman said: '*When we compare our mistake in the Iraq case with the mistakes of Europe for which America paid with blood and money in World War I and II, we feel cheated. We did not criticize France when it failed to cope with Hitler. Why did you criticize us when we failed to cope with bin Laden?*' (see interview in: "Polityka" no. 44/2012, p. 46).

[3] See: M. Walker, *Europe: Superstate or Superpower?*, "World Policy Journal", Winter 2000/2001, p. 5.

Another problem concerns forming of adequate institutional framework for cooperation between the European Union and NATO. The solution preferred by the United States would be one that, while defining relations between the EU and NATO in an unambiguous manner, would anyway clearly provide for the superior status of the latter one as regards security and defence. However, this concept was opposed by the EU partners. In this context, the essential fact was that despite many years of mutual relations, it took a long time for the European Union and NATO to establish formal bonds. A preliminary agreement on military cooperation was concluded at the NATO summit in Berlin in 1996, while formal relations were initiated only in 2001.

As has been mentioned in the chapter on EU foreign policy, further development of mutual relations between the EU and NATO and the USA took place in various ways. At the next summit held in the capital of Germany in 2003, a new agreement was concluded, called 'Berlin Plus' (in reference to the previous document, of 1996). This agreement provided, among other things, for ensuring the EU's access to operational planning and to NATO's common capabilities and resources as well as European command within NATO for operations carried out by the EU. The aim of the agreement was also to avoid unnecessary duplication of resources and efforts of NATO and the European Union for the development and use of the military potential of the two parties. However, the real degree of collaboration between the two organisations has still been insufficient.

In fact, the scale of difficulties experienced in that area was illustrated – even before 11 September 2001 – by some facts and events, such as the armed NATO operation carried out from the air against Serbia in 1999. On the one hand, it became an evidence of consistence of NATO, agreement of opinion among its members and effectiveness of American command. On the other hand, however, it exposed sheer military weakness of European allies and the vast scale of their dependence upon the USA. Air raids were executed using almost exclusively American forces, since Europeans had serious lacks of equipment, for example, no satellite communication necessary to drive bombs precisely into intended targets.

This made the EU countries fully aware of their weakness in military area and contributed to undertaking by some of the EU Member States (mainly by France, the United Kingdom and Germany) of actions aiming at achieving autonomous military capacities within the European Security and Defence Policy (ESDP), originating from the Common Foreign and Security Policy (CFSP).

The concept of the ESDP has been rather controversial issues in the area of transatlantic political and defence cooperation. The US attitude towards it remained unclear. On the one hand, the USA expressed their support for development of defensive capacities by their European partners (for example, at the NATO Washington summit in 1999). However, on the other hand, Americans tended to believe that the ESDP should serve further consolidation of NATO, rather than evolve beyond it and duplicate its structures. The US position was

aptly expressed in 1998 by Madeleine Albright, at that time the American Secretary of State. While generally approving the idea of ESDP, at the same time she warned Europe that its implementation might bring a threat of a so-called "3D': decoupling of NATO and the EU, duplication of structures and resources of NATO as well as discrimination of those members of NATO that have not belonged to the EU Member States.[4] In short, it seems that the United States would be most satisfied with a scenario according to which Europeans would develop their defensive power within NATO or at least under its control.

A sort of a specific test for transatlantic relation took place when both partners had to reveal some reaction to the terrorist attack against the USA on 11 September 2001. At first, we witnessed full political support on the European part – even French press went as far as write: '*We are all Americans now'*. However, just a couple of weeks later, it was revealed how little changed really in mutual US–EU relations. It occurred that neither the United States needed any military support from the EU nor the European Union – contrary to what it declared – was too eager to provide some. This hesitation, however, resulted to a significant degree from the attitude assumed by Americans who under conditions of weakness of the EU's foreign policy preferred to retain full autonomy of their actions.

In effect, the USA first undertook military actions in Afghanistan and then in Iraq what provoked sharp criticism in some EU countries. The situation was further aggravated by critical remarks of some members of Washington administration addressed to either individual countries of Europe or the European Union as a whole. For example, a statement of Donald Rumsfeld, the US Secretary of Defence, suggesting a concept of a 'new' Europe of countries newly-adopted to the EU and contrasted with the 'old' Europe of its long-standing Member States was received with particular discontent in the continent. Such a assertion was regarded as an attempt to disintegrate Europe's unity.

On the other hand, it should be stressed that for most countries of Central and Eastern Europe (including, in particular, Poland) an alliance with the USA and NATO provides a much better guarantee of political and military security, in particular in relation to Russia's neo-imperial ambitions, than membership in the EU, with its multiple deficiencies in foreign and security policy. Moreover, new EU members – much to the irritation of some EU partners, in particular France – are not alone in that. They belong to a broader group of pro-Atlantic EU Member States, including first of all the United Kingdom (a traditionally loyal ally of the USA), as well as Italy, Spain and several others. This means that instead of just introducing new elements to transatlantic relations, the pro-American policy of the new EU members, including Poland, has in fact strengthened the political option supporting closer cooperation with the United States, an option which had already existed in the centre of European integration for a long time.

[4] Interview in: "International Herald Tribune", 30.03.1998.

Finally, the crisis provoked by the US intervention in Iraq appeared to be one of the most serious ones in the whole history of transatlantic relations. However, account taken of the methodology which is adopted in the present paper, one must not forget that the relations between the European Union and the United States have also comprised very important elements of partnership. It should be remembered that so far, despite the above-mentioned controversies or even discordant political philosophies, the foreign policy of the EU as a whole could not be called anti-American in any aspect. Moreover, it can be concluded from the analysis of developments taking place in the EU's Common Foreign and Security Policy/European Security and Defence Policy, that EU's policy has still largely been based upon long-standing transatlantic alliance. Such a balanced view of the EU-US relations is well-justified when one focuses on fundamental matters and resists quick judgments prompted by current political events whose effects in the long run can hardly be foreseen yet.

It is sufficient to remind in this context that the European Communities/European Union have for decades been involved in a complex web of all sorts of relationships with the United States and that both parties, leaving competition or even rivalry aside, have really been each other's closest allies and partners. The United States, as the history teaches us, has played the role of a principal guarantor of security for the united Western Europe for longer than half a century now. Europe – as pointed out by several experts like for example Zbigniew Brzeziński – has been America's natural ally having an enormous geo-strategic importance for the USA. Even different disputes and controversies cannot undermine this kind of foundations of transatlantic partnership, and both parties are well aware of that.

Many examples could be quoted to support this statement. For example, despite the controversies over Iraq, at the summit in Brussels in December 2003 the European Union confirmed the primacy of NATO in the field of European security and the willingness to cooperate with NATO in this respect. Since the middle of the last decade, there have been some positive tendencies, including the calming of the controversies between Europe and the United States regarding the Iraq conflict, as well as other contentious issues. There has been in particular clear improvement in the relations between France and the USA, which could be observed even during the presidencies of Jacques Chirac and George W. Bush. The situation continued to improve during the period of office of their successors: Nicolas Sarkozy and Françoise Hollande in France and Barack Obama in the USA. As the Secretary of State Condoleezza Rice commented during her visit in Poland: '*Europe and the USA have shared common challenges*' and '*fears of those who said European and transatlantic unity cannot be reconciled with each other have proved unjustified*'.[5]

In particular president Obama has contributed to calming down of the atmosphere in transatlantic relations, also by mitigating – maybe more so in the declar-

[5] Interview in: "Gazeta Wyborcza", 11.02.2005.

ative sphere than in real action – the most extreme examples of unilateralism in American foreign policy. As the President of the Hudson Institute Kenneth R. Weinstein put it, Obama is '*the most Europe-oriented US President since the establishment of the European Union*' in the sense that he '*is guided by the principle of multilateralism and by an innate scepticism against the use of military measures by the USA*'.[6]

The most clear example of a certain 'thaw' in transatlantic relations was the decision of all EU's NATO Members to take part in the military stabilization mission in Afghanistan. Officially, the mission was conducted under NATO flag, but in fact, it is the United States that played the dominant role there. The involvement of the EU Member States in Afghanistan was significant, as that operation was, essentially, not much different in military and political terms from the intervention in Iraq, while being a very costly undertaking in every respect. But in contrast to Iraq, the European unanimously and fully backed their American ally.

Further proofs of collaboration were provided, among other things, by the EU-US summit in 2007 where both partners agreed that any effort to combat terrorism must be undertaken in the bounds of international law and that they will continue to facilitate discussions about the subject matter. In addition, the EU efforts to broaden the cooperation in police and judicial matters, cut-off terrorist financing, and improve border controls and transport security have been recommended by the Washington administration. As a result, the EU and the United States have come to several agreements on police information-sharing, extradition, mutual legal assistance, container security, and the exchanging of airline passengers' data. These agreements represent the cohesion between the EU and the US to fight terrorism and a common approach to the idea of keeping the world safe and secure. The fact that both partners have agreed to continue to talk about the above-mentioned matters continues the tradition of cooperation.

In fact, the EU–USA relations are characterised by a peculiar mixture of elements of cooperation and rivalry, especially in the area of foreign policy. The positions of both partners on a series of international problems coincide (except for fighting terrorism, this regards for example opposition to the adventurist policy of Iran or North Korea), but there also appear controversial issues.

One of many examples of these controversies is the attitude of Europe and the USA towards Russia. Differences in the approach towards this country could be observed, for example, during the Georgia–Russia War of 2008. This issue is discussed in detail in the chapter on EU foreign policy. Here, suffice it to repeat that European allies essentially supported the USA's severe criticism of Russia's behaviour. At the same time, however, some of them, in particular Germany and France, did so with a great amount of caution, or actually half-heartedly. They were afraid of harming their relations with Russia, which they still treat as a very

[6] K.R. Weinstein, *Stosunki europejsko-amerykańskie po zwycięstwie Obamy* (*Euro-American relations after Obama's victory*), "ASPEN Review. Central Europe" no. 1/2013, p. 41.

important political and economic partner. Although the Americans claim the same, in practice their relations with Russia are very varied – not much is left after the famous 'reset' in bilateral relations announced at the beginning of President Obama's term of office, which was to start an era of a new détente between Washington and Moscow. The current relations between these two powers are overshadowed by various spy scandals as well as political and diplomatic conflicts (for example, in 2012 the Congress imposed sanctions on Russian public officials accused of violating human rights, in response to which the Russian State Duma prohibited the adoption of Russian children by US citizens).

A much telling manifestation of the current state of transatlantic relations is the fact that the Americans have essentially withdrawn from the idea of building an anti-missile shield in Europe, the main elements of which were to be installed in Poland and the Czech Republic. It was intended to substantially contribute to the military security of the United States and its allies. In 2009, only a year after concluding relevant agreements concerning the shield (e.g. with Poland), President Obama officially announced a change of the idea, which in practice meant ceasing the whole operation. Apart from financial reasons or Russia's opposition, the most important factor proved to be the falling interest of the USA in European affairs.

Economic relations

Apart from common values and interests in areas of foreign and security policy, the European Union and the USA have been tied very strongly with economic cooperation. Its vast scale and importance determines the fact that it constitutes one of the most important factors holding the whole transatlantic alliance together. So, one should agree with the opinion that *'United States and the European Union maintain the world's largest and most significant economic relationship, which in turn is a foundation supporting the transatlantic political partnership'*.[7]

Throughout the post-war period relations in this area have undergone the obvious evolution: from the evident dependence of Western European economies on the US aid (i.e. the 'Marshall Plan'), to the achievement of a status of equivalent partners, who account each for roughly 1/4 of the world's total GDP. The trade exchange, which has been an object of gradual liberalisation, is the most important in this respect.

Accordingly, the liberalisation of trade constitutes an ongoing but successful initiative. Even the global economic crisis which started in 2008 has not managed to change the core trends in this area. Although currently the situation has deteriorated a little, it is worth stressing that in the middle of the past decade the United States and the European Union exchanged two billion euro a day in goods and

[7] *The Transatlantic Economy in 2020: A Partnership for the Future?,* Working Group on the Transatlantic Economy in 2020, New York–Washington 2004, p. ix.

services across the Atlantic. This relationship fostered 40 per cent of global trade and as many as 15 million jobs in Europe and America depended on this economic link. As a result, the amount of trade was so huge that efforts to further liberalise trade and break down barriers have been undertaken on both sides. Moreover, the US and EU shares in each other's total export and import are in the range of 20-25 per cent what makes them the largest commercial partners to each other. The data concerning direct foreign investments are even more meaningful: the total US investments in the EU is 3 times higher than in all of Asia, and EU investments in the US is 8 times the amount of EU investments in Asia.[8]

In institutional terms, the economic cooperation between the EU and the USA has been based upon the Transatlantic Economic Partnership, signed in 1998. (This document, which provides for further development of economic ties based on more open system of global trade, has been so far perceived as the most important achievement in the area of providing institutional framework for transatlantic economic relations.) In addition, in order to facilitate European-American trade, the Transatlantic Economic Council was established with an intent to make regulations more uniform in many important areas, including, to name a few, automotive, cosmetic, medical, pharmaceutical, and financial service industries as well as intellectual property.

The objectives of the functioning of the Transatlantic Economic Council belong to two areas. Firstly, it is mandated to accelerate on-going efforts to reduce different barriers to trade. Secondly, it will monitor the areas where it is needed to reduce regulation and improve harmonisation. And this agenda is going to be a challenge, partly because of the US/EU conflicting values as regards health safety and environmental protection. Nonetheless, the convergence of regulations and reduction of barriers will surely stimulate economic growth in both the United States and the European Union as well as contribute to the global market economy.

At the 2007 EU-US summit both partners identified the several so-called 'lighthouse projects' to keep the road to economic integration as smooth as possible and reduce non-tariff trade barriers. These projects encompass a wide range of topics which all contribute towards the cooperation and open economy. Importantly, items present on the agenda include the protection of intellectual property. Due to the fact that now, intellectual property rights legislation varies between the EU and the US jurisdictions, both parties have agreed to collaborate with a view to harmonise this legislation. Another item on the agenda concerns the facilitation of making international investments. Thus, the European Union and the United States have decided to eliminate policies and practices that have negative repercussions for investments. Hopefully, the result of those efforts will boost economic growth and raise the number of jobs.

[8] See: *Transatlantic Trade and Investment Partnership*, Press Release, European Commission, Brussels, 14 june 2013.

Furthermore, the initiative to secure the safety of trade and transport is high upon the list of things to be accomplished. Both parties realise the magnitude of costs if the flow of trade and investments falls into the hands of terrorists. The movement of goods, services, business travellers and tourists must be protected and the USA and EU also work together to ensure that this is done. This is evident in the collaboration of the US Customs-Trade Partnership Against Terrorism and the EU Authorized Economic Operator which are key elements of their Customs Security Program. In essence, both systems promote the safety of global supply chains and the further goal is to establish mutual recognition between the two.

Finally, financial markets on both sides of the Atlantic will be restored when the EU and the USA encourage policy convergence as regards rules taking precedence in financial industry. All these efforts constitute an attempt to break down trade barriers and strengthen economic links between the European Union and the United States.

An additional example of European-American collaboration can be found in the automotive industry. In the first decade of the 21st century, many European car companies revived their US production as a hedge against unfavourable exchange rates (because of a weaker dollar, compared to the Euro.) Ironically, 60 per cent of these American made vehicles are then re-exported to countries throughout the European Union. The fact that Nissan, Renault, and General Motors were even considering a three-way alliance back in 2006 is an evidence of future willingness of global competitors to team up. The mere readiness of companies to consider it reveals their foresight and intent to cooperate.

Such an intention is also evident in the 'Open Skies' agreement that will allow any US airline to fly to any city within the European Union and any EU carrier to do the same in the United States. The free movement of individuals will only enhance EU-US relationship as well as contribute to the global economy. Another example is the new act passed by the Congress in May 2013, which extended the scope of non-visa movement between the United States and the EU Member States (Poland was to be one of the beneficiaries of these new regulations and maintaining the visa regime in travels to the USA cause much discontent among Poles).

At the same time, however, one has to remember that – in line with the principal argument of this study – economic relations between the European Union and the United States have not been clear of conflicts and tension. This stems, on the one hand, from the reinforcement of the EU's global economic position and, on the other hand, from the US aspiration to maintain their dominance in the global economy.

The principal areas in dispute include agriculture, steel and aviation industry, and the rules of competition. Parties have undertaken efforts to solve disagreements through bilateral negotiations in these fields, but it occurs relatively often that the role of the principal arbiter has to be entrusted to the World Trade

Organisation. Sometimes, mutual disputes may even lead to so-called trade wars, the most notorious of which included a conflict about export of bananas to the EU, lasting since 1993, or the US introduction of customs tariffs on European steel products in 2002.

Apart from periodic 'trade wars' between them, both parties accuse each other either of general economic inefficiency (the United States' traditional argument against Europe) or, the other way round, of maintenance by the USA of an excessive trade deficit which results in weakening of the US dollar, and thus promoting the American export at the disadvantage of the EU and other economies. At the same time, the Americans hold a great deal of pride in their US dollar and have become accustomed to being number one. From the other side, the fact that the European Union has slightly exceeded the United States in GDP, certainly caused a feeling of rivalry.

Even individuals from both sides will feed on this competition. For example, the US National Science Foundation criticised an increasing number of published European scientific and engineering articles by saying that '*Although the European Union may have produced more articles, the qualities of those articles are below that of the United States*'.[9] In general, this kind of competition is good and welcome, since it drives innovation, helps to develop technologies and improve everyday life. It is a sort of competition that helps to stimulate economic growth, and one that teaches societies, nations and businesses about themselves and their strategies.

At the same time, however, conclusions should be drawn from the global economic crisis which lasts since 2008 and during which both transatlantic partners showed their weak sides. Basing the American economy on ultraliberal rules of withdrawing from the controlling role of the state and on full deregulation of markets (in particular financial) has almost led to a global economic catastrophe, while failing to comply with the rules of the Economic and Monetary Union in the EU has caused a serious collapse of the common currency area leading to the most serious crisis in the history of European integration – not only an economic one, but also a political and institutional one.

In response to the crisis, the European Union and the United States have taken various measures. However, we still have to wait for the final effects of these measures, in some cases many years. Nevertheless, the general state of transatlantic economic relations has not suffered much despite the negative effect of the global crisis. The economies of both sides are still the most important partners for each other and there is even a chance that the extent and scale of the mutual relationship will be further consolidated and strengthened. In response to crisis events, there have been opinions emerging in Europe and the USA, strongly expressed in 2012 and 2013, that some measures should be taken to establish

[9] *US–Fends Off Foreign Journals Competition*, "Bookseller" no. 5294/2007, University of Northern Colorado Mitchner Library, Greeley, 10 September 2007.

a transatlantic free trade area. As a result decision of launching negotiations on Transatlantic Trade and Investment Partnership (TTIP) was made in 14 June 2013.

Consequently, although it is impossible to avoid competition, and sometimes even rivalry, the future relationship of the United States and the European Union in the field of economy will be mostly consisting in cooperation. And, the combination and coordination of the two markets will give the USA and the EU an opportunity to become the biggest economic machine in the history of the mankind. But, the responsibility comes also with this power. Therefore, both sides should work together to improve their economic cooperation. The EU and USA should be successful with their goal of reducing non-tariff and regulatory barriers. It should also be emphasised that both sides of the Atlantic share fundamental values of freedom, democracy, market economy, human rights, rule of law, free trade and competition.

Conclusions

To sum up the above short consideration about the evolution and perspectives of relations between the European Union and the United States, a sort of peculiar dichotomy should be pointed out in the first rank. On the one hand, there is no doubt about the existence of significant or even fundamental differences in the way strategic visions of contemporary world are formulated by both parties, in particular, differences in beliefs about what sorts of means should (or should not) be used to build a desired international order. Such divergences have constituted a certain threat, not only to the unity of the whole Western world, but also to the future of democratic States that have faced enormous challenges regarding globalisation and economic crisis as well as the crucial problem of combating international terrorism. Differences over those matters between the EU and the USA to some extent reduce the opportunities for finding and implementing common solutions for global problems.

Along with well-known controversies regarding the conflict in Iraq, disputes about the International Criminal Court or about the Kyoto Protocol and the protection of the environment may be mentioned. Dealing with the global warming and the energy crisis are just some of issues over which the two partners do not agree. The European Union believes that following the Kyoto Protocol and binding regulations will help to reduce greenhouse gas emissions whereas the United States advocate alternative and clean energy advancements as well as technological innovations in order to curb the nation's energy dependence on foreign oil. (What may be important here is the intensive exploitation of shale gas in the United States, which may contribute to the achievement of energy self-sufficiency). Although the two parts have a common goal, their methods of reaching it are different.

In addition, we should take into account another very important factor which might significantly influence the shape of the transatlantic relations in the long term, namely that in terms of their culture and civilization the United States have

become remote from their European roots. Instead, they seem to reinforce their ties with regions from which the principal streams of immigrants come to the USA, i.e. mainly Latin America and Southern-and-Eastern Asia. In effect, America is going to be less and less interested in Europe.

On the other hand, however, all this fortunately does not sum up to any breakdown of transatlantic partnership. The latter still rests firmly upon as strong a foundation as the community of basic, principal values of the Western world, upon which contemporary democratic systems and market economy are based as well. Both parties remain the most important political, economic and military partners to each other and this community of principal interests acts as an additional factor reinforcing the alliance between Europe and America.

Moreover, the partners – which should not be forgotten – belong to crucial, and the most powerful actors in processes of globalisation, so they seem to be destined to mutual collaboration in the modern world. A great many cases of such collaboration might be quoted, for example many EU and US efforts to give support and aid to developing nations or the fight against AIDS coincide. Most certainly, an ability to work together recently and in the past lays the ground for the future collaboration.

All this taken into consideration, it would be quite inadequate to perceive the mutual balance between the European Union and the USA in terms of a zero-sum game, where either one actor wins at the cost of another, or less so strives to predominate the rival. Instead, these complex relations have the logic and dynamics of their own and often tend to evolve according to many different scenarios at the same time.

To conclude, the relationship between the United States and the European Union in the near future will be multi-faceted. Governments will cooperate on global issues such as terrorism, human rights, global warming and the economic crisis; trade barriers will be decreased; and product regulations as well as other non-tariff barriers between the two partners will become probably more compatible in an attempt to make the process of selling in both the European and American markets more efficient. As the number of multinationals consisting of both European and American firms rise, the firms will cooperate on a large scale through sharing information, resources and know-how.

Although the relationship thus far seems to be one that is mutually beneficial and cooperative, given American and European culture, history, values, and attitudes, with no doubt, there will be a fair amount of competition between the two partners as well. As a result of this competition, in instances when the two parts do not see eye to eye, confrontation may arise as well. This does not change the fact that '*the interests of Europe and the USA are becoming increasingly coincident*'.[10] Recent and past relationships will be the best predictor of what the future holds for the European Union and the United States.

[10] K.R. Weinstein, op.cit., p. 42.

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Eastern Policy of the European Union: Step by Step Towards Ukraine

Introduction

Eastern policy has always been of a great importance to the Western Countries – the members of the European Community – from the 1960s to the 1980s. As Dariusz Milczarek underlines in his paper, one of their main goals was to maintain good-neighbourly relations in the Eastern part of Europe. This could easily be proven by numerous initiatives and measures addressing the so-called communist camp, i.e. the Soviet Union and its Central and Eastern European allies.[1]

The importance of the Eastern policy kept growing due to the collapse of the communist system and the dissolution of the USSR. This further created favourable conditions for a triumph of democracy in post-socialist countries and for the peaceful reunification of Germany. One of the important factors that significantly strengthened the European Communities' position in regional policy was their transformation into the European Union in 1992.

Already in June 1992, the European Council in Lisbon suggested a whole new concept of foreign policy of the EU based upon geographical proximity. Such Central and Eastern European countries as Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, and Slovenia, as well as the Western Balkan countries were listed among the European Union's neighbours, or the 'near abroad' as they call it. Particularly close relations were established with the member countries of the so-called Visegrad Group (Czechoslovakia, Hungary, and Poland). This became an outstanding example of effective economic and political cooperation in the region and fostered the integration of the Visegrad Group members into the structures of the European Union.

[1] For details see: D. Milczarek, *Polityka wschodnia – wyzwanie dla Unii Europejskiej (The Eastern Policy – A Challenge for the European Union)* in: *Rola Polski w kształtowaniu polityki wschodniej Unii Europejskiej na przykładzie Ukrainy (The Role of Poland in Shaping the European Union's Eastern Policy)*, J. Borkowski (ed.), Warszawa 2006.

First steps towards the East

A strong emphasis put by the leading European countries on their eastern policies was very important to the post-communist countries. Such approach gave a significant push to social and economic transformation in those countries and strengthened their position within the new European security system of the post-bipolar world.

Thus the goals of the EU's eastern policies and aspirations of the Central and Eastern European countries finally free from Soviet domination were concurrent. The EU was about to implement one of its strategic goals – moving the security, stability and welfare line as far to the East as possible. In the meantime, the Central and Eastern European countries wanted to ensure welfare and stability to their citizens by means of, among other things, close cooperation with the West. After all, the ultimate goal was to join the structures of economic and political collaboration, security and defence of the European Union.

Making efforts to meet the aspirations of the new democracies in Central and Eastern Europe, the European Communities offered and later signed bilateral Association Agreements covering both economic and political issues. A long and complicated process of adoption of the European standards into the candidate countries' economic, political and social life lasted for over 10 years. In 2004, eight Central and Eastern European countries finally joined the EU, followed by Romania and Bulgaria in 2007.[2]

Before the first enlargement of the EU to the east, its policy regarding the newly independent countries in the post-Soviet area was quite vague and rather figurative.[3] In 2004 though, when the European Union started to share a border with the CIS countries, the officials in Brussels faced an urging need to to revise the policy towards the EU's Eastern neighbours. The basis for a whole new level of cooperation was provided within the European Security Strategy drawn up in December 2003 and resulted in the European Neighbourhood Policy outlined in 2003–2004. The neighbouring countries were divided into three groups: Balkan Countries, Mediterranean Countries, and finally Russia together with other Eastern European Countries, such as Ukraine, Moldova and Belarus. The latter group included the countries that did not want to or could not bid for EU membership for the time being.

It should be underlined, that no matter what common decisions were taken, there has never been a unanimous position regarding the Eastern European countries within the European Union. The old Member States are very careful when it

[2] For details see: D. Milczarek, *Yevropeysky Soyuz ta yoho mistse v suchasnomu (European Union and its Role in the Modern World)*, Lviv 2008, pp. 140–141.

[3] For details see: B. Cichocki, *Segodnyashniye dillemy budushchey vostochnoy politiki Yevropyeyskogo Soyuza (Current Dilemmas of the Future Eastern Policy of the European Union)*, "Europa. Zhurnal polskogo instituta myezhdunarodnyh diel" ("Europe. Polish Institute for International Relations Journal") no. 3(8)/2003, vol. 3, p. 15.

comes to the prospects of EU membership for Ukraine or Moldova. For instance, France and Germany quite often stick to their pro-Russian policies, while the Central and Eastern European countries, especially Poland, are supporters of Ukraine's ambition to join the structures of the EU. Such position may, to a great extent, be explained by the strategic interests of Poland itself, as it has rather many problems on the borders with its Eastern neighbours – Russia and Belarus. That is why Ukraine's closest Western neighbour would be so happy to transform at least the Polish-Ukrainian border into an inner EU border.

On 13 June 2001, the Ministry of Foreign Affairs of Poland prepared a special paper on the *Eastern Policy of the EU in the Light of its Enlargement by the Central and Eastern European Countries*. Poland believes that when making plans for the future, the EU should take into account further development of the bilateral relations with the signatories of Partnership and Cooperation Agreements (PCAs), including Russia and Ukraine, as in had been earlier stated in the Common Strategies of the European Union (signed in June and December 1999 respectively). The cooperation should not involve any preconditions or pre-trace any borders on the future map of Europe. It had been underlined that without overrating institutional decisions, the EU should get the Community of Independent States (CIS) countries involved into the political dialogue on integration, define the conditions of EU enlargement, and discuss European security architecture and cooperation principles. Political dialogue with Ukraine regarding security issues should also become one of the priorities of the EU's Eastern Partnership Policy, especially considering this country's being in the EU's immediate neighbourhood and its exceptional importance to the EU. It should also be considered that the independence of Ukraine is a stabilizing factor and a positive influence upon the countries in this region, especially Belarus and Russia.[4]

When it comes to Russia, even though geographically it occupies a sizeable chunk being a part of Eastern Europe, due to its size, potential, and both regional and world leadership ambitions, it cannot be considered a country aiming at close collaboration with the EU. It is rather seen as a partner on economic and political levels, a supplier of energy sources, and a target market for European businesses. That is why the Eastern initiatives of the EU are mostly aimed at its immediate neighbours – Belarus, Ukraine and Moldova, along with the South Caucasus region including Armenia, Azerbaijan and Georgia. EU–Russia relations are of a completely different nature and this fact should be taken into account when analyzing the relationship that the European Union has with most of its Eastern neighbours. Another fact to remember is the special status of Belarus due to the authoritarian regime of Alexander Lukashenka and partial international isolation of the country.

[4] For details see: *Skhidna polityka Yevropeyskoho Soyuzu v ramkah procesu rozshyrennia YeS na Skhid shchodo pryiednannia krayin Centralnoyi ta Skhidnoyi Yevropy (Eastern Policy of the EU in the Light of its Enlargement by the Central and Eastern European Countries)*, http://www.ji.lviv.ua/n22texts/shid-pol.htm (last visited 13.06.2012).

Therefore, the neighbouring area of the EU is far from being homogenous in political, economic or civilizational terms, and this should be taken into account while shaping a Neighbourhood policy regarding this country.[5]

All in all, the Eastern Policy of the European Union had several stages and each of them had its special characteristics. As it has already been mentioned, the first stage lasted from 1989/1990 to 2004 (2007). This stage was a process of gradual recognition of pro-European aspirations of most of the new democracies of Central and Eastern Europe and the three post-soviet republics: Estonia, Latvia and Lithuania. During the first stage, the European Union signed Association Agreements with the abovementioned countries preparing them for future joining. Then, the EU signed simple Association Agreements with a number of countries with no clear prospects for accession, like the one with Ukraine in 1994. In conclusion to the first stage, a new concept of relations with non-EU countries was developed. This was the European Neighbourhood Policy (ENP), aimed at the neighbouring countries that remained outside after the first enlargement of the EU.

At the second stage, the European Neighbourhood Policy was being implemented and further developed based upon the so-called action plans drawn up by Brussels and the neighbouring countries. The first EU–Ukraine Action Plan was created in 2005. Thus, cooperation included supervision upon the action plans' implementation.

During the third stage, starting from 2008, a formal separation of the Eastern and Southern Policies of the European Union was carried out. Those policies were formally transformed into the Eastern and Mediterranean Partnerships.[6]

The nature, meaning and potential of the ENP

Marek Siwiec, Member of European Parliament, used a very well-turned expression when presenting the annual report on European Neighbourhood Policy at the end of 2011: *'At the very beginning this policy was introduced as a consolation prize for countries that are close but shall never become members of the European Union'*.[7] A lot has changed in the last years; the concept itself and the approaches in policy implementation are different now. Both the EU and its neighbours can now come to certain conclusions and sum up the ENP analyzing its contribution to democratization and economic transformations in the region.

[5] For details see: T. Sydoruk, *Polityka susidstva Yevropeyskoho Soyuzu u Skhidniy Yevropi: model intehratsiyi bez chlenstva (European Neighbourhood Policy in Eastern Europe: Integration Model without Membership)*, Lviv 2012, pp. 17–18.

[6] For details see: V. Malik, *Evolyutsiya skhidnoyi polityky Yevropeyskoho Soyuzu (Evolution of the Eastern Policy of the European Union)*, http://www.nbuv.gov.ua/portal/Soc_Gum/Gileya/2011.../P25_doc.pdf (last visited 10.12.2012).

[7] Review of the European Neighbourhood Policy. Speech by Marek Siwiec, rapporteur on the review of the European Neighbourhood Policy, http://www.youtube.com/watch?v=XtD9updcvHk (last visited 04.12.2011).

The idea of the ENP as an instrument of cooperation with the EU's close neighbours and strategic partners emerged in 2003. Already in 2004, the process of implementation started, aiming at *'avoiding the emergence of new dividing lines between the enlarged EU and its neighbours and instead strengthening the prosperity, stability and security of all'*.[8] Within the new framework, cooperation was offered to Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Morocco, Moldova, Palestine, Syria, Tunisia and Ukraine.

Despite all the political, economic, and socio-cultural differences between the above mentioned countries, there is one geopolitical feature that they have in common. All those countries are situated along the Eastern and Southern borders of the European Union. Exactly due to this fact, stability and security in this particular region are of such high importance to the EU. The fact that the Neighbourhood Agreement embraced both countries with actual membership prospects and countries that most likely shall forever remain no more than close neighbours of the European Union is yet another evidence of the fact that from the very beginning ENP had a security nature, even though it had never been declared as such.

In spite of its initial security bent, European Neighbourhood Policy has a strong potential that can meet the neighbouring countries' expectations regarding deeper political, economic and socio-cultural integration. The biggest challenge is to implement this policy in the right way.[9]

One of the strongest sides and one of the most attractive prospects to the neighbouring states is an opportunity of closer economic cooperation, including integration. This, in turn, would let the abovementioned countries enjoy most of the advantages that the Member States do. Moreover, economic integration is one of the greatest challenges to the national economies, but in the long term, it fosters strengthening and stabilization of markets. As a part of closer cooperation in the economic sphere and due to the gradual opening of markets, the ENP offers the neighbouring countries the EU's major economic freedoms, such as free movement of goods, services, capital and people. One of the real instruments to achieve these objectives is the signing of bilateral free trade agreements.

In its political scope, the ENP is a constant dialogue concerning the support for democracy, human rights and the rule of law in the neighbouring countries. Furthermore, in the framework of the European Neighbourhood Policy, the EU makes a practice of systematic involvement of the neighbouring countries into its major foreign affairs and security policy related processes.

[8] European Neighbourhood Policy, http://www.ec.europa.eu/world/enp/policy_en.htm (last visited 10.12.2012).

[9] For details see: S. Razdorozhnyy, K. Shynkaruk, *YeS-Ukrayina: Ekonomichni Naslidky ta Perspektyvy Yevropeyskoyi Polityky Susidstva (EU–Ukraine: Economic Consequences and Prospects of the European Neighbourhood Policy)*, http://www.ua.boell.org/downloads/IER_Report_final.pdf (last visited 10.12.2012).

Nonetheless, the nature of the ENP seems quite controversial to many neighbouring countries. Such contemplations were especially common in the first stages of the ENP's implementation. The main reason for such general feeling among the ruling elites of Ukraine and Moldova was the fact that the ENP had primarily been shaped as a framework for cooperation with the neighbouring countries that did not have any clear prospects of joining the EU. Nevertheless, in practice the European Neighbourhood Policy fosters widespread dissemination of European values and profound Europeanization of its Eastern neighbours. This, in turn, causes overexpectation and stimulates membership aspirations.

Thus, in late 2007, in his report named *European Neighbourhood Policy and Perspectives for Cooperation with the EU. Ukrainian Point of View*, the Ukrainian political expert Oleksandr Derhachov noted that *'Ukraine sees ENP as an integration constraining tool, rather than an additional cooperation mechanism'*. Based upon the official position of Ukrainian authorities, expert opinions and polls, Derhachov's analysis points out that carrying out a standardized policy towards Ukraine is intolerable and unfair, as it puts Ukraine on the same footing as the other reformed states, that are however way less interested in closer cooperation with the EU.

In his opinion, the level of protection of civil rights and political freedoms in Ukraine was similar to that in Romania, Bulgaria, and Croatia, and better than in Turkey and many Western Balkan countries (which, nevertheless, have much better integration prospects according to Brussels). Such approach increases the number of eurosceptics among Ukrainian politicians and experts and gives more arguments to those ready to blame the EU for its double standards and violent construction of membership criteria.[10]

Perhaps exactly because of such complaints of its neighbours, but first of all in order to differentiate its cooperation with all the different countries along its Eastern and Southern borders, in 2008–2009 the EU established two separate cooperation programmes as part of the renewed European Neighbourhood Policy.

First steps to specify certain aspects of the ENP were made in 2006–2007. Among such attempts, one can name the Communication from the Commission to the Council and the European Parliament on Strengthening the European Neighbourhood Policy of 4 December 2006, and several other documents.[11]

In July 2008, the Euro-Mediterranean Partnership (the Barcelona Process) was re-launched as the Union for the Mediterranean.[12] It concerned 27 Member

[10] For details see: O. Derhachov, *Posytsiya Ukrayiny shchodo Yevropeyskoyi polityky susidstva ta perspektyv spivpratsi z YeS (European Neighbourhood Policy and Prospects for Cooperation Ukrainian Point of View)*, http://www.eu.prostir.ua/data?t=1&q=13332 (last visited 10.12.2012).

[11] Communication from the Commission to the Council and the European Parliament on Strengthening the European Neighbourhood Policy, Brussels, 4.12.2006, COM (2006) 726 final.

[12] For details see: P.J. Borkowski, *Partnerstwo Eurośródziemnomorskie (Euro-Mediterranean Partnership)*, Warszawa 2005, pp. 16–17.

States of the European Union and 16 partner countries from North Africa, the Middle East and the Balkans.[13]

In addition, on the initiative of Poland, supported by Sweden, a project of Eastern Partnership was drawn up. It embraced cooperation with Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The goal and main principles of the renewed Eastern European-oriented policy were declared in the *Communication from the Commission to the Council and the European Parliament on Eastern Partnership* of 3 December 2008. It was clearly outlined that *'The European Union has a vital interest in seeing stability, better governance and economic development at its Eastern borders'*. It was also emphasised that *'The Eastern Partnership will be pursued in parallel with the EU's strategic partnership with Russia'*.[14]

Eastern Partnership

The concept of Eastern Partnership appeared in the political lexicon of Brussels and was finally institutionalized within the European Neighbourhood Policy between 2006 and 2009. One of the main reasons for development of the ENP was conceptual formlessness and functional incompleteness of the European Neighbourhood Policy, which hindered the implementation of its fundamental tasks. The concept of a distinguished Eastern Partnership appeared together with the renewed Union for the Mediterranean. On 22 April 2008, a Member of the European Parliament for Germany, Ingo Friedrich, officially declared the initiative of founding the Eastern European Union, embracing Ukraine, Moldova and countries of the South Caucasus.[15]

The Eastern Partnership programme was initiated by Poland. The latter had clearly declared its intention to shape and promote policies of the European Union in the Eastern Europe even before joining the EU. This initiative of Poland was further supported by Sweden, so the new vision of the Eastern Policy was no longer perceived by Brussels as an initiative of its ten new members only. The final version of the Polish project was a result of numerous consultations and the cooperation of a large number of EU Member States, namely the Visegrad group countries and the Baltic countries, which, just like Poland, were repeatedly emphasizing the vital need for intensification of cooperation with the EU's Eastern neighbours.[16] However, the deciding votes for the Polish–Swedish initiative

[13] For details see: B. Piskorska, *Wymiar wschodni polityki Unii Europejskiej (The Eastern Dimension of the European Union's Policy),* Toruń 2008, pp. 69–84.

[14] Communication from the Commission to the European Parliament and the Council, Eastern Partnership, Brussels, 3.12.2008, COM (2008) 823 final.

[15] For details see: T. Sydoruk, *Yevropeyska polityka susidstva: evolyutsiya kontseptsiyi ta problemy realizatsiyi (European Neighbourhood Policy: Evolution of the Concept and Implementation Issues)*, Lviv 2012, p. 96.

[16] Ibidem, pp. 94–95.

were cast by Germany and France. Nicolas Sarkozy supported the Eastern Partnership in exchange or Poland's support for the southern policies.[17]

The official launch of the Eastern Partnership was stimulated by the conflict between Russia and Georgia in August 2008 and another gas war between Ukraine and Russia in January 2009. Not only had these events proven to everyone the need to render the EU's Eastern Policy more active, but this was a strong push to real actions as it once again became crystal clear how important it was for the European Union to have 'stable and predictable relations' with its neighbours.[18]

The Eastern Partnership was officially affirmed by the European Council on 19–20 March 2009. Adopted within the Presidency Conclusions of the European Council in Brussels, the Declaration by the European Council on Eastern Partnership outlined that Eastern Partnership is a part of the wider European Neighbourhood Policy aimed at promotion of stability and wealth among the EU's eastern neighbours. The Conclusions also emphasised that the Eastern Partnership *'will promote stability and prosperity among the EU's Eastern partners covered by the European Neighbourhood Policy. The European Council commits, on the terms set out in the declaration, to a deeper bilateral engagement and to a new multilateral framework involving the EU, Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine, aiming at accelerating reforms, legislative approximation and further economic integration'*. At the same time the Declaration did not envisage membership prospects for the respective countries, which immediately reduced the interest among the Declaration's addressees.[19]

The first Eastern Partnership Summit took place on 7 May 2009 in Prague. This event marked the official launch of the abovementioned initiative. A Joint Declaration of the Prague Eastern Partnership Summit was adopted, summing up all the successful efforts related to establishment of the initiative as an integral part of EU's policy. As it was stated at the summit, the aim of the Eastern Partnership would be to strengthen democracy in the countries of Eastern Europe and Southern Caucasus, support them in terms of European integration, provide economic and social modernization as well as ensure the rule of law. The ultimate goal of the Prague Summit participants was defined as the formation of an association, adoption of all-embracing free trade agreements among partner countries and the EU, as well as further visa liberalization as a step towards a fully visa-free regime.[20]

[17] For details see: *Skhidne partnerstvo YeS: dodatkovi mozhlyvosti dlya yevrointehraciyi Ukrainy (EU Eastern Partnership: Additional Opportunities for Ukraine's Integration)*, V. Martynyuk (ed.), Kyiv 2009, p. 12.

[18] For details see: B. Ferrero-Waldner, *Ukraina maye vsi mozhlyvosti otrymuvaty vyhody vid Skhidnoho partnerstva (Ukraine has Every Opportunity to Gain Profit out of the Eastern Partneship)*, "Yevrobyuleten" ("Eurobulletin") no. 4/2009, pp. 18–19.

[19] Presidency Conclusions of the Brussels European Council (19/20 March 2009), http://www.register.consilium.europa.eu/pdf/en/09/st07/st07880-re01.en09.pdf (last visited 10.12.2012).

[20] For details see: T. Sydoruk, *Yevropeyska polityka susidstva: evolyutsiya kontseptsiyi ta problemy realizatsiyi (European Neighbourhood Policy: Evolution of the Concept and Implementation Issues)*, op.cit., pp. 99–100.

The Eastern Partnership was one of the priorities of the Polish Presidency of/in the Council of the European Union. Thus, the second Eastern Partnership Summit took place in Warsaw on 29–30 September 2011. The heads of the 27 Member States and of 5 partner countries, as well as high representatives of European Institutions participated in the Summit. A Joint Declaration was issued, giving a political signal to further integration and active participation of both the EU and its Eastern partners in cooperative activities. Among other things, the Declaration points out the fact that the Eastern Partnership is based on a community of values, and the European aspirations and the European choice of some partners are being acknowledged. It is stated that the EU and most of its partners are engaged in negotiations on Association Agreements which shall also lead to Deep and Comprehensive Free Trade Areas as soon as the conditions are met. Moreover, the Declaration reaffirms a will to take gradual steps towards visa-free regimes as well as enhanced sector cooperation. The abovementioned is thus the evidence of a strong will for active cooperation.[21]

Practical support to partner countries is carried out through the Comprehensive Institution Building Programme (CIB). The Programme is aimed to support institutional development in 5 partner countries: Armenia, Azerbaijan, Georgia, Moldova, and Ukraine. Financing in the form of EUR 173 million is first and foremost available to institutions that are crucial for Association and Free Trade Agreements. Implementation of the CIB in partner countries is carried out with the assistance of some of the EU countries, including Poland. After the European Commission's and partner countries' approval of the framework documents that define the general cooperation principles, partner countries shall draft Institutional Reform Plans containing detailed information on institutions to be transformed along with the methods and means of transformation.

The European Commission has already taken first steps to implement the Pilot Regional Development Plans (PRDP) in accordance with the respective arrangements with the partner countries. The PRDP budget for 2012–2013 is EUR 75 million. CIBs are being created guided by the EU's equalization policy aimed at elimination of the drastic disparity between regions taking into account specific demands of each one of the Eastern Partnership countries.[22]

It is also worth mentioning that all the six Eastern Partnership addressees are former Soviet Union countries. Even though they have a common past, nowadays there are essential differences when it comes to their economic and social development, as well as democratic transformations. Thus, the nature of the EU's relationship with each one of the abovementioned countries is quite different. The status of Ukraine is quite special and it has proven to strive for more than just

[21] Joint Declaration of the Eastern Partnership Summit, Warsaw, 29–30 September 2012, http://www.ec.europa.eu/europeaid/where/neighbourhood/eastern_partnership/documents/warsaw_summit_declaration_en.pdf (last visited 10.12.2012).

[22] The website of the Polish Embassy in Kyiv, http://kijow.msz.gov.pl (last visited 10.12.2012).

neighbourly relations. Nevertheless, lately it has been giving up the front line to Moldova and Georgia that both made a significant progress in harmonization with EU standards. At the same time, Ukraine remains the leader when it comes to negotiations on an Association Agreement.[23]

Case of Ukraine

As early as in the early 1990s, European orientation became the main part of the foreign policy of the newly independent Ukraine. The Decree on Implementation of the Declaration of State Sovereignty of Ukraine in International Affairs issued by the Verkhovna Rada of the Ukrainian SSR on 25 December 2012 entrusted the Government of Ukraine with ensuring direct participation of the state in European-wide processes and institutions.[24] Soon after Ukraine was proclaimed independent, Verkhovna Rada issued a special decree on Main Ukraine's Foreign Policy Orientation (2 July 1993), where the European orientation of the foreign policy of Ukraine was put down on paper on the highest level. It was mentioned that '*the ultimate goal of Ukraine's foreign policy is membership in the European Communities* [...] *In order to maintain stable relations with the Communities Ukraine shall sign a Partnership and Cooperation Agreement as a first step towards associated and later on full membership in this organization*'.[25]

Implementing the declared pro-European foreign policy, Ukraine opened up the Mission of Ukraine to European Communities in Brussels in 1992. Shortly thereafter, the European Commission made a step in return and a Delegation of the European Union to Ukraine was set up in Kyiv.[26] Such a lively dialogue gave an opportunity to actually sign a Partnership and Cooperation Agreement between Ukraine and the EU on 14 June 1994, which came into force on 1 March 1998 and was intended for 10 years. On 11 June 1994, the then President of Ukraine, Leonid Kuchma, decreed a Strategy of the European Integration of Ukraine[27] and already a year later, in December 1999, Brussels officially defined the main principles of the EU's strategy towards independent Ukraine.[28]

[23] T. Sydoruk, *Yevropeyska polityka susidstva*..., op.cit., p. 107.

[24] Decree of Verkhovna Rada of Ukraine on Implementation of the Declaration of State Sovereignty of Ukraine in International Affairs, http://www.zakon2.rada.gov.ua/laws/show/581-12 (last visited 10.12.2012).

[25] Decree of Verkhovna Rada of Ukraine on Main Ukraine's Foreign Policy Orientation, http://www.zakon2.rada.gov.ua/laws/show/3360-12 (last visited 10.12.2012).

[26] Delegation of the European Union to Ukraine, http://www.eeas.europa.eu/delegations/ukraine/about_us/delegation_role/index_uk.htm (last visited 10.12.2012).

[27] Decree of the President of Ukraine on Approval of the Strategy of the European Integration of Ukraine, http://www.zakon2.rada.gov.ua/laws/show/615/98 (last visited 10.12.2012).

[28] European Council Common Strategy of 11 December 1999 on Ukraine, http://www.consilium.europa.eu/uedocs/cmsUpload/ukEN.pdf (last visited 10.12.2012).

Nevertheless, even though Ukraine was the first one among the post-Soviet countries to sign the PCA with the EU, until now it is not even an associated member of the European Union. There are several reasons for that and they can be divided into external and internal issues. Among the internal ones, the following should be mentioned:

- non-compliance of Ukraine's legislation with the legislation of the EU;
- lack of inner political consolidation regarding the pro-European orientation;
- insufficient development of democratic institutes;
- economic and social issues, incompatible with EU standards;
- lack of cooperation with the EU member states on sectoral and regional levels;
- intolerably high level of corruption;
- freedom of speech and access to information related issues
- selective and politically committed use of law;
- repeated violations of electoral legislation and procedures, etc.

It is crucial to find solutions to internal problems as this shall be one of the determinant factors when it comes to whether Ukraine is going to join the European institutions or not.

At the same time it has to be emphasized that the external factors do have a significant influence on potentially closer relations between Ukraine and the EU, especially when it comes to Russia. The importance of this factor grew significantly after Vladimir Putin was elected president of Russia in spring 2000. In the first decade of the 21st century, the European import quota for Russian gas reached from 47.7 per cent in 2001 to 34.2 per cent in 2009 and that is one of the reasons why the EU Member States have to reckon with Kremlin's stand in Ukrainian question[29]. The abovementioned also explains why the vast majority of Western European politicians are treating Ukraine as a part of the post-Soviet area that belongs to the sphere of strategic interests of Russia. Moreover, in 2000 France and Germany expressed an opinion that Ukraine, Belarus, and Moldova could never possibly join the European Union as this would lead to... isolation of Russia.[30]

The abovementioned fully describes all the main reason for the so called *désintéressement* of the Old Europe regarding Ukraine that showed particularly in 2000–2004. The situation did not change much after the Orange Revolution. President Kuchma had always been blamed for the lack of a clear pro-European orientation, weak democracy, persecution of free press and non-democratic elections. In times of Yushchenko's presidency though, the excuse for the European

[29] Mikhail Korchemkin Live Journal, http://www.m-korchemkin.livejournal.com/104055.html (last visited 10.12.2012).

[30] B. Hud', *The European Union's Eastern Policy. Direction Ukraine, Polish Carrier* in: *Eastern Policy of the European Union: Role of Poland, Case of Ukraine*, A.Z. Nowak et al. (ed.), Warsaw 2008, p. 123.

Commission not to give clear European prospects to Ukraine was the 'excess of democracy' that resulted in confrontation between legislative and executive power, insufficient attempts to fight corruption as well as aggravation of Ukraine-Russia relations, especially because of the gas-related issues. Unofficially though, the governmental representatives of the EU Member States admitted that the main reason for the EU not to make any clear steps towards Ukraine was the unwillingness to disrupt the relationship with Russia.

The EU–Ukraine relations took turn for the better in 2007, with the negotiations about a new enhanced agreement, namely an Association Agreement that would substitute the PCA, only valid until 2008. All in all, from 2007 to 2012, 21 rounds of negotiations on the Association Agreement took place along with 18 rounds of negotiations on a Free Trade Agreement between Ukraine and the European Union. An important step was a compromise regarding the definition of the future enhanced agreement. A certain consensus was reached at the Paris Summit in 2008, when it was decided that the negotiations would further concern the future Association Agreement to be signed in 2009.[31]

In the end though, in 2009 only the EU – Ukraine Association Agenda was signed. It replaced the old EU–Ukraine Action Plan valid from 2005 to 2008 and then extended until 2009. It regulates the EU–Ukraine relations temporarily and contains a number of reforms that Ukraine is supposed to carry out before the Association Agreement can be signed.

It is worth emphasizing though, that the EU–Ukraine Action Plan was one of the instruments of the European Neighbourhood Policy. This solely caused prejudices against the document due to the non-differentiated nature of the ENP that equalized integration prospects for all the partner countries. The Association Agenda though has no formal relation to the ENP and is rather an exclusive instrument of EU–Ukraine cooperation, intended to intensify the bilateral relations. In fact, the abovementioned document became an implementation instrument for the EU–Ukraine Association Agreement which is, in turn, an integral part of the European Neighbourhood Policy strengthened by the Eastern Partnership in Eastern Europe and North Caucasus.

On 19 December 2011, the negotiations on the Association Agreement were declared to be concluded at the EU–Ukraine Summit in Kyiv. The EU–Ukraine AA goes far beyond similar Agreements between the EU and other Eastern and Central European countries. On 30 March 2012, the heads of negotiating delegations initialed the Association Agreement, or rather its political part and the first and the last pages of the Free Trade Agreement. The paragraphs of the Association Agreement regarding the FTA were finally initialed on 19 July 2012.[32]

[31] *Uhoda pro asotsiatsiyu, vklyuchayuchy stvorennya ZVT (Association Agreement Including FTA)*, http://www.kmu.gov.ua/control/uk/publish/article%3Fart_id=224167817&cat_id=223345034 (last visited 10.12.2012).

[32] Ibidem.

The final signing of the Association Agreement was suspended for an unspecified time though. Among the main reasons, EU officials name the dissatisfaction with Ukrainian legal procedures and the Tymoshenko and Lutsenko imprisonment. One of the most important factors that shall influence further signing and ratification of the Agreement is the final appraisal of the parliamentary election in Ukraine on 28 October 2012. The conclusions are to be made and reported by the ODIHR/OSCE Parliamentary Election Observation Mission. Taking into account how the events were developing at some of the majoritarian districts, where the pro-governmental candidates won no matter what the real results of the elections were, and how the security and defense forces acted towards the journalist and opposition representatives, one may count on an overall bad judgment. This may, in turn, slow down further negotiations between Ukraine and the EU.

Conclusions

The Eastern vector of the EU's foreign policy at the end of the 20th and the beginning of the 21st century may be considered quite successful. This fact is strikingly illustrated by the EU's Eastern enlargement in 2004–2007.

After the latest enlargement, the European Union became way less active in this area. On one hand, this may be explained by the intensified cooperation with its Mediterranean neighbours, but on the other hand, there is a lack of support from Old Europe regarding the attempts of Poland and other new Member States to involve six Eastern European and South Caucasian neighbours into the structures of the European Union. Another reason for such a restrained policy of the European Commission towards Ukraine is the high number of the above mentioned internal issues and the EU's unwillingness to come into conflict with Russia, which does not seem to want to let Ukraine go from its political and economic sphere of influence.

As a result of all the above mentioned causes there is an uncertain and quite unpredictable geopolitical situation in the Eastern Europe and it shall remain so at least for another decade. One thing is clear though: if the West decides to impose sanctions on Yanukovych, sooner or later Ukraine will proceed with Eurasian integration. It would rather not happen but this requires a way more flexible and determinate policy of the EU.

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European Union Enlargement – An Unfinished Business?

Introduction

Unlike 10 years ago, the seventh enlargement round of the European Union in 2013 was practically unnoticeable to the public eye. Croatia's preparation for EU membership did not animate the heated debate and its accession process was rather seen as an ordinary routine mainly because there was no apparent risk of undermining or weakening the European Union. This is due to several factors: firstly, the previous enlargements in 2004 and in 2007 helped determine and narrow down the criteria for EU membership, and organize and structure the preparation process in the candidate countries; secondly, the European Union itself underwent important institutional changes after the coming into force of the Treaties of Nice and Lisbon which enabled it to embrace new members; thirdly, after the Eastern enlargement the European Union significantly expanded and absorbed the major part of the European continent and further accessions are less probable in the foreseeable future. In fact, it is pointed out that the enlargement has been losing its importance as the principal way of integrating the EU neighbours and, in the foreseeable future, the relationships with the European Union are more likely to develop into transitional arrangements that may or may not lead to full membership. Therefore, EU enlargement-related issues lost their appeal for the majority of scholars.

EU accession process

According to Article 49 of the consolidated version of the Treaty on European Union, any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. Article 2 states that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common

to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

A European country that wants to join the European Union should submit the official application to the Council, which must consult the Commission and receive a favourable opinion from the European Parliament. The European Commission must prepare an opinion on the application for membership, assessing the situation of a country in relation to the accession criteria. The Commission takes into account information provided by the given candidate country, the EU and other institutions. The Commission's opinion might also be a detailed analysis of the tasks to be accomplished by the candidate country. Only after that, the Council unanimously adopts the final decision. The application may be accepted or turned down. In 1987, Morocco's membership application was rejected on the grounds that this was not a European country.

In the case of a positive conclusion of the Council, the country is granted the status of an official EU candidate. Otherwise, the potential candidate should achieve the required degree of compliance with the membership criteria in order to start the accession negotiations. It should be noted that the EU's Eastward enlargement helped to systemize the accession norms and process. In 1993, the European Union established the Copenhagen membership criteria that require: firstly, that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities; secondly, the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union; thirdly the ability to take on the obligations of membership (*acquis communautaire*), including adherence to the aims of political, economic, and monetary union. In 1995, the European Union added the requirement that an applicant state must create the necessary conditions for a gradual, harmonious integration through the appropriate adjustment of its administrative structures. In addition, it is also required that the EU's absorption capacity should not jeopardize the European integration process.

It should be noted that the *acquis communautaire* contained more than 80,000 pages of EU law in 2004 and is constantly involving. It comprises the normative *acquis* (the founding treaties with amendments; acts adopted by EU institutions, such as regulations, directives, decisions, recommendations and opinions; other acts provided for in the treaties; measures adopted in the area of external relations of the EU, such as EU agreements concluded with international partners; other agreements concluded in order to accomplish the objectives of the treaties), the political *acquis* (declarations, resolutions, principles and guidelines, and so on, adopted by the European Council, or the Council of the European Union; common agreements of the Member States regarding the development and strengthening of the EU), the judicial *acquis* (the case law of the Court of Justice of the European Union). The acceptance of the EU *acquis* is a compulsory condition for accession as it encompasses the rights and obligations attached to the European

Union and its institutional framework. Candidate states must accept the *acquis* before they join the EU.[1]

The formal accession negotiations can start after the European Commission has assessed the applicant's suitability for joining the European Union. The so-called screening helps to identify potential inadequacies and difficulties regarding the forthcoming implementation of the *acquis communautaire* and to determine possible solutions, reforms, adaptations which the candidate must undertake. The European Commission informs the Council of the results of the screening and, if appropriate, recommends that negotiations on specific chapters can be started. The main focus of negotiations, which are conducted individually with each country, is on the timing and the conditions of the adoption of the *acquis communautaire* by the applicant state. A number of benchmarks are identified in order to manage and control better the enlargement process. It should be noted that during the accession negotiations both parties discuss the progress of the compliance of the candidate with pre-established benchmarks and not the content of membership criteria which are non-negotiable. In fact, the accession process is heavily conditioned by the performance of the applicant state in adopting the required criteria and usually the European Union is reluctant to grant exemption or derogation from membership obligations. In the case of non-compliance by the candidate, the preparation for EU membership can be slowed down, postponed or even suspended indefinitely.

For practical purposes, the subsequent negotiations cover a multitude of areas and are divided into separate chapters. In the current accession process, the *acquis communautaire* has been broken down in 35 chapters: free movement of goods; freedom of movement for workers; right of establishment and freedom to provide services; free movement of capital; public procurement; company law; intellectual property law; competition policy; financial services; information society and media; agriculture and rural development; food safety, veterinary and phytosanitary policy; fisheries; transport policy; energy; taxation; economic and monetary policy; statistics; social policy and employment; enterprise and industrial policy; trans-European networks; regional policy and coordination of structural instruments; judiciary and fundamental rights; justice, freedom and security; science and research; education and culture; environment; consumer and health protection; customs union; external relations; foreign, security and defence policy; financial control; financial and budgetary provisions; institutions; miscellaneous issues.

The accession partnership is adopted in order to provide a tailor-made membership action plan for the candidate country. It identifies the principle requirements and key priority areas in which substantial changes should be made. The accession partnership also serves as a guide for EU assistance. If the European Union deems it appropriate, other additional agreements can be concluded. For example, Western Balkan countries must sign the Stabilisation and Association

[1] A. Kaczorowska, *European Union Law*, London 2011, p. 64.

Agreement. In addition, each candidate country has to draw up and approve, in consultation with the European Commission, its own national programme for the adoption of the *acquis communautaire*. This document is the plan of activities with aims of providing the timetable and allocating necessary resources for meeting membership requirements.

The Member States continue to condition the accession process, but the European Commission enhanced its role in the EU enlargement process because it ensures on a daily basis the effective implementation of the accession criteria. The Commission assists the candidate country in its preparations for joining the European Union by offering its expertise, administrative assistance, technical support and financial resources. It meticulously controls the process of adopting the *acquis communautaire* and related rules by each candidate, rectifies it within the limits of its competences and submits regular reports and strategy papers to the Member States and EU institutions in order to inform them how successfully the applicant country fulfils all necessary membership requirements in order to open and close a specific negotiation chapter. The duration of the accession process is not fixed, can greatly vary and depends on the progress made by the applicant country.

Once the negotiations are successfully completed, an accession treaty should be drawn up including all conditions of the future membership of the applicant country. It also contains the date of accession, possible transitional arrangements, safeguard clauses and other relevant measures. In order to come into force, the treaty should follow the appropriate ratification procedure. The EU Council must unanimously approve the membership of a new country. Prior to its decision, it should receive the opinion of the European Commission and the assent of the European Parliament. The accession treaty is signed by the future member and all the current Member States. The applicant country may hold a national referendum to definitely approve its membership in the European Union. All current Member States and the future member must ratify the accession treaty according to their national legislation. The candidate is granted the status of an acceding country and, on the previously stipulated date, finally becomes a full-fledged EU member.

EC/EU enlargements 1973–1995

In the several decades of its existence, the European Union has accumulated sufficient experience in integrating new Member States. In 1973, the United Kingdom, Denmark and Ireland were the first to join the European Communities. The first enlargement process made it necessary to start working on the membership rules and procedures. The six founding members agreed that the entry of new countries should not disturb or hamper in any way the functioning of the European Communities. For example, the accession process should exclude the possibility of revising the EC founding treaties. However, the entry terms were subject to bilateral negotiations.

Greece became the tenth EC member in 1981. The second enlargement brought significant economic benefits to this Mediterranean country, but also encompassed for the first time an important political dimension, because its accession was aimed at strengthening and consolidating Greece's fragile democracy. The third round of EC enlargement in 1986 included Spain and Portugal. The integration of the two Iberian countries was also seen as a tool for stimulating economic modernization and ensuring democratic stability. However, it should be noted that the Southern enlargement process in the 1980s was not conditioned by particularly rigid political, economic or legal requirements and all three countries were granted a lengthy transitional period.

Austria, Finland and Sweden joined the European Union in 1995. They opted for full membership because of their concerns of being marginalized outside of the single market. Their accession process went quite smoothly with only minor difficulties which were swiftly resolved. All three countries enjoyed a high level of development, did not pose any serious threat to the integration process within the EU and became financial contributors to EU funds.

These four enlargements all conformed to the classical community method which included five principles: firstly, applicants accept the *acquis communautaire* in full and no permanent opt-outs are available; secondly, formal accession negotiations focus solely on the practicalities of the applicants taking on the *acquis*; thirdly, problems created by increasing the economic diversity of an enlarged Community are addressed by the creation of new policy instruments overlaid on existing ones rather than by fundamental reform of the inadequacies of the latter; fourthly, new members are integrated into the Community's institutional structure on the basis of limited incremental adaption, facilitated by the promise of a more fundamental review after enlargement; fifthly, the Community prefers to negotiate with groups of states that already have close relations with each other.[2]

To conclude, it should be underscored that in view of new enlargement rounds, this method could not be particularly efficient in integrating numerous post-communist countries and the European Union was forced to work out additional rules and procedures.

EU enlargements 2004–2013

The Eastward enlargement was a huge challenge for both the European Union and the potential candidates. After the collapse of the Soviet Union, a 'return to Europe' became a key element of reform strategies adopted in the post-communist countries and EU membership was considered as its ultimate goal. The European

[2] C. Preston, *Obstacles to EU Enlargement: The Classical Community Methods and the Prospects for a Wider Europe*, "Journal of Common Market Studies" no. 3/1995, vol. 33, p. 452–456.

Union was seen by Central Europe as a haven of stability for countries which had mostly known turbulence, poverty and oppression during the course of the twentieth century. To them, Western Europe represented peace, freedom, order and prosperity and was considered to be a point of reference and an automatic solution to their problems. Enlargement was a potent symbol of merging the post-communist countries back into the Western part of Europe, and reaffirming the sense of 'belonging' that they had always claimed.[3] The European Union quickly agreed to the accession of post-communist countries from Central and Eastern Europe, but there was no understanding of how the enlargement process should be carried out and how it would affect both the European Union and the potential candidates.

At that moment the European Union constituted a regional homogeneous polity embedded in a heterogeneous European space. However, the EU expands through the process of enlargement outwards gradually transforming the heterogeneous European continent into a more homogeneous EU-dominated society.[4] Despite serious challenges and numerous hindrances during the accession process of three Mediterranean countries, the Eastward enlargement caused a lot of doubts, scepticism and even fear. The European Union aimed at putting the end to the historic division of the continent, but was totally unprepared to encompass numerous candidates that were embarked on a challenging simultaneous triple transition: build and strengthen the democracy, create and consolidate the market-oriented economy, and achieve and safeguard the fully sovereign nation-statehood. There already was an example of what kind of difficulties might arise from the inclusion of a post-communist country. In 1990 the reunification of Germany also meant the territorial expansion of the European Community through inclusion of the former German Democratic Republic. The reintegration process of East Germany was a challenging and complicated process. Thus, many in Western Europe voiced their concern whether post-communist countries were determined and had the appropriate knowledge and the capacity of carrying out large-scale reforms effectively. It was aptly said that the transformation processes in Central and Eastern Europe looked more like an attempt to rebuild the ship at sea.[5]

On the other hand, (re-) integration in Europe, including EU membership, became a powerful impetus and an important unifying factor for the post-communist countries to implement the necessary changes. The prospect of EU membership was so attractive that the governments in Central and Eastern Europe frequently used it as some kind of anaesthetic in order to justify and legitimize unpopular and painful reforms that had often nothing to do with the accession

[3] V. Curzon, A. Landau, *The Enlargement of the European Union: Dealing with Complexity* in: *The Enlargement of the European Union: Issues and Strategies*, V. Curzon, A. Landau, G. Whitman (eds.), London 1999, p. 12.

[4] B. Kliewer, Y. Stivachtis, *Democratizing and Socializing Candidate States: The Case of EU Conditionality* in: *The State of European Integration*, Y. Stivachtis (ed.), London 2007, p. 144.

[5] J. Elster, C. Offe, U. Preuss*, Institutional Design in Post-Communist. Societies: Rebuilding the Ship at Sea*, New York 1998.

process. The regional reform is a good example of this.[6] In addition, it should be said that there was no valid alternative for these countries in the context of the post-communist transformation. They were looking for efficient solutions for fixing their problems, replacing comprised and dysfunctional institutions and ensuring the modernization and the prosperity of their society. In the absence of other realistic options, joining the European Union was seen as an adequate response to the existing challenges. At the same time, EU membership coupled with the entry to the NATO became a point of no return in terms of the communist legacy. The best examples of the results of possible non-membership are such post-Soviet countries as Ukraine, which were excluded from the EU enlargement process and where many attempts to introduce the necessary changes failed miserably. At present, they still remain stuck in the trap of the vicious circle of simulated reforms.

The lack of a valid alternative drastically narrowed the space for manoeuvre for candidate countries. Although the main part of tasks that were subject to compulsory implementation was entrusted to post-communist countries even at the expense of their societies, it was virtually impossible to refuse the membership. The interruption or the termination of the accession process would entail negative consequences for the candidate countries. In addition, their institutional weakness made them vulnerable, reduced their resistance to the external influence and contributed to the establishment of asymmetrical relationships with Brussels.

The European Union also had to make sure that the Eastward enlargement process was advanced smoothly and completed successfully. Otherwise, the failure of integrating the post-communist countries could destabilize the situation in the entire continent and undermine the credibility of the project of a United Europe. After the adoption of the Maastricht Treaty in 1992, Brussels was focused on deepening the European integration and many were concerned that the enlargement of the EU could seriously disrupt its functioning, contribute to the erosion of EU institutions, incur substantial financial costs and weaken it from inside. The distrust in the capability of the post-communist countries to quickly become full-fledged members led to the EU considering the expansion to the East as a medieval crusade in which barbarians had be taught the superior Western ways of doing business and politics.[7]

Therefore, Brussels adopted the maximalist approach by requiring that post-communist countries must comply with all necessary criteria before they are allowed to join the European Union. Thus, a candidate country had to function as a fully-fledged member even before it became one. The accession process was designed to transform a candidate country while limiting the changes in the EU.

[6] C. O'Dwyer, *Reforming Regional Governance in East Central Europe: Europeanization or Domestic Politics as Usual?*, "European Politics and Societies" no. 2/2006, vol. 20.

[7] A. Dimitrova *Enlargement-driven Change and Post-communist Transformations: A New Perspective* in: *Driven to Change: The European Union's Enlargement Viewed from the East*, A. Dimitrova (ed.), Manchester 2004, p. 4.

In the case of the countries of Central and Eastern Europe, Brussels was forced to produce more rigorous criteria partially because of the negative experience from the previous southern enlargement which was characterized by a protracted period of transition, incomplete and postponed reforms, unwillingness or inability to quickly adjust and adapt to the realities of the EU. There were also understandable fears that after joining the European Union the post-communist countries would be less willing to implement the necessary reforms, so the bulk of changes had to be made before their accession.

The Eastern enlargement process differed from the previous ones, which conformed to the abovementioned classical community method, and featured at least four new characteristics: complexity, differentiation, conditionality and asymmetry. The previous expansions, except for the first one, mainly consisted of two phases. In the case of the post-communist countries, intermediate stages were created which should guarantee better control over the enlargement process. This new tool was delivered into the hands of the European Commission. For example, a more sophisticated, detailed and stringent screening and monitoring process was established for the post-communist countries from Central and Eastern Europe. Therefore, the enlargement process became more complex with more possibilities to control access at each step.[8]

A differentiated approach towards the post-communist countries was widely applied. Firstly, only five post-communist countries (the Czech Republic, Estonia, Hungary, Poland, and Slovenia) were recommended to start the accession negotiations with the European Union in 1998. One year later, others (Bulgaria, Latvia, Lithuania, Romania and Slovakia) joined them. However, only 8 post-communist countries became EU members in 2004. The accession of Romania and Bulgaria was postponed and completed in 2007. There was a danger that differentiation would transform into discrimination, because the process of selective expansion would create new lines of division, cause further fragmentation and lead to the isolation of some parts of the continent. The Western Balkans is again a good example of the EU's differentiated approach towards candidate countries.

Conditionality should be seen as a key feature of EU enlargement. This principle is widely used by international organizations in order to facilitate the compliance of candidate countries with accession requirements. The EU put the prospect of membership in direct dependence on the implementation of required conditions. This step was to convince the sceptical members that the accession process would in no way threaten the internal stability and the EU will be able to absorb those new countries which would successfully meet all requirements. It was used in the previous rounds of enlargement, but in the case of post-communist countries the conditionality became a far more powerful leverage over poten-

[8] K. Maniokas, *The Method of the European Union's Enlargement to the East: A Critical Appraisal* in: *Driven to Change: The European Union's Enlargement Viewed from the East*, A. Dimitrova (ed.), Manchester 2004, pp. 19–28.

tial candidates. It did not mean simply adopting the *acquis communautaire*, but carrying out large-scale pre-accession preparations, the requirements of which were generally based on the Copenhagen criteria. In fact, they were vaguely defined and there was a tendency for making them more specific in terms of their implementation, adjusting them to the particular situation, presenting additional demands. Thus, the initial membership requirements were considerably extended and detailed, and new instruments were created in order to ensure the control over the enlargement process.

All this contributed to an increasing asymmetry between the European Union and the post-communist countries. In addition, the applicant states were excluded from defining the rules and norms of the accession process; they had to accept all membership requirements and the process of implementing them. The candidates had no say in this matter: they could agree with them or refuse, but were unable to affect their content to any significant extent or effectively resist the implementation. The position of the post-communist countries was also weakened by their really strong desire to join the European Union, while some EU members remained sceptical about the eastern enlargement. Completely opposed views were expressed on the asymmetrical relationship of the European Union with the applicant countries. Some considered the EU a colonial power that selfishly exploited its superiority in relations with post-communist states and was capable of rewarding or punishing candidate countries at its own discretion. Others claimed that the European Union was instrumental in guiding the successful transformation of this region.

Indeed, the European Union played a pivotal role in providing indispensable resources and enacting the necessary reforms in different spheres. The European Union's involvement in the transformation of such post-communist countries as Poland or Estonia was successful, because it followed a strategy of conditionality in which the EU set its rules as conditions that candidates had to fulfil in order to receive EU rewards. In this case, the reward was a full membership. An applicant state mainly adopted EU rules because the benefits of the reward offered by the EU exceeded the domestic adoption costs. EU membership comes with a wide range of far-reaching benefits. For example, taking into account only the financial perspective, Poland will get more than EUR 105 billion from the EU budget in the period 2014–2020 and its previous allocation for the period of 2007–2013 was around 102 billion Euros.

The accession process also depended on the clarity of EU rules, the credibility, size and speed of the reward, as wells as on the degree of openness or resistance of domestic actors to follow EU rules. When the reward is not likely to compensate domestic efforts, the effectiveness of implementing EU rules is low or non-existent.[9] The external incentive, in this case the credible prospect of full

[9] F. Schimmelfennig, U. Sedelmeier, *Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe*, "Journal of European Public Policy" iss. 4/2004, vol. 11, pp. 663–667.

EU membership, decisively contributed to strengthening the position of reformist-minded forces, helped weaken the domestic resistance to introducing changes and justified in the eyes of the society the necessity to make painful sacrifices. In addition, a clearly defined timetable of the implementation of reforms contributed to speeding up the implementation of reforms, disciplined public authorities, made it possible to avoid excessive and unnecessary delays. It is quite probable that without the credible prospect of accession to the European Union, post-communist countries would not able to cope with so many tasks as relatively easily and quickly as they had.

As stated before, the EU did not have a clear understanding of what requirements should be presented to post-communist countries and how they should be implemented. In the context of the transformation of Central and Eastern Europe, three main periods are usually identified: 1989–1994, 1994–1998, and 1998–2004.[10] Such periodisation is due to changes in the EU's vision of its role in the region and its search for the optimal enlargement strategy.

The first period started after the fall of the Berlin wall and coincided with the beginning of a close interaction between the two parts of Europe. Brussels slowly and cautiously reacted to changes taking place in Central and Eastern Europe. There was no clear understanding of what should be the policy in respect to the post-communist countries; therefore, main emphasis was put on restoration of stability. First programmes, such as PHARE, were created with the aim of supporting the transformation in the region. The EC/EU paid special attention to providing economic and financial aid, as well as technical expertise. At the same time, European agreements with the post-communist countries were concluded, which established the association relationship with the European Communities and brought them closer to Western Europe. In this period, preference was given to negative conditionality. The development of cooperation was clearly subordinated to the implementation of conditions such as the rule of law, respect for human rights, fair elections, market-oriented economy, and so on. In the case of non-compliance with these conditions, the EU could suspend or withdraw its assistance and stop the further development of institutional ties. However, the EU quickly realized the futility and failure of this approach.

The adoption of the Copenhagen criteria in 1993 marked the transition to the second period, when positive conditionality started being applied. Ten post-communist countries from Central and Eastern Europe submitted their application in the period of 1994–1996. The prospect of membership became more realistic for the post-communist countries, but new accession requirements greatly exceeded the simple incorporation of the *acquis communautaire* into domestic law and actually went beyond the obligations of current Member States. A candidate country was required to function as a full-fledged member even before joining the

[10] M. Vachudova, *Europe Undivided: Democracy, Leverage and Integration after Communism*, Oxford 2005.

European Union. However, the Copenhagen criteria were not clearly specified and the lack of accurate requirements, consistent policy and precise benchmarks caused a serious delay and confusion in the applicant countries. The so-called 'Potemkin harmonization' attracted a lot of criticism and the EU was prompted to define and adopt a more efficient and well-organized approach towards the candidate states from Central and Eastern Europe.[11] The European Commission released its communication named Agenda 2000 – for a stronger and wider Europe, that was accompanied by the opinions on all candidate states and recommendations on opening the accession negotiations were included. This was an important step towards removing the existing ambiguities and specifying which deficiencies and limitations impede the complete fulfillment of all the accession criteria.

The third period was the most productive in preparing the post-communist countries for EU membership. In 1998–1999, the accession negotiations with ten post-communist countries plus Malta and Cyprus were conducted on 31 chapters. Accession partnerships were adopted and subsequently revised and updated. They provided a single framework for priority areas for further work identified in the Commission's regular reports; the financial means available to help the countries to implement the EU priorities; the terms for applying EU assistance. Each candidate also adopted a National Programme which specified the implementation of the Accession Partnership's priorities and to prepare for its integration. This document included the timetable for executing the identified priorities and objectives and indicated which human and financial resources should be allocated. The monitoring process became stricter. For example, the regular report prepared by the European Commission on each candidate's preparations for the accession played a crucial role in making the accession process efficient. The generous financial support through PHARE was reinforced by two pre-accession structural and agricultural instruments – ISPA and SAPARD. Also, a wide range of expertise was offered by the EU and its members. The mechanisms used by the EU during the accession period are grouped in five principal categories: firstly, the provision of legislative and institutional templates; secondly, aid and technical assistance; thirdly, benchmarking and monitoring; fourthly, advice and twinning; fifthly, gatekeeping: access to negotiations and further stages in the accession process.[12]

The negotiations were completed in 2002 and the accession treaties were signed in 2003. On 1 May 2004 eight former post-communist countries: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia, plus Cyprus and Malta became full-fledged members of the European Union. However, the EU remained concerned about the impact of its largest expansion. Therefore, a range of safeguard clauses on trade liberalization, internal market,

[11] W. Jacoby, *The Reality behind the Potemkin Harmonization: Priest and Penitent: The European Union as a Force in the Domestic Politics of Eastern Europe*, "East European Constitutional Review" no. 1-2/1999, vol. 8, pp. 62–66.

[12] H. Grabbe, *The EU's Transformative Power: Europeanization through Conditionality in Central and Eastern Europe*, London 2006, pp. 76–88.

justice and home affairs were introduced. Plus additional restrictions on the free movement of workers from new member countries were applied.

The accession of Romania and Bulgaria was postponed because the two countries failed to fully comply with the membership criteria. Therefore, their accession should be considered as the sixth round of enlargement. The most sensitive areas in these countries were inefficient public administration, weak judicial system, widespread corruption, and organized criminal networks. Nonetheless, it was believed that further delay in admitting these two countries could damage the credibility of the EU enlargement process and it was decided that Romania and Bulgaria were sufficiently prepared to meet the political, economic and *acquis* criteria. Both countries joined the European Union in 2007. However, a range of safeguard measures was adopted in order to ensure the fulfilment of the new members' obligations in the post-accession period. For example, the European Union created a special instrument: the Mechanism for Cooperation and Verification of progress in the areas of judicial reform and the fight against corruption, money-laundering and organized crime. It was aimed at assisting these two countries in tackling the identified outstanding shortcomings.

Six years after, Romania and Bulgaria are still subject to monitoring from the European Commission. Once becoming EU members, both countries have come to be more resistant to the influence of the European Union which is now deprived of powerful tools that could be applied during the accession process in order to force the applicant states to complete the necessary reforms. Many problems still remain unresolved and hinder their further development. For example, their full integration in the Schengen Area was slowed down and both countries failed to appropriately absorb EU funds (Romania – 4%, Bulgaria – 19%). The mixed outcomes of the sixth enlargement led the European Union to reconsider its accession policy. The main conclusion from the sixth round of enlargement was that the partial application of conditionality proved to be wrong: a candidate country must be fully ready before joining the European Union and no exemptions should be allowed.

Croatia is the second former Yugoslav republic (after Slovenia) joining the EU and becomes the 28th EU member in 2013. Despite the fact that economically this country was doing better than Romania or Bulgaria and could comply with the economic criteria, the accession process started only in 2003 when Croatia submitted its application for the membership. The status of a candidate country was granted to it in 2004 and the accession negotiations were launched in 2005. The delay was mainly due to problems of political nature. The main concern of the European Union was related to the unsatisfactory cooperation with the International Criminal Tribunal for the Former Yugoslavia. Later the accession process was disrupted as a consequence of the border disagreement with Slovenia. The negotiations with the European Union were completed in 2011 and the accession treaty was signed the same year. It should be noted that unlike in the case of Romania or Bulgaria, no safeguard clause was included in the treaty. This is

because the EU adopted a more rigorous approach to Croatia's preparations. Based on the previous negative experience from 2007, Brussels became more demanding in complying with the accession criteria. The idea of the creation of a post-enlargement monitoring system was not approved and Croatia was required to fulfil all its obligations before the accession. Special emphasis was put on human rights, the supremacy of the rule of law, the efficiency and the transparency of public administration, the independence of the judiciary system, the fight against organized crime and corruption. Finally Croatia joined the European Union on the 1st July 2013. It should be expected that Brussels will be more demanding towards new candidates, the accession process will be more challenging, additional conditions will be introduced, new instruments of control will be created and the European Union is more likely to act as a 'soft empire' and not as a 'soft power'.

Future enlargements

One of the key preconditions for EU membership stipulates that the potential candidate has to be a European State. Despite the lack of consensus on the definitive geographical borders of Europe, it should be underscored that not many states in Europe remain outside the European Union. Some of them, such as Switzerland or Norway, voluntarily opted for not being EU members, while others, such as Serbia or Montenegro, were granted the status of candidate countries and started a complex process of preparations for EU membership, and several post-Soviet European states such as Georgia or Moldova, declared their intention to join the European Union. Nonetheless, the EU enlargement process has been gradually nearing its terminus and will not be the key element of the EU agenda in the future.

After Croatia's accession in 2013, the Western Balkans will remain the main focus of the EU enlargement policy. In principle, the European Union consented to incorporate all countries of this region at the Thessaloniki European Council summit in 2003. However, in the case of the Western Balkans, additional stages and instruments were introduced in order to exercise more efficient pressure and ensure better compliance with the required criteria. In addition to the already well-known membership obligations, Brussels made further demands in the framework of the Stabilization and Association Process, such as the collaboration with the International Criminal Tribunal for the Former Yugoslavia, the protection of ethnic minority rights or the establishment of the regional cooperation between the Western Balkan countries. The European Union also replaced previous financing mechanisms with the more comprehensive Instrument for Pre-accession Assistance for both candidate countries and potential candidate countries. Its budget for the period 2007–2013 amounts to EUR 11.5 billion.

The former Yugoslav Republic of Macedonia has already accomplished a lot on its way to EU membership. The Macedonian government applied for EU membership in 2004 and the European Council decided in 2005 to grant Macedonia

the status of a candidate country. In 2009, the European Commission recommended the opening of accession negotiations. However, serious domestic issues such as the successful integration of the sizable Albanian minority and external factors such as the lasting conflict with Greece regarding the official name of the country can considerably delay the completion of the accession process.

Montenegro applied for EU membership in 2008, just two years after the proclamation of its independence. In 2009, the status of a candidate was granted to this country. After the fulfilment of seven key priorities identified by the European Union, Montenegro officially started the accession negotiations with Brussels in 2012. This small former Yugoslav republic has made a significant progress on its path towards EU membership and has already closed the first chapter on science and research. However, major obstacles like a high level of corruption and organised crime remain unresolved.

The accession of Serbia to the European Union is one of the major challenges to the EU enlargement process. The lack of cooperation with the International Criminal Tribunal for the Former Yugoslavia seriously disrupted the dialogue between Brussels and Belgrade. The issue was solved only in 2011 when the last of Serbia's suspected war criminals were extradited to the Hague. Another huge challenge for the country's future membership is Serbia's relationship with its former province – Kosovo. Belgrade has obstinately refused to recognize its independence, but it is constrained under continuous EU pressure to cooperate with Pristina in exchange for achieving progress on Serbia's path towards membership in the European Union. Significant concessions made by Belgrade speeded up the accession process. Serbia formally applied for the membership in 2009 and was granted the status of a candidate country in 2012. The opening of the accession negotiation depends on Serbia's general progress and particularly on its willingness to normalize day-to-day relations with Kosovo. Serbia is also required to enact reforms concerning its judiciary system, the fight against corruption and organized crime.

Bosnia and Herzegovina remains a potential candidate for EU membership. Due to a high number of unresolved domestic issues linked to the difficult coexistence of different ethnic groups, and a complicate security situation that requires the presence of the EUFOR/Althea military mission, it is highly improbable that this country will make any significant progress towards meeting the EU membership criteria in the foreseeable future.

Albania is also a potential candidate. This country submitted the formal application for EU membership in 2009 and the European Commission adopted a favourable opinion on granting the status of an official candidate country in 2012. The further progress on Albania's path towards full membership directly depends on the stable functioning of democratic institutions and the successful implementation of large-scale internal reforms. The European Union especially pointed out that significant improvement should be made in the judicial system, public administration and parliamentary rules.

Despite not being a full-fledged sovereign state (five EU members did not recognize its independence), Kosovo is officially considered a potential candidate as well. The European Union declared its commitment to help Kosovo's reconstruction through offering clear European prospects. The ambiguity of its status greatly hinders the EU–Kosovo relations, in particular it impedes the conclusion of international agreements. At present, the European Union examines the legal possibilities for signing the Stabilization and Association Agreement.

Turkey is a long-standing candidate for joining the EU. This country submitted the application for membership in the European Economic Community in 1987, but the accession negotiations were only launched in 2005. In fact, Turkey's prospects for joining the EU are rather uncertain. Brussels opened only 13 of the 35 chapters. The negotiations have been stalled so far because of the frozen conflict over Turkish-occupied north Cyprus and the refusal to give the diplomatic recognition of the Republic of Cyprus. Human rights violations in the name of the fight against the Kurdish people also attracted a lot of controversy. A multitude of other sensitive issues should be addressed by Turkey as well – such as gender equality or freedom of expression. More importantly, some EU members question the Europeanness of Turkey, voice their concern over the impact of a Muslim country on the EU and therefore object its membership.

Iceland greatly differs from other countries that aspire for EU membership. Unlike other candidates, this Nordic state previously established very close links with the European Union in the framework of the European Economic Area and other bilateral and multilateral arrangements, adopted a considerable portion of the *acquis communautaire* and is in good economic shape. Therefore, the degree of compliance with the membership criteria was already very high when Iceland submitted its application in 2009. The accession negotiations started in 2010 and the major part of chapters is already closed, while others do not cause significant controversy. However, fisheries and agriculture policies are very delicate and sensitive issues for Iceland and Reykjavik is not ready to make significant concessions in these matters. There were also tensions over compensations to EU citizens after several Icelandic banks collapsed in 2009. In addition, the opposition to a bid for the membership in the European Union is deeply rooted in the society of this Nordic country.

Norway and Switzerland voluntarily decided to remain outside the European Union and thus became known as 'Reluctant Europeans'. Both countries considered at some point the possibility of joining the EU, but the accession process was never completed. Norway was very close to becoming an EC/EU member twice, but the outcomes of both referendums – in 1972 and in 1994 – demonstrated that the Norwegian society rejects the idea of EU membership. Currently, this Nordic country is associated with the EU through the participation in the European Economic Area (EEA). Switzerland was even more opposed to being part of the EU. This Alpine country did not only reject the EU membership, but refused to participate in the EEA. At present, the EU–Swiss relations are based on the two

packages of bilateral treaties. Both Norway and Switzerland will stick to the non-membership choice at least in the medium-term perspective.

Conclusions

After the Eastward enlargement, the European Union became the immediate neighbour of the post-Soviet area where several countries which are located in the European part of the former USSR declared their intention of joining the European Union. Whilst Russia or Belarus never seriously examined the possibility to become EU members and are involved in Eurasian integration processes, Moldova or Georgia explicitly stated their interest in joining the EU. European integration is considered a fundamental priority of their domestic and foreign policy. At this stage the EU is unwilling to recognize them as potential candidates and is ready to offer an alternative to membership in the form of the Eastern Partnership and strengthen the bilateral relationship through concluding the Association Agreement.

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Artur Adamczyk

The EU's Policy Towards the Mediterranean Region – Success or Failure?

Introduction

The phenomenon of the Arab Spring which swept through the Middle East and North Africa states (MENA) has shown the 'fragility' of the international system in this area of the world. The Mediterranean Basin may be considered the soft underbelly of Europe, as it has 'always' been an area of interests of Western European governments, which was particularly apparent in the process of establishing relations between the countries of the region and the EU. The principal determinants influencing the relations of the countries located at the Mediterranean Sea were the economy and the security policy.

The MENA states are an important outlet market and destination of investments for European enterprises. The European countries, on the other hand, are the main recipients of goods produced by the African societies, including first of all energy resources, which are necessary for the functioning of developed economies.

Security issues are related to the high political instability of the region: there are many international conflicts there (the most important one being, naturally, the Israeli-Palestinian conflict) resulting in a kind of regional arms race and many terrorist organisations are active there as well. The fact that the region is so conflict-ridden results in large waves of Arab emigration to European countries, which has an adverse impact on the economic situation in Europe.

Genesis of the Mediterranean policy of the European Communities

The European Communities started cooperating with the countries of North Africa already in the 1960s, when they signed the association agreements with Tunisia and Morocco, with further agreements signed in the subsequent decade

with Israel, Egypt, Lebanon, Algeria, and Jordan.[1] The Community member particularly interested in developing the cooperation with its Mediterranean neighbours was France. In 1972, the EEC launched the initiative called the Global Mediterranean Policy (GMP) with the aim of creating a framework for cooperation covering the entire Mediterranean area. This Community undertaking concerned Algeria, Cyprus, Egypt, Israel, Jordan, Malta, Morocco, Syria, Tunisia, as well as some European countries: Albania, Greece, Portugal, Spain, Turkey, and Yugoslavia.[2] The GMP did not involve comprehensive multilateral cooperation. It was a Community initiative which led to the signing of bilateral agreements concerning trade as well as financial and technical aid for the individual countries of the region. Owing to these agreements, the countries of the region were given the opportunity to sell industrial goods in the European Communities.[3] However, the extent of this cooperation was very limited, as the industrial production in the North African countries was not developed. The main sector of their economies was still agriculture and agricultural products were not subject to the aforementioned agreements, as the European countries were unwilling to jeopardize the competitiveness of their own agricultural products.

The events of 1973, that is the Middle-Eastern crisis and the resulting economic crisis in Western Europe, forced the European Communities to intensify their cooperation with the Arab states in both economic and political terms. Once the Arab countries limited the supply of energy resources to Western Europe, the Community member states were becoming more involved in solving the Palestinian-Israeli problem, stressing the Palestinians' right to self-determination. Another breakthrough in the relations between the Western European countries and the Mediterranean countries took place in the second half of the 1970s, when a new generation of association agreements were signed, resulting in deepening the economic cooperation in the trade in industrial and agricultural goods, as well as regulated the problem of Arab immigration into the EEC.[4]

Very important changes in the relations between Western Europe and the Mediterranean countries took place in the 1980s. The European Mediterranean countries – Greece, Spain and Portugal – which had earlier been involved in cooperation under the GMP, now joined the European Communities. The structure of the economies of the new EC members as regards industrial and agricultural goods was similar to the economies of Arab countries. This economic similarity

[1] P.J. Borkowski, *Partnerstwo Eurośródziemnomorskie* (*The Euro-Mediterranean Partnership*), Warszawa 2005, pp. 120–122.

[2] Greece and Turkey received a special status under these agreements, as they were striving after full membership in the European Communities. For more see: G. Bernatowicz, *Polityka Śródziemnomorska UE* (*EU Mediterranean Policy*), "Sprawy Międzynarodowe" no. 4/1995, p. 64 fp.

[3] V. Knoops, *Euro-Mediterranean Relations and the Arab Spring*, "Background Brief" no. 6, October 2011, pp. 3–6.

[4] In 1975–1977, the EEC signed association agreements with Israel, Algeria, Morocco, Tunisia, Egypt, Jordan, Lebanon, and Syria.

contributed to an increasing rivalry between these two groups in terms of revenue from trade in the Community markets. The countries of North Africa were losing this competition.[5] Paradoxically, the admission of the three European Mediterranean countries to the EC attracted more attention to the political situation in this region among the governments of the EC members, mainly due to the large waves of immigrants appearing in the EEC markets.

The situation in Europe and in its closest neighbourhood changed fundamentally in the late 1980s and early 1990s. In consequence of the collapse of the bipolar system, the European Communities had to go through a deep institutional reform in order to meet the new political and economic challenges. As a result, the European Union was established as a new actor in global international relations with the ambition to play an important political role in East-Central Europe and in the Mediterranean Basin. In 1991, the Communities initiated the New Mediterranean Policy, under which cooperation in the region was to be deepened through stimulating economic development, encouraging greater foreign investments in the region, increased financial aid and further regulation of the Arab states' access to the Common Market.[6] Furthermore, this new Community initiative executed by the European Commission emphasised the need to respect human rights and democratic values in the region. However, the inclusion of these principles in the documents of the European Commission later proved to have no greater impact on the development of cooperation between the European Union and the Mediterranean countries. The EU financial aid for these countries was provided without any conditions concerning reforms and did not put any pressure on the Arab states to introduce democratic principles in their politics.

The EU initiatives of deepening the cooperation with North African countries did not bring any significant success in the first half of the 1990s. The reason for this was not the lack of interest of the Member States in this region, as the countries of the European South, such as France, Spain, Portugal, Italy, or Greece, were keenly observing the situation in the Mediterranean Basin. However, the main attention of the EU members was drawn to their Eastern neighbours – the countries which declared the desire to join the European Union after the collapse of the Eastern Bloc.[7] It should be stressed that in the early 1990s, the strongest EU country – namely Germany – was mainly interested in stabilising the political situation at its eastern border. Consequently, the relations with the EU's Southern neighbours were of secondary importance.

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[5] F. Bicchi, *Euro-Mediterranean Relations in Historical Perspective* in: *The Euro-Mediterranean Dialogue: Prospects for an Area of Prosperity and Security – A Report edited by the Foundation for European Progressive Studies with the Support of Fondazione Italianieuropei*, Rome 2009, pp. 15–19.

[6] G. Bernatowicz, *Polityka Śródziemnomorska UE* (*Mediterranean Policy of the EU*), "Sprawy Międzynarodowe" no. 4/1995, p. 68 ff.

[7] R. Gomez, *Negotiating the Euro-Mediterranean Partnership: Strategic Action in EU Foreign Policy*, Hampshire 2003.

Euro-Mediterranean Partnership

In the 1990s, the policy of the EU Member States towards North Africa consisted mainly in monitoring the political situation. The aim behind the monitoring was to prevent the occurrence of any crisis which could cause a wave of threats to EU societies. The European politicians relaxed their vigilance concerning the Mediterranean Basin in 1993, with the signing of the Oslo agreement, which presented a real chance to end the Israeli-Palestinian conflict. At that time, the EU Common Foreign and Security Policy was only a recent development, as it had been established by the Treaty of Maastricht. This new EU initiative had a grand name, but was utterly ineffective, which was especially apparent during the war in the former Yugoslavia.

In 1994, the concerns of the southern EU Member States – Greece, Italy, France, and Spain – caused by the instable situation in the Balkans induced the EU to undertake a more active stance in the policy towards the Mediterranean region. The governments of these countries managed to convince the other Member States that the main threat to their security was originating in this particular region of the world. Immigrants from North Africa were reaching not only the south of Europe, but due to the internal freedom of movement of persons, they were now appearing in other parts of the continent as well. Furthermore, terrorist organisations were becoming active within the Arab diasporas inhabiting the European countries, which caused a widespread sense of threat among the citizens of the European Union. The ultimate source of this threat was, in the opinion of Europeans, the instable situation in the Mediterranean region.

In this atmosphere of anxiety, European decision-makers decided to 'pacify' the situation in the southern neighbourhood of Europe and put forward a new offer of cooperation with the Arab states, including financial aid. The Euro-Mediterranean Conference organised in Barcelona in 1995 was attended by the representatives of all the EU Member States (15) and 12 actors from North Africa and the Middle East: Morocco, Algeria, Tunisia, Egypt, Israel, Jordan, Syria, Lebanon, Turkey, Cyprus, Malta, and the Palestinian Authority.[8] Libya did not take part in the Conference as it was subject to UN sanctions. The most important result of the Conference the adoption of the Declaration establishing the Euro-Mediterranean Partnership (Euromed).

The Partnership was to involve three forms of cooperation, commonly referred to as baskets. The first form of cooperation concerned political and security issues. Its main goal was to maintain stability and peace in the region. In this case, the European countries focused on cooperation with the Mediterranean countries in combating terrorism and organised crime. It stressed the principle of

[8] R. Hollis, *No Friend of Democratization: Europe's Role in the Genesis of the 'Arab Spring'*, "International Affairs" no. 1/2012, p. 82.

non-proliferation of nuclear weapons and the commitment to adopt conventions on disarmament in order to gradually reduce the armaments in the region. Furthermore, this basket included declarations on actions aimed at ensuring respect for the fundamental principles of freedom and human rights.[9]

The second basket concerned economic issues, which were the most important for the countries of North Africa and the Middle East. This form of cooperation included economic and financial partnership. The aim of this basket was to establish a zone of prosperity based on bilateral relations. According to the plan, the cooperation would result in decreasing the differences in development between the countries of the Mediterranean region and the European Union and in establishing a free trade area by 2010.[10]

The last basket concerned cooperation in the field of culture and social issues. Apart from the standard objectives related to scientific exchange, promotion of culture and student exchange, the basked additionally involved cooperation in migration-related issues. The European countries particularly stressed the development of cooperation in combating immigration. It should be emphasised that no liberalisation in the free movement of workers was planned under the Euro-Mediterranean Partnership.[11]

The Conference in Barcelona was to be the beginning of a new stage in the relations in the Mediterranean region, referred to as the Barcelona Process. Its goals were very noble, as they included a thorough revision of the image as well as the political, economic and social architecture of the region. It was even planned that an area of security, stabilisation and peace would be established in the Mediterranean Basin by 2010. However, European politicians quickly restrained themselves, realising that this plan was impossible to execute due to the ongoing Israeli-Palestinian conflict as well as other conflict issues in the region. The very initiative of cooperation between European and Arab states called the Euro-Mediterranean Partnership was, in fact, not at all a partnership, as its participants were, on the one hand, highly developed European economies united in a single block and, on the other hand, very diverse and often conflicted countries of North America and the Middle East. The southern countries of the Mediterranean region had not formed any common and solid supranational structure which would have a strong position in the negotiations with the rich northern countries. Therefore, it is of no surprise that the implementation of the Euro-Mediterranean Partnership consisted in working out mainly bilateral agreements between the EU and the individual countries of the region.

While evaluating the effects of the Barcelona Process, several years after its initiation, we should explicitly stress that the provisions highlighted in the

[9] Ibidem, p. 83.

[10] For more see: S. Radwan, J. Reiffers, *The Euro-Mediterranean Partnership, 10 Years after Barcelona: Achievements and Perspectives*, Marseille 2005.

[11] R. Hollis, *No Friend of Democratization...,* op.cit., p. 83.

Barcelona Declaration and concerning security and peace in the region, combating terrorism and illegal immigration, as well as developing a free trade area, reflected the interests of the European countries. In theory, these provisions were also in the interest of the North-Eastern and Middle-Eastern states, but, in fact, they were much more interested in developing such forms of cooperation which give their products access to the EU market. However, while the European countries quickly agreed to liberalise the movement of industrial goods, they kept blocking the elimination of customs duties on agricultural goods. As a result, the free trade area for industrial goods established between the EU and the countries of North Africa and the Middle East provided the European states with access to a huge outlet market for their products. The consent to the establishment of the free trade area for industrial goods was a great challenge and risk to the Arab states, as it was commonly known that they were not able to compete with the thriving European enterprises in this field. Concluding the execution of this provision could potentially lead many Arab companies to bankruptcy. However, the southern Mediterranean countries were hoping that this was but the first stage of cooperation and that in the future the free trade area would include agricultural goods and fishery. This was also the reason why the Arab states made the difficult decision to introduce arduous reforms to prepare their economies for future participation in a free trade area with the European Union.[12] Paradoxically, those EU countries which were particularly interested in cooperation with the Arab states for security-related reasons – that is France, Italy, Spain, Portugal, and Greece – were blocking the liberalisation of the trade in agricultural products, as they wanted to protect their national producers.[13]

Of course, the EU states were aware that opening the markets of Arab countries to the industrial goods from the EU was a threat to Arab economies and were offering financial aid to support the market transformations.[14] However, this aid was insufficient and could not make up for the possible losses. Thus, it was impossible to decrease the disproportions in development in the region and they basically remained unchanged, while the establishment of a prosperity area in the Mediterranean Basin remained an empty declaration.

More than a decade after the commencement of the Barcelona Process, we can see that its results reflect primarily the goals and interests of the European countries. Owing to the Euro-Mediterranean Partnership, the EU members have ensured a relatively stable situation in the region and limited the inflow of immigrants from North Africa.[15] Some mutual benefits, however, can be found in the

[12] F. Bicchi, *Euro-Mediterranean Relations*..., op.cit.

[13] S. Radwan, J. Reiffers*, The Euro-Mediterranean Partnership*..., op.cit.

[14] *The Euro-Mediterranean Partnership Ten Years On: Reassessing Readiness and Prospects*, 23 June 2006, http://www.imf.org/external/np/speeches/2006/062306.htm (last visited 4.05.2013).

[15] For more see: J. Marks, *High Hopes and Law Motives: The New Euro-Mediterranean Partnership Initiative*, "Mediterranean Politics" no. 1/1996, pp. 1–24.

field of economy, as new-generation association agreements have been signed with Tunisia, Morocco, Jordan, Egypt, Algeria, Lebanon, the Palestinian Authority, and Israel.

None of the provisions concerning human rights and the processes of democratisation included in the documents drawn up in the wake of the Barcelona Conference were actually implemented. This was a taboo topic in the relations between the signatories of the Partnership. European politicians tolerated authoritarian regimes in North Africa, as long as these maintained the *status quo* which ensured security for Europe. This behaviour of EU decision-makers can only be deemed two-faced. While they preached respect for human rights and democratisation of politics, at the same time they worked hand in hand with authoritarian regimes of North African states.[16]

Furthermore, the cooperation was to be institutionalised under the Partnership, mainly through the organisation of Euro-Mediterranean Summits – regular meetings of the EU Heads of State or Government with the leaders of the Arab states subject to the Partnership programme. This obvious pampering of the Arab leaders was further intensified after the terrorist attack on the World Trade Center in September 2001, when fear of potential similar attacks in Europe spread among the EU citizens. What the EU was expecting of the leaders of the Arab countries was, primarily, combating terrorism and monitoring their borders to prevent illegal migration. The anxiety was further increased by the terrorist attacks made in 2004 in Spain and a year later in the UK. European politicians completely 'forgot' about the implementation of the principles of democracy in the Arab states, as they understood that the most important matter was Europe's security. EU decision-makers realised that the processes of democratisation in the Mediterranean region would entail the possibility for Islamic political parties to democratically take power. These parties were associated with terrorist movements which posed a threat to European security. With this in mind, it comes of no surprise that from the perspective of the European countries, the best solution was to maintain a *status quo*, which ensured a stable situation in the region.

New cooperation initiatives in the region: the European Neighbourhood Policy and the Union for the Mediterranean

The early years of the 21th century brought a great challenge to the Mediterranean region due to two key events. In 2003, Americans invaded Iraq in retaliation for that country's contribution to Al-Qaeda's attack on the World Trade Center. Pursuing its military goals, the US Government incorporated them in the offer of conducting political, economic and social changes in the Mediterranean Basin and the Middle East. The initiative, named The Broader Middle East and

[16] M. Beck, *The Comeback of the EU as a 'Civilian Power' through the Arab Spring?*, "GIGA Focus" no. 2/2013, pp. 2–3.

North Africa Initiative (BMENA), was presented in June 2004 at a G8 summit.[17] Essentially, the American undertaking turned into a fiasco, as the initiative met with a negative response of the Arab states, who approached the notion of an American intervention in the Middle East with outright hostility.

The second important event for the region was the accession of ten new countries to the European Union. The great enlargement scheduled for May 2004, in which several Eastern European countries as well as Malta and Cyprus joined the EU, completely changed the geopolitical situation in Europe and its surroundings. The new shape of the EU border brought both new opportunities and risks to the Member States. Already in March 2003, the European Commission prepared the document "Wider Europe – Neighbourhood: A New Framework with our Eastern and Southern Neighbours",[18] which included guidelines for the EU foreign policy towards its new neighbours. In this document, the Commission proposed the establishment of a zone of prosperity and a friendly neighbourhood, a ring of friends, in which – due to the considerable interdependence between the EU and its immediate neighbours – stability, security and sustainable development could be promoted. The ultimate goal of the zone would be to achieve such a level of integration as to share 'everything but institutions',[19] modelled after the European Economic Area – composed of EU and EFTA countries. The new EU initiative established as a result of the actions taken in 2004 was referred to as the European Neighbourhood Policy (ENP).[20] This undertaking was addressed to the six eastern EU neighbours (Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine), as well as the ten Mediterranean actors (Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, the Palestinian Authority, Syria, and Tunisia).[21]

Compared with the aggressive policy of the USA, pursued in the name of promoting democracy in the region (the intervention in Iraq), the EU's initiative was associated by the international public opinion with a manifestation of soft power. Nevertheless, the Arab states were approaching the EU proposal with great reserve, as it's documents referred to the implementation of democratic values which would be a threat to the Arab authoritarian regimes. The MENA countries were trying to show the EU that they are able to create their own structures of cooperation. In 2004, in Agadir, an agreement was signed on free trade between

[17] In 2004–2006, annual meetings of representatives of the US Administration and representatives of selected countries of the region were held under the BMENA, but they were mostly courtesy meetings. The initiative died a natural death due to the Arab states showing no interest in it. See: http://bmena.state.gov/ (last visited 26.06.2013).

[18] *Wider Europe – Neighbourhood: A New Framework with our Eastern and Southern Neighbours*, COM (2003) 104 final, 11.03.2003.

[19] R. Prodi, *A Wider Europe – A Proximity Policy as the Key to Stability. Peace, Security and Stability International Dialogue and the Role of the EU*, speech delivered in Brussels, 6.12.2002.

[20] For more see: P. Marcinkowska, *Europejska Polityka Sąsiedztwa* (*European Neighbourhood Policy*), Warszawa 2011.

[21] A. Adamczyk, *The Role of Poland In the Creation Process of the Eastern Partnership*, "Yearbook of Polish European Studies" vol. 13/2010, p. 197.

Morocco, Tunisia, Egypt, and Jordan.[22] This undertaking, however, was more a political manifestation than an actual readiness to cooperate.

The European Union's proposal to deepen the cooperation in the Mediterranean region presented in the ENP could not be ignored by the Arab states, for whom access to the European market was of great importance. Furthermore, it included an offer to provide financial aid, very attractive to North African countries. The main instrument of the ENP are action plans, which the EU was signing under bilateral relations with its neighbours. The main principle of the implementation of the plans was that the EU would provide its neighbours with financial assistance in return for meeting the political and economic conditions specified in the given plan. Initially, the Mediterranean countries were not happy with the proposal to base the cooperation on bilateral agreements. Previously, under the Barcelona Process, cooperation was based on the relations of the entire region. Theoretically, bilateral agreements gave the Arab countries a greater chance to negotiate a faster access to the European market for their products.

EU politicians counted on the ENP to contribute to the stabilisation of the situation in the south of Europe, as the initiative's main aim was to ensure the security of the EU through surrounding it with a ring of democratic countries.[23] However, their enthusiasm connected with the introduction and implementation of the European Neighbourhood Policy faded quickly when it turned out that the neighbours of the EU were not that eager to introduce effective political and economic reforms as it had been assumed. The lack of positive transformations was especially apparent in the Mediterranean region. It seems, however, that the European Union was not at all interested in introducing elements of democracy in these countries and that it put emphasis only on economic cooperation. In the opinion of Arab politicians, the ENP brought no visible positive effects due to insufficient funds allocated by the EU to this aim. A significant flaw of the ENP was that eastern countries and the MENA states were considered a single group of neighbours, and as a result the EU failed to take an individual approach to the different problems that the countries subject to the neighbourhood policy were struggling with. However, the most important flaw of the undertaking was the lack of the proverbial 'carrot'. When the EU established the initiative, it stressed that the countries subject to it had no prospect for full membership in the EU. With no ultimate reward in view, neighbour countries had only little motivation to conduct the reforms expected by the EU.

As there were no significant changes in the EU's neighbourhood, the EU societies were continuously concerned about illegal immigration, organised crime and international terrorism. The stagnation in the relations between the European

[22] http://www.medea.be/en/countries/arab-world-general/agadir-agreement/ (last visited 26.06.2013).

[23] A. Del Sarto, T. Schumacher, *From EMP to ENP: What's AT Stake with the European Neighbourhood Policy Towards the Southern Mediterranean?*, "European Foreign Affairs Review" no. 1/2005, p. 26 fp.

Union and its southern neighbours induced France to propose another initiative: the Union for the Mediterranean (UfM).[24] It brought a new dimension of cooperation, a form update of the Barcelona Process.[25] The UfM was established in 2008 and included a total of 44 participants. This members of this new undertaking are all the countries participating in the Euro-Mediterranean Partnership, as well as Turkey, Monaco, Bosnia and Herzegovina, Montenegro, Albania, and Mauretania. Another member of the UfM is the League of Arab States.[26] Libya was also invited to join the cooperation, but the country's leader at that time – Muammar Gaddafi – believed the initiative to be a form of neo-colonialism and rejected the invitation.

The Union for the Mediterranean is a continuation of the provisions included in the Barcelona Declaration, but its main goal is to achieve closer cooperation in the region through the execution of multilateral projects. These projects are to focus on, for instance: construction of transport, land and sea infrastructure; environmental protection and use of renewable energy; scientific cooperation (through the establishment of two Euro-Mediterranean universities). Some projects concern financial aid in the form of loans for small and medium enterprises.[27] The UfM is financed from the instrument of the European Neighbourhood Policy. As the decision on the establishment of this initiative was made when the EU Financial Perspective for 2007–2013 was already set, it was difficult for the EU Member States to find more funds to finance it. The next decision, which gave more gravity to the UfM, was the establishment of institutional structures linking the EU Member States with the Mediterranean countries. A permanent Secretariat of the Union for the Mediterranean was established in Barcelona and it was agreed that Euro-Mediterranean summits would be held every two years on the level of Heads of State or Government. Furthermore, a co-presidency system was introduced, under which the presidency in the UfM would be simultaneously held by the EU Member State holding the Presidency in the Council of the European Union and one non-EU state from the Mediterranean region.[28] This decision was to symbolise that the UfM was based on equal partnership between the countries of the North and the South. The first countries holding the co-presidency were France and Egypt.[29]

[24] E. Soler i Lecha, *Barcelona Process: The Union for the Mediterranean*, Madrid 2008, p. 28.

[25] M. Cholewa, *Polityka Śródziemnomorska Nicolasa Sarkozy'ego* (*Mediterranean Policy of Nicolas Sarkozy*), "Stosunki Międzynarodowe" no. 3–4/2011, p. 237.

[26] For more see: P. Marcinkowska, *Europejska Polityka Sąsiedztwa* (*European Neighbourhood Policy*), Warszawa 2011.

[27] K. Kauch, R. Youngs, *The End of the Euro-Mediterranean Vision*, "International Affairs" no. 5/2009, p. 965.

[28] O. Schlumberger, *The Ties do not Bind: The Union for the Mediterranean and the Future of Euro-Arab Relations*, "Mediterranean Politics" no. 1/2011, p. 141 ff.

[29] R. Gillespie, *Adapting the French 'Leadership'? Spain's Role in the Union for the Mediterranean*, "Mediterranean Politics" no. 1/2011, pp. 59–78.

The establishment of the UfM meant that the European Union admitted the fiasco of the European Neighbourhood Policy. The most significant change in the EU's approach to the Mediterranean states was the separation of these countries from the EU's eastern neighbours. Nevertheless, the fact the initiative would provide for a cooperation between as many as 44 actors made the effectiveness and efficiency of this new undertaking uncertain.

EU's policy towards the Arab Spring

In July 2008, when the project of the Union for the Mediterranean was adopted at a summit in Paris, it seemed that the European Union would be successful in building a new system of economic, political and social relations in the Mediterranean region. Two years later, in December 2010, the Arab Spring started in Tunisia, from where it spread to the east of Africa and to the Middle East. This process is still ongoing, as manifested for example by the civil war in Syria. It might seem that the phenomenon of the Arab Spring is related to the EU's cooperation initiatives in this region, that it is a result of the introduction of the principles of democracy that EU decision-makers were striving to implement there. This is, however, not the case.

The very occurrence of the Arab Spring is proof of the failure of the EU Mediterranean policy. Since the very beginning, the project of the Union for the Mediterranean had been undergoing a crisis. Generally speaking, the initiative failed to introduce any significant changes in the relations with the Arab states and essentially copied the tasks already functioning under the ENP. In the opinion of experts, the undertaking was overly technical and its execution consisted mainly in avoiding projects of political nature.[30] The goal that the EU politicians were after was the establishment of cooperation in specific sectors, primarily in the energy industry.[31] The Arab countries were accusing the EU that it was once again trying to arbitrarily embroil them in a project together with Israel. The leaders of these states explicitly warned the EU that as long as Israel conducted an aggressive policy towards the Palestinian Authority, any broad cooperation in the region with Tel Aviv would be impossible. Any attempts to organise meetings with Israeli politicians were futile, as some Arab leaders announced that they would boycott them. In consequence of subsequent crises in the Middle East (such as the Israeli Operation Cast Lead directed against the Palestinians), the Euro-Mediterranean summits in 2009 and 2010 were called off.[32] According to Arab politicians, the unsatisfactory effects of the UfM are also the result of insufficient funds allocated to this initiative. For such a huge regional undertaking, with

[30] M. Beck, *The Comeback of the EU...*, op.cit., p. 3.

[31] O. Schlumberger, *The Ties that Do not Bind: The Union for the Mediterranean and the Future of Euro-Arab Relations*, "Mediterranean Politics" no. 1/2011, pp. 135–153.

[32] F. Bicchi, *The Union for the Mediterranean, or the Changing Context of Euro-Mediterranean Relations*, "Mediterranean Politics" no. 1/2011, p. 12.

44 participant countries, a budget of seven and a half billion euro is definitely not enough.

However, it seems that the aforementioned problems did not contribute to the outbreak of the Arab Spring. Analysts argue that social revolutions would take place in North Africa and the Middle East regardless of the cooperation with the EU. Therefore, we can, of course, criticise the EU for its 'sin of omission' towards the ruling elites of the Arab countries and failing to induce them to execute reforms aimed at implementing the principles of democracy. However, on the other hand, we should point out that even the ruling elites of the North-African countries were not fully aware of the scale of their societies' discontent with the state of affairs. The principal culprit behind the eruption of discontent among the Arab societies frustrated by poverty were the immensely rich and corrupt authoritarian regimes. The countries of North Asia, officially named republics, were in fact ruled by dynasties (Ben Ali in Tunisia, Gaddafi in Libya, Mubarak in Egypt, al-Assad in Syria), which have created a vast economic chasm between the small ruling class and the rest of the society.[33] The corrupt governments did not distribute the profits from selling energy resources or from the tourist sector justly and, eventually, they were overthrown.

European politicians also failed to correctly assess the situation in North Africa. First, the EU Member States were not really convinced that such social movements had any chance of succeeding. It was assumed that since the authoritarian power in the Arab countries was based on military power, they should be well able to deal with any revolutions of this kind. A good example of such wrong assessment was the address delivered by the French Minister of Foreign Affairs, Michèle Alliot-Marie, delivered after the pro-democratic demonstrations in Tunisia, who declared that the *status quo* in this country should not be upset and that Europe should not worsen its relations with the president of Tunisia.[34] It was a mistake of the European politicians to underestimate the power and desperation of the frustrated Arab revolutionaries.[35] Probably for the same reason, the EU members failed to react quickly to the Arab Spring, as they preferred to observe the process than to become involved. Any quick response consisting in supporting the social uprisings could ruin the relations with authoritarian regimes, if the anti-establishment movements were pacified.

[33] L. Anderson, *Demystifying the Arab Spring. Parsing the Differences Between Tunisia, Egypt, and Libya*, "Foreign Affairs", May/June 2011, p. 3.

[34] M. Beck*, The Comeback of the EU*..., op.cit., p. 3; P. Morillas, *Bilateralism, Multilateralism and the Euro-Mediterranean Regional Project after Arab Spring* in: *The Arab Spring One Year Later: Voices from North Africa, Middle East and Europe*, eds. J. Janning, A. Frontini, "EPC Issue Paper" no. 69, July 2012, p. 32.

[35] T. Schumacher, *New Neighbours, Old Formulas? The ENP One Year After the Start of the Arab Spring* in: *The Arab Spring: One Year After. Transformation Dynamics, Prospects for Democratisation and the Future of Arab-European Cooperation*, A. Ghali (et al.), "Europe in Dialogue" no. 2/2012, p. 90.

The belated response of the EU was also a consequence of the weakness of the EU Common Foreign and Security Policy or, in fact, of the lack of such policy, as there is still no internal unity in the decision-making in this field.[36] Some countries demanded a quick response and some preferred to wait before they took a stand and decided to support one of the sides. We should remember that the new elements introduced into the EU foreign policy by the Treaty of Lisbon were only at the stage of implementation. This was the first serious political crisis faced by Catherine Ashton, the High Representative for Foreign Affairs and Security Policy. The European External Action Service was also only being formed.[37] Unfortunately, the EU foreign policy towards the Mediterranean region has never been coherent and will probably remain like this for a long time to come. This is most apparent in the reactions of the EU Member States to the Israeli-Palestinian conflict, issues related to combating terrorism and limiting illegal immigration.[38] The differences in opinion among the Member States regarding the joint reaction were later also apparent in the context of the intervention in Libya and the involvement in the conflict in Syria.

Another important element which contributed to the belated reaction of the European Union were the internal economic problems of the EU itself. The financial crisis in the euro area and the catastrophic debt of Greece were the most significant economic shock faced by the EU during the process of European integration since World War II. The most important political actors in the EU, that is France and Germany, were focusing on internal issues related to combating the financial crisis. The other countries which should be most interested in the Mediterranean policy, namely Spain, Portugal, Italy, Greece, also had their hands full struggling to deal with the economic crisis. Consequently, despite watershed events taking place in the south of the Mediterranean Basin, the external policy became of secondary importance to the EU.

When it was obvious that the foundations of the authoritarian regimes began to crumble, the EU took a series of actions aimed at supporting the anti-establishment movements in the Arab countries. The assets and bank deposits of President Ben Ali and his officials were frozen. An embargo was placed on weapons supplies to Libya and imports of goods from this country were halted in order to demonstrate the EU's displeasure with the military actions of Gaddafi's regime taken against the rebels.[39] What is more, the European countries offered financial aid to the Tunisian and Libyan opposition and suddenly recalled that they had the

[36] L. Anderson, *Demystifying the Arab Spring...*, op.cit., p. 114.

[37] In June 2011, Christian Berger took the post of Director for North Africa, Middle East, Arab Peninsula, Iran and Iraq at the European External Action Service. Cf.: R. Balfour, *The Arab Spring, the Changing Mediterranean, and the EU: Tools as a Substitute for Strategy?*, "EPC Policy Brief", June 2011.

[38] R. Balfour, *EU Conditionality after the Arab Spring*, "PapersIEMed.", June 2012.

[39] E. Viilup, *EU's Weak and Slow Reaction to Arab Spring has no Excuses*, "Opinión Europa", February 2011.

possibility of using a conditionality policy towards the authoritarian states.[40] First of all, however, the European Union was trying to control the situation regarding the wave of immigrants from North Africa appearing at the southern border of the EU.

Only with time did European politicians appreciate the importance of the transformations taking place in North Africa and believed that the Arab revolutions might actually succeed and the authoritarian regimes be overthrown. The EU Member States started wondering how to find their new place in the changed political situation in the Mediterranean Basin, so as to ensure security on the southern border. They started thinking about establishing and strengthening contacts with the new governments, trying to show the readiness to provide help and assistance in executing reforms and modernising the Arab states towards democracy. Moreover, European countries made an 'examination of conscience' trying to identify their mistakes and omissions in their past policy towards the Arab states. In July 2012, the President of the European Commission José Manuel Barroso said: *'in the past too many have traded democracy for stability'*.[41] The Commissioner responsible for the ENP, Stefan Fule, voiced a similar opinion: *'we are continuously struggling to keep our values and interests as close as possible in dealing with Southern neighbourhood. It is clear that we cannot return to the old days of complacency towards authoritarian regimes'*.[42]

The main charge against European politicians in the context of relations with the countries of North Africa was failing to develop relations between Europe and the Arabs on the level of the civil society. The relations were limited only to those between the EU and the authoritarian elites, and consequently the image of the social situation in these countries was blurred. Perhaps European politicians did not appreciate the possibility that such a society could exist in the Arab countries in the local dimension. In fact, this shows that they disregarded the factor which was the motor behind the social uprisings. At the same time, while the civil society proved very strong, it was not organised, as there was no tradition of civil society in the Arab countries. Therefore, it is the EU's task to channel this factor and help the Arab societies use it to form various types of social organisations which would contribute to the development of democracy in the Arab states.[43] Consequently, the European Union should play the role of the teacher of political pluralism. The EU, which is still afraid of Islamic fundamentalism, has to pass on its know-how on building civil society structures as an alternative to religion-based state institutions. Political pluralism, freedom of speech and voting in free and universal suffrage is the best path towards establishing new state structures.

[40] See: D. Jankowski, *Po „arabskiej wiośnie – „zima" dla europejskiej obrony?* (*After the 'Arab Spring' – A 'Winter' for European Defence?*), "Bezpieczeństwo Narodowe" no. 18/2011.

[41] M. Beck, *The Comeback of the EU*..., op.cit., p. 3.

[42] S. Fule, *One Year after the Arab Spring*, "Europost", 28.01.2012.

[43] *Power to the People. Reactions to the EU's Response to the Arab Spring*, Oxfam, 14 November 2011, p. 4 ff, http://www.oxfam.org (last visited 4.05.2013).

The future of the EU Mediterranean policy

A reform of the European Neighbourhood Policy proposed in the second half of 2012 in consequence of the actions taken by the European Union resulted in the establishment of the European Endowment for Democracy (EED) and the creation of the Civil Society Facility.[44] The EED's aim is to support a political transformation in the Arab states and develop an institutional system in these countries based on the *trias politica* principle. Another goal of this undertaking is the establishment of a pluralist party system and development of the civil society through the establishment of non-governmental organisations. Emphasis will also be put on the development of education, combating illiteracy and improving the quality of the healthcare system. However, EU officials clearly stressed that the principles of providing financial aid to neighbour countries would be revised. The High Representative Catherine Ashton announced that the principle of conditionality – the rules of providing more funding for more reforms ('more for more') and giving less funds for slowing down reforms ('less for less') – will be used in the cooperation between the EU and the Arab states.[45] An additional incentive for those Arab countries which are most determined to achieve quick changes was to be the project of the so called three Ms (more Money, Market access, Mobility).[46] Furthermore, a new EU programme named SPRING (Support for Partnership, Reforms and Inclusive Growth) was launched. It was addressed to the countries of the Mediterranean region, for which in 2012 the amount of EUR 285 million was allocated. The total EU financial aid under the ENP in the Mediterranean region in 2011–2012 was EUR 7 billion.

Observing the actions of EU decision-makers, we can see that there was nothing new about the proposal. While the principle of conditionality was not actually included in the association agreements signed under the Mediterranean Partnership after 1995, the agreements included provisions referring to penalties for infringing upon the principal values of this undertaking. All agreements included listings of possible coercive measures ranging from suspending financial aid to severing relations.[47] However, these possibilities were never used during the functioning of authoritarian regimes in the Arab countries. Therefore, Catherine Ashton's statement should be understood as announcing that the European Union will start using these measures once an ENP country starts slowing down its internal reforms. But what about the countries which are not at all interested in introducing such changes, for example Algeria? Most probably the EU will not use coercion measures on them, as we can infer from its attitude towards Egypt, where despite democratic parliamentary and presidential elections, the army still

[44] *Review of the Review – of the European Neighbourhood Policy*, "CEPS European Neighbourhood Watch" no. 71, May 2011.

[45] *Power to the People. Reactions to the EU's Response...*, op.cit.

[46] R. Balfour, *EU Conditionality After the Arab Spring...*, op.cit., p. 21.

[47] Ibidem, pp. 15–16.

remains the main party influencing the country's political life. In this case, the EU's activity is limited to calling for respect for the principles of democracy and human rights.[48]

The European Union should therefore venture beyond the typical patterns of operation. The catchphrases on close relations and deepened cooperation, repeatedly used by European politicians, have long stopped working in the Mediterranean region. Brussels should offer a long-term cooperation to the countries of North Africa and the Middle East. The strongest mechanism for influencing the European Union's neighbours is a promise of membership in this organisation. The countries of North Africa have no chance of joining the EU, so this instrument of EU's influence cannot be used in this case. Hence, European politicians are only left with the option to deepen economic cooperation with the Arab states, mainly by signing ever more advanced association agreements.[49] Since December 2011, the European Commission has been conducting preliminary negotiations on signing of the Deep and Comprehensive Free Trade Agreements (DCFTA) with Morocco, Tunisia, Egypt, and Jordan. The main goal of these states is to gain access to the European common market for their agricultural products and to obtain financial aid. In February 2013, direct negotiations on this issue were commenced with Morocco. The next country in line is Tunisia.[50]

Perhaps it is precisely the gradual economic integration of these countries with the European Union that is the best instrument for stabilising this region. Indeed, the economies of most Arab countries are still dependent on the European market. There remains, however, the problem of the conditionality, 'more for more', which, in the opinion of the Arab states' governments, infringes upon their sovereignty.[51] It would seem that until the situation in North Africa stabilises, the European Union will not be able to use this rule and will engage in a policy of listening and observing rather than demanding and putting pressure. The reason is that the EU's position has been weakened in the Mediterranean region. After the Arab Spring, some countries, e.g. Egypt and Libya, have become somewhat distrustful of European politicians.[52] Their attention is much rather drawn to the east, to the political model of Turkey and the financial model of Saudi Arabia.

[48] T. Schumacher, *New Neighbours, Old Formulas*..., op.cit., p. 96.

[49] T. Schumacher, *The EU and the Arab Spring: Between Spectatorship and Actorness,* "Insight Turkey" no. 3/2011, vol. 13, p. 113.

[50] *EU's Response to the "Arab Spring: The State-of-Play after Two Years*, European Commission, 8 February 2013, A 70/13, http://europa.eu/rapid/press-release_MEMO-13-81_en.htm (last visited 27.06.2013).

[51] R. Balfour, *Changes and Continuities in EU-Mediterranean Relations after the Arab Spring* in: *An Arab Springboard For EU Foreign Policy?*, eds. S. Biscop, R. Balfour, M. Emerson, Gent 2012, p. 33.

[52] K. Kausch, *Supporting Transitions In The Arab World* in: *Challenges for European Foreign Policy in 2013. Renewing the EU's Role in the World*, eds. G. Grevi, D. Keohane, Madrid 2013, pp. 58–59.

Most important challenges faced by the EU in the Mediterranean region

The most important challenges faced by the European Union as regards the changes taking place in the Mediterranean region include the redefinition of its policy towards Islamic organisations and parties. As it has been mentioned previously, for many years European politicians believed that the only alternative to authoritarian regimes in the Arab countries was Islamic fundamentalism connected with the Al-Qaeda. Therefore, it was natural for the EU to turn a blind eye to the non-observance of human rights in the Mediterranean region, as it was the lowest price that the EU could pay for maintaining the *status quo* in the region and preventing Islamic parties from gaining power. Of course, this was the lowest price for the EU, but quite a high one for the societies of North Africa.[53]

European politicians and societies associate Islam primarily with its most radical branch which calls for a holy war. This stereotype stems from the fact that most terrorist organisations in the world originate with Islamic fundamentalism. The media further consolidate this image regularly providing information about terrorist attacks or attempted attacks made by such organisations. Furthermore, the most important contemporary armed conflicts take place in the Middle East and it is there that religion-based military operations take place as well.

However, it should be firmly stressed that the social revolutions of the Arab Spring had rather no religious background and were not incited by Islamist organisations. This does not mean that religion did not play any role at all. With no political pluralism – no political parties, no NGOs, no freedom of speech, etc. – the only places were the people could gather and express their discontent were mosques. It is in the places of religious cult, where the people could gather and organise themselves, that the social opposition against the dictatorship was channelled.[54] Consequently, we were dealing with a paradoxical situation where European countries, scared of Islamic fundamentalism, were working with the regimes, while the Arab societies struggling against these regimes considered mosques the only places where they could gather and express silent opposition. However, the leaders of the Arab Spring revolutions were not religious leaders. This movement had a clearly socio-economic foundation and was an expression of deep poverty and a chasm between the poor society and the rich authoritarian elites. During the revolutions, Islamists usually did not get involved, but rather observed the course of events. Nevertheless, after the uprisings, it turned out that they were the best organised social groups which could establish order in the revolutionised countries.[55]

[53] For more see: V. Perthes, *Europe and the Arab Spring*, "Survival" no. 6, vol. 53, December 2011–January 2012, p. 79 ff.

[54] O. Taspinar, J. Laurence, *Will Europe Shrink from the Arab Spring?*, "World Politics Review – Arab Spring, Global Repercussions", December 20, 2012, p. 13–14.

[55] Ch. Boltanski, *Partie Allacha*, "Forum" no. 2/2012, pp. 14-15.

In the parliamentary elections organised after the Arab Spring, parties who developed their ideologies on the basis of the Islam received considerable social support. In Tunisia Islamists got 41 per cent of votes, in Morocco 27 per cent, and in Egypt as much as 60 per cent (including 24 per cent support for the Salafist movement, the most fundamentalist of all Islamic parties). This proves that the idea of political Islam is highly popular among the Arab societies.[56] However, political Islam has its drawbacks. Islamic parties are divided and conflicted and hence do not constitute a solid political monolith.[57] Experts monitoring the phenomenon of political Islam are rather sceptical about the possible future success of this movement. Nevertheless, the European Union and its politicians have to learn to work with the Islamic parties of the Arab states. It is high time that the stereotype of Islamic parties associated only with fundamentalism and terrorism be countered. There is a very important role to play for European politicians, as well as European media and education.

It seems that European politicians have changed their attitude towards the Islam. We are witnessing the process of accepting the role of this religion in the democratisation of the Arab countries.[58] If political parties based on religious communities are given power in democratic parliamentary elections, the EU (pursuant to the principles it is promoting) has to respect this choice. Ignoring the democratic decisions of the Arab societies would be destructive for the EU itself, as the EU would thus completely forfeit its influence in this region. Parties are behind the governments with which the European Union has to work, while striving to achieve stability in the Mediterranean region.

Conclusions

There is no doubt that the policy of the European Union towards the Mediterranean region should be approached with criticism. What the decision-makers in Brussels can surely be blamed for is the fact that they were turning a blind eye to the authoritarian behaviour of dictators in Arab countries as they were set on maintaining the *status quo* in this conflict-ridden region. The relations between the Union and the Arab states was dominated by the principle that a dictator who was not causing any problems was better than a fundamentalist threat.[59] The European Union, which developed the foundation of its own integration on the basis of the principles of democracy and respect for human rights, somehow seemed to forget about these roots in its relations with the Arab states. However, the position of European decision-makers comes as no surprise. None of the Arab states (apart from Lebanon)

[56] O. Taspinar, J. Laurence, op.cit., p. 14.

[57] Ch. Boltanski, *Partie Allacha...*, op.cit.

[58] P. Frisch, *The Arab Spring – Why, Possible Implications, What Can Europe Do?* in: *The Arab Spring One Year Later: Voices from North Africa...*, op.cit., p. 31.

[59] S. Parzymies, *Aspekty wewnętrzne i międzynarodowe „Arabskiej wiosny"* (*Internal and International Aspects of the 'Arab Spring'*), "Stosunki Międzynarodowe" no. 3–4/2011, p. 59.

had ever had a democratic system before and because of cultural and social differences it seemed that such a system would be rather difficult to introduce in North Africa. Due to the potential threat of destabilisation in the Mediterranean Basin, the reality outweighed the EU's idealist values and principles in policy development. Luis Amado, the Minister for Foreign Affairs of Portugal, made it explicit by stating: *'Foreign policy is not necessarily only based on principles but also on interests. And in that sense, our foreign policy is no different from that of all those European states which currently face the same type of foreign policy developments. It is absolutely ridiculous to wish to develop ties based on the democratic conditions of each country. If that were the case we would not have ties with many countries with whom we have had ties for decades'*.[60] While analysing the EU's Mediterranean policy, it is understandable why European politicians chose to focus on real concerns. At the meetings with Arab leaders they were constantly confronted with warnings that if the dictators were to be overthrown, Islamic fundamentalists working with the Al-Qaeda would take power.[61] This type of 'intimidation policy' used by the authoritarian regimes fell on fertile soil in the European Mediterranean countries. The Arab dictators implied that it was better for the EU not to interfere with the internal situations of their countries, as this would cause a collapse of the delicate balance of power and political destabilisation in the Mediterranean Basin which could result in the rise of Islamic fundamentalism. We should also point out that the EU was counting on being able to introduce some socio-political changes towards democracy through a long-term step-by-step policy by means of economic relations. However, the EU suspended the execution of the conditionality policy in the relations with the authoritarian regimes, as it came to the conclusion that such a policy would not contribute to preserving stability and ensuring security of European countries. Of course, we can criticise the European Union for its past Mediterranean policy. We should also stigmatise the duplicity of the EU as an organisation which has put democracy and human rights among its founding principles, while in relations with its neighbours it purposefully forgot them in order to pursue its particularistic interests. The history of international relations shows that, unfortunately, issues of democracy and morality are used rather instrumentally by states pursuing certain goals in the international arena. In its Mediterranean policy, the most important issues for the EU were the economic and the security-related ones. Internal social and political problems of the Arab states were mostly of little interest to European politicians. The EU was focusing on maintaining security in the region, controlling immigration, gaining access to energy resources, and on opening the Arab markets to European industrial goods. These were the key elements in the relations between the EU and the countries of North Africa.

[60] After: G.P. Herd, V. Yan, *The Arab Spring: Implications for Europe-Eurasian Relations*, "Central Asia Security Policy Brief" no. 6/2011

[61] O. Taspinar, J. Laurence, op.cit., p. 13.

The Arab revolutions forced the European Union to change this policy. As, of course, European countries are still mainly interested in stability and security in the region, the EU will have to learn to cooperate with the new political 'powers' which will emerge in the Arab states and these states expect the EU to provide them with assistance as well. Naturally, they mostly count on financial aid which would contribute to the economic development of these countries and improve the living conditions. The European countries must also intensify the trade exchange with the Arab countries, as development of economic cooperation is the best way to pass on and consolidate the values that Europeans hold dear. Increased economic cooperation, greater opening to products coming from the Arab countries and scientific exchange can contribute to a better transfer of thought between the societies of Europe and North Africa and, consequently, combat the negative stereotypes on both sides of the Mediterranean.

Obviously, in consequence of the Arab Spring, the role of the European Union in the Mediterranean region has been reduced. The economic crisis in the euro area has further weakened the position of the EU in the relations with the countries of North Africa. The EU Member States – Greece, Spain, Italy – that had considered themselves models for their southern neighbours have been economically compromised and politically weakened. Not long ago, it seemed that Turkey would fill the void left in the Mediterranean sub-system by the European Union, as the country was rising to the position of a regional power. However, the events in the Taksim Square have shown the frailty of the foundations of the Turkish political arena. The future of the Mediterranean region remains uncertain. As long as the Israeli–Palestinian conflict and the civil war in Syria last, it is hard to predict how the situation in the region will develop. It will also be hard for the EU to rebuild a strong position in this part of the world.

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The European Union and Asia, Latin America and Sub-Saharan Africa – Different Regions, Particular Policies

Introduction

Since 2008, there has been an intensification of structural changes in the world economy, involving especially quick economic advancement of some non-European state subjects, including the largest among them, identified with the group of BRICS (Brazil, Russia, India, China and South Africa). This process has resulted in a new balance of power in the international economic order (with obvious impact in political order as well). This paper focuses on the relations between the EU and these emerging economies of Asia, Latin America and Africa. It is divided into subject areas which present the internal and external factors determining the character of cooperation between the EU and selected areas of the region known, until recently, as South, which should be defined since 2008 as emerging markets. It presents the main dimensions of these relations and their current status. Attention was drawn to the problems and challenges facing the EU in its relations with non-European countries on the international stage, particularly in the context of the increasing globalisation of economic processes.

The paper consists of four parts: The first part, devoted to China, was written by Bogdan Góralczyk; the second, focusing on India, was prepared by Jakub Zajączkowski; the third and fourth part, both written by Kamil Zajączkowski, deal with Latin America and Sub-Saharan Africa respectively.

1. EU – China relations: equal partners or different potentials?

Formal diplomatic relations with the People's Republic of China (PRC) were established by the Communities already in 1975, that is towards the very end of the 'Mao Zedong era' (1949–76). Initiated by Deng Xiaoping in late 1978, the

pro-market reforms and the opening up to the world (*kaifang*) naturally resulted in the two partners' increased interest in each other, although this was much more true for individual large European states, such as Germany, France, Italy, or the UK, than for the Community as a whole. Only after the Treaty of Maastricht and the establishment of the European Union (EU), the relations became more formalised and intensive; even more so, as starting with 1992 – with the famous Deng Xiaoping's Southern Tour and a new reforming impulse, which was essentially his political testament, in which he drew the right conclusions for China after the fall of the Soviet Union and the collapse of the Cold War order – the PRC entered a new stage of reforms. Now it plunged itself into globalisation, opened up to the world even further and entered the world markets, which at that time were already almost exclusively capitalistic. With this, even though the EU was still a relatively incomplete entity, it became of interest to China, while European companies and capital became interested in the PRC to a much greater extent than before.

Dense network of mutual relations

Due to the above factors, already in the mid-1990s there was talk about a strategic partnership, which, however, was formalised only in 2004. The EU presented the first programme document, or a strategy towards the PRC, in the form of "A Long-term Policy for China-Europe Relations", already three years after its establishment, that is in 1995. In this document the EU went beyond the previous EEC-China Trade and Economic Cooperation Agreement (in force since 1985), inflexible in both form and content. The two parties became aware that this time the goal was to establish much more complex and multidimensional relations, beyond a simple trade exchange. The subsequent EU Strategic Papers of 1998, 2001 and 2003 only confirmed this tendency. The network and density of mutual relations was growing rapidly, as proven, among others, by the launching, already in June 1992, of a bilateral political dialogue (even despite the negative repercussions of the events in Tiananmen Square in spring 1989), which was soon (April 1998) raised to the rank of annual summits of the leaders of both sides, organised interchangeably in the EU and China (the most recent, 16th summit, was held in Beijing on 21 November 2013).

In 2003, China finally presented its Policy Paper regarding the relations with the EU. The paper stated that the relations were now better than ever before and that there were neither any noteworthy differences in the bilateral dialogue nor any sources of military threat, which bids well for the future of these relations. This strategy was supplemented and extended several times by China, but its core and meaning has remained the same: the EU is a good, profitable and useful partner for the quickly developing China.

The positive attitudes of the two partners, the quickly developing trade exchange and any other mutual turnover, as well as China's accession to the WTO in late 2001 were what led the two parties, already in the mid-2000s, to speaking

about closer partnership and comprehensive partnership. On this basis, three parallel solutions and mechanisms have been introduced:

- On 20 December 2005, in London, the bilateral EU-China Strategic Dialogue was initiated. Its agenda and scope of participation exceeded the annual leader summits, but nonetheless the latter were not suspended. So far, three such meetings were held, the latest one on 9–10 July 2012;
- Following this, the construction of an entire network of strategic sector dialogues was initiated (for example: in May 2006 on regional cooperation, in December 2006 on macroeconomic dialogue, in November 2007 on climate protection; also, the earlier dialogue, conducted since 1995, on human rights was extended to include round tables on the development of the civil society). In total, there are now more than 50 of these regularly held sector dialogues and they concern not only the economy and trade, but also issues such as global challenges, modern technologies, including alternative energy sources, as well as cultural, student and tourist exchange;
- The entirety of the relations definitely went beyond the initially promoted and still most important issues, namely the economic and trade-related ones, and the relations were divided into three pillars: political dialogue, economic and sector dialogue, people to people dialogue, with special emphasis on human rights on the EU's part.

Economy-based strategic partnership

This way the two parties are heading from an initial constructive engagement to the implementation of a comprehensive strategic partnership. The latter one has been mentioned by the two parties for several years now, but they have still not produced the actual document to confirm it. It is clear that the visible dynamism of development in this regard was halted by the crisis in the world markets in 2009, which has had a serious impact on both partners and has noticeably changed their roles: the EU, and the entire West, is following the USA into crisis, while in the same period, the PRC rises to become the indisputably most important emerging market, increasingly confident in its ever more important role and increasingly more assertive in the international arena.

China's international position has undergone a particularly dramatic change in the last three decades and, as we now know, China's share in world economy and trade soared as well. According to calculations made by Justin Yifu Lin, Chief Economist and Senior Vice President of the World Bank in 2008–2012, between 1979 and 2009 Chinese exports grew on average by 16 per cent annually. While on the eve of its own reforms China provided only 0.8 per cent of the global trade in goods, in 2012 its share already exceeded 10 per cent. The WTO data shows, in turn, that in 2009 China's share in world exports was 12.7 per cent (after the USA with 16.2 per cent) and in world imports – 10.5 per cent (after the EU with 17.4 per cent and the USA with 16.7 per cent). The crisis in the global markets has weakened these tendencies to a certain extent (see Chart 1), but in the context

of the deep collapse of the Western markets, China's position has relatively improved, which allowed it to become the largest exporter in the world in 2010 and the largest country trading in the world in early 2013. In other words, the 2008 crisis has decidedly strengthened China's position, but it has also caused a heated internal debate on how to react to this new situation: whether to keep focusing on internal transformation or, perhaps, take a greater responsibility for global issues. It seems that there is no agreement in this matter and that the previous consensus regarding Deng Xiaoping's directive from the early 1990s to stick to the ancient formula of *taoguang yanghui*, i.e. slowly gather strength and hide own potentials, is no longer as eagerly pursued by the Chinese leaders and elites as it used to be.

Table 1. Dynamics of China's merchandise global trade: 2000–2012 (billion USD)

2000	24.1
2001	22.6
2002	30.4
2003	25.6
2004	32.0
2005	101.9
2006	177.6
2007	262.2
2008	297.4
2009	198.2
2010	184.5
2011	157.9
2012	232.8

Source: Economist Intelligence Unit; W.M. Morrisom, *China's Economic Rise, History, Trends, Challenges, and Implications for the United States,* Congressional Research Service, Washington D.C., 13 July 2013, p. 21.

Of course, such processes and phenomena affect the positions of both sides. The EU and the other partners simply cannot fail to notice China's quickly growing role in the world economy and trade, and constantly strive after the best possible access to the Chinese huge, dynamic and highly profitable market. China, in turn, cares about the access to the EU as the largest and most modern market in the world next to the USA.

Since that moment, the bilateral relations between the EU and the PRC have exhibited new phenomena, such as China putting emphasis on the dialogue with the individual EU Member States, starting with the most important one, with Ger-

many, as well as a visibly increased presence of China in Europe – previously either purely nominal or barely noticeable – due to the country's growing power. China's involvement in Europe concerns three dimensions at once:

- through purchase of bonds, starting with those issued by EU Member States struggling with economic problems or heavily indebted, such as Greece, Portugal, Spain, or even Italy;
- entering the European market with own direct investments, including fusions and takeovers, such as the well-known purchases of Volvo and the port in Pireus, or the less well-known transactions, for example, in the German market (takeover of the chemical concern Putzmeister by Sany and of the electronics company Medion by Lenovo), the British market (takeover of Emerald Energy by Snochem), the Hungarian market (the chemical conglomerate BorsodChem), the Bulgarian market (construction of an automobile factory and nuclear power plant – project Selene), and the Polish market (Huta Stalowa Wola);
- participation in European public procurement in order to take over the individual sectors, at least as subcontractors (as e.g. in Poland in the case of the Kozienice Power Station).

There is no doubt that the entire EU–PRC partnership is still based on trade exchange and economic cooperation. This is confirmed by the state of the mutual exchange as in mid-2013, as it shows that the EU is still China's most important trade partner, outstripping both the USA and Japan, while China is the most important partner of the EU in terms of imports and the second most important partner, after the USA, in terms of exports. Altogether, this constitutes the most dense network of trade relations in the world, which in 2011 – according to the Eurostat – generated EUR 136.2 billion in exports (20 per cent more than in 2010) and EUR 292.5 billion in imports (3 per cent more than in 2010). As we can see, the mutual trade is constantly growing. While in 2004–2008 it virtually doubled, it has slowed down thereafter, but the growth rate still remains generally a two-digit value. The principal flaw of and a serious problem in these relations – just as it is the case with the China–USA trade – is invariably the huge trade deficit on the EU's part, which has recently exceeded the amount of EUR 150 billion per annum.

Table 2. EU – China trade (billion euro)

	2001	**2005**	**2007**	**2010**	**2011**	**2012**
Imports	82	160	229	282.5	292.5	289.9
Exports	31	52	72	113.4	136.2	143.8
Balance	–51	–108	–157	–169.1	–156.3	–146.1

Source: http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113366.pdf (last visited 30.07.2013).

Another sign of the key importance of economy in the mutual relations is the third plane of top-level cooperation – next to the annual summits and the strategic dialogue – namely The EU-China High Level Economic and Trade Dialogue, launched in Beijing in April 2008. It proves that the cooperation is constantly deepened and broadened, as can be seen not only in trade, but also in the exchange of services (according to the Eurostat: EU services exports to China in 2011 amounted to EUR 25.1 billion, while EU services imports from China the same year amounted to EUR 17.5 billion), another proof for this being the level of mutual investments, which used to be unidirectional – from the EU to China – but after 2010 has gradually become bidirectional. So far, however, the volume of the two directions is not equal (in 2011, EU investments in the PRC amounted to EUR 17.7 billion, while Chinese investments in the EU, almost non-existent until recently, amounted to EUR 3.1 billion), although this may change in the future.

Strategic interests – not entirely similar

Although they are partners, the EU and the PRC are very different. The EU is a highly unique entity, complex, still nascent, and constitutes the first ever attempt to create a supranational structure. As such, it is 'a post-modernist' entity, while China, although communist in name, remains a traditionalistic state, deeply attached – and recently ever more deeply – to its long civilisational tradition, which greatly differs from the tradition of the Western world. The EU has no choice, it has to look into the future, but China prefers looking into the past, especially its own past. The EU has no common national goals, while China looks at the world primarily from the angle of its own national interest. As they are very different, they also perceive each other in a different way and even though they constantly keep emphasising their similarities, they also formulate goals and interests differently.

It seems that from the point of view of the EU, the most important issues in the relations with China are as follows:

- constant deepening and broadening the dialogue, both the bilateral one and the one concerning the most important global problems and challenges (non-proliferation of nuclear weapons, terrorism, cyber-terrorism, climate change, environmental pollution, etc.), as especially after the 2008 breakthrough it is becoming more and more obvious that none of these issues can be solved globally without the participation of the emerging markets, and particularly China. In other words, the essential goal is to finally follow up on the appeal voiced by the former head of the World Bank, Robert Zoellick, who stated that China should become a 'responsible stakeholder' in the international arena and accept its share of responsibility for global issues;
- supporting the Chinese process of transformation and change, and, as far as possible, influencing it so that the country keeps heading towards the

rule of law and respect for human rights, as defined in the EU and generally in the West (that is respecting individual rights, and not solely collective rights, as it is usual in the Chinese tradition, which additionally puts emphasis on social rights and living conditions and not on individual freedoms);

- supporting the process of integrating the Chinese economy with the world economy, which is a necessity in an age of communicating vessels and supranational markets (financial and capital). After 2008 it became clear that without China's participation, dealing with the global crisis (of the capitalist economy) would be much more difficult;
- promoting the EU's own soft power and positive image, which is a particularly demanding task considering the crisis in the euro area and in many individual Member States, mainly those located in the Mediterranean Basin (the PIIGS).

It is only natural that China perceives Europe in a different way. From its point of view, the most important goals regarding the EU and its Member States are as follows:

- to remain the most important trade and economic partner, and – in the context of the consequences of the 2008 crisis and the uncertainty regarding the future of European integration – to maintain the dialogue with the individual Member States and sign agreements on strategic dialogue and partnership with the most important ones among them, such as Germany. In a sense, this resembles more and more the 'divide and rule' strategy, although in this case it is probably more adequate to speak about the ancient Chinese formula *yi yi zhi yi* (using barbarians to control barbarians);
- to take advantage of European solutions in the field of governance, law and social reforms (with special emphasis, as has been shown recently, on an in-depth analysis of the Scandinavian development model and the Scandinavian social solutions);
- to use own reserves – instead of only entering the European markets and attracting investments from Europe, as it has been so far (these reserves are indeed huge: in mid-2013 China's foreign exchange reserves were estimated to amount to USD 3.5 trillion) – to enter the highly developed European markets and, among others, thus take advantage of advanced technology (which will, naturally, only deepen the already burning issue of ownership rights, weighting on the mutual relations); in this context, we should note that the Chinese public discourse after 2010 and the debate conducted ever since on the Chinese model of development (*Zhongguo moshi*) have been putting ever more emphasis on the development of an 'innovative society', including alternative energy sources (solar panels, wind turbines, biomass, etc.), 'green economy', or even 'coal-less economy', among others;

- to maintain the scientific exchange – very profitable to China – as well as cultural and tourist exchange;
- to conduct a strategic dialogue with the EU in the context of multilateralism in international relations, a concept strongly favoured by China, which immediately after 2008 took the form of nearly undermining the USA's dominant role in world politics and strategy and the American dollar's dominance in world finance. In time, this trend turned into promoting various formats of cooperation – not necessarily with Western participation and often even against Western interests (e.g. the Shanghai Cooperation Organisation, BRICS, the G-20, or the CAFTA – a free trade area between China and the ASEAN). A favourable or at least neutral position of the EU regarding these and similar initiatives would be welcome for China;
- to promote the image of China as an increasingly open state and society, one that is undergoing rapid changes and which is, consequently, modern, as well as to continue conducting a 'Charm Offensive' (a handy term coined by Joshua Kurlantzick) to keep changing China's image in the global arena, so far the country has been perceived mostly as a threat by the West (this is not always the case in other regions). The goal is to have China perceived not only as a huge market, but also a country of new possibilities and new opportunities in many different fields.

There are, of course, difficult and unsolved problems in the mutual relations as well. These include the EU embargo on military equipment, introduced shortly after the events in the Tiananmen Square, the 'market' status of the Chinese economy, ownership rights and copyright, the persisting problem of completely different interpretations of human rights, including such issues as Tibet, Xinjiang, or the imprisonment of Liu Xiaobo, winner of the Nobel Peace Prize, for his views (essentially largely coincident with the Western system of values). To top it all up, there is the fundamental and principal misunderstanding – the systems of values, so different in the EU and the PRC. Both sides, quite understandably, insist on sticking to their respective ones.

China – the decisive market among emerging markets

'Once a large but distant trade partner, China is now also a powerful actor within Europe itself', wrote the experts of the European Council on Foreign Relations, Francis Godement and Jonas Parello-Plesner. In addition, they presented some rather apocalyptic visions of the 'Chinese threat,' which could be a cathartic experience for European elites (including the Polish ones), still not sufficiently aware of the fact that the 2008 crisis and its long-term consequences have resulted in a considerable reorientation of the Chinese strategy towards Europe. Former fake merchandise, short-lived gym shoes or faulty electronics equipment, considered by many Westerners as – by definition – not much more than junk, was in time replaced by gadgets and functional technology of constantly improving qual-

ity, which was followed by Chinese banks and capital coming to Europe as well. Now this is an entirely different presence than what it used to be.

Regarding this new and unprecedented challenge (which could be a threat, but could also prove to be a new opportunity), Europe's answer seems especially bland and weak. Only Germany has its own strategy towards China. As a result, only Germany enjoys a relatively balanced trade exchange with China. All the remaining Member States and the EU as a whole suffer considerable deficits (in the case of Poland, the ratio is 1:11). If Europe wants to be an equal partner to the increasingly assertive China, it has to emanate an aura of unity, instead of signing individual agreements and contracts. Only by coordinating activities and deepening integration instead of fragmentation and renationalisation – as many European politicians would have it (to mention only the 'True Finns' of Timo Soini, as well as Geert Widlers, Jean-Marie Le Pen, or Viktor Orbán) – will we have a chance to maintain an equal partnership with the ever more powerful China.

Will China really continue to grow, if we consider that it has been slowing down recently and that other emerging markets either have trouble (India, Indonesia) or even seem undermined (Turkey, Brazil, Egypt)? In the light of the long-term tendencies and processes very well described in the well-known studies by Angus Maddison, the question is formulated incorrectly. Not so long ago, before the Napoleonic Wars, China and India were responsible for approximately the half of the world's GDP. Then they became either dependent colonies (India) or internally destabilised (China), which resulted in the fact that in the mid-20th century, after World War II, they became virtually marginalised. Now they are returning to their due place in the international arena – as they themselves believe. Even if presently they are experiencing a slowdown, according to all predictions the PRC could overtake the USA already in the early 2020s and become the first economy in the world (we should also note that China entered the 21st century as the sixth economy in the world and in 2010 it became the second one, after the USA, or the third one, if we count the EU as a single body).

What is more, China has already announced that in 2013 and 2014 it would implement a new reform package, which will address such issues as economy based on internal consumption and a rich internal market and not only exports, as it has been so far. According to the principles of this package, China is to become a country of sustainable development, 'green economy', caring for the environment and the climate, and its own increasingly wealthy society (the package includes the goal of doubling per capita income between 2012 and 2020) is to be both innovative and composed of a large middle class (which already exceeds 300 million people). Of course, we cannot be sure how many of these goals will actually be achieved – and how soon, but it is good to be aware of them and keep an eye out for any news from the Chinese internal arena. It is no longer completely unimportant to us, which is already a new development, for if China manages to succeed with its reform projects, it will become an even greater challenge to us

than before and we will have a much greater deficit in the relations with that country than just the one in trade. Should they fail to succeed, however, which is a possibility – due to the serious social tensions in the country, as well as problems related to the political reforms and the rule of law – China will nonetheless remain important to us, since even now it has much influence in the world. Whatever the outcome of the reforms, we, the members of the European Union, need to speak with a single voice and pursue a common strategy towards China. As we do not have any such strategy, our negotiating position is ever worse. So far, or at least until roughly 2010, we were equal partners. If we fail to do our homework, soon we, the Europeans, could become supplicants humbly asking for China's attention. Do we really want that?

2. Evolution of the relations between India and the European Union around the beginning of the 21st century

India and the European Union – the nature and character of cooperation: towards multidimensional cooperation

Around the beginning of the 21st century, the relations between India and the European Union have been experiencing a growing importance of the economic factor, as well as the opening of new areas of cooperation. In the 1990s, in addition to further strengthening their economic relations, the EU and India decided to expand them to include political relations as well. The similarities in their visions of the future world were conducive to this. For the essence and the nature of these relations should be seen in the context of the transformation of the international order and the shared vision of the world.[1]

At the same time, due to the Chinese factor (the rise of China's power) and economic considerations, in the 1990s and at the beginning of the 21st century we have been observing the deepening of the cooperation between the EU and India. Since the signing of the Cooperation Agreement of 20 December 1993, India has been developing both economic and political relations with the European Union.[2] The first summit meeting of the EU and India was held on 28 June 2000, in Lisbon. At the next summits (23 November 2001 in New Delhi, 10 October 2002 in Copenhagen and 29 November 2003 in New Delhi), representatives of both sides discussed matters such as: security in the South Asia and Southeast Asia regions, combating terrorism, and strengthening economic and cultural cooperation.[3] In 2004, at the Haag Summit, the EU and India decided to establish a Strategic Partnership. At the sixth summit in 2005, in New Delhi, they signed an Action Plan, which outlined the schedule and areas of cooperation under the Strategic Part-

[1] J.N. Dixit, *Cooperation with Europe: Market and More*, "Indian Express", 10.07.2000.

[2] B. Vivekanandan, *India and Europe in the 1990s* in: *Indian Foreign Policy in the 1990s*, K.R. Pillali (ed.), New Delhi 1997, pp. 61–70.

[3] http://europa.eu.int/comm/external_relations/india/intro/summ_index.htm (last visited 22.07.2013).

nership.[4] The next two summits – the seventh, in October 2006, and the eighth, on 30 October 2007, confirmed the intention of the EU and India to strengthen mutual cooperation, also in the strategic dimension. The summits that followed were held in: 2008 (Marseilles), 2009 (New Delhi), 2010 (Brussels) and 2012 (New Delhi). At the 2012 summit, apart from the standard topics – i.e. negotiations on a free trade agreement and strategic cooperation – the participants talked about preventing cyber-terrorism and about space cooperation. Further institutionalisation of the India–EU relations took place with the establishment of a common consultation mechanism at the level of foreign affairs ministers (2011) and the initiation of the India–EU Dialogue on security and the India–EU Joint Working Group on Counter-Terrorism (2012).

India and the European Union have been stressing the role of common values, which was reflected in the Lisbon Declaration of 2000. Furthermore, they have been highlighting the need to deal with new challenges and risks, such as terrorism. Another document confirming the importance of India to the EU was the first Security Strategy in history, adopted by the EU on 12 December 2003. It stated that the EU should further develop the strategic partnership with India. In the communication issued in June 2004 entitled "An EU-India Strategic Partnership", it was stressed that the relations between the EU and India, based on common values, should develop on four planes: cooperation in international forums, conflict prevention, combating terrorism, non-proliferation of weapons of mass destruction; enhanced commercial and economic interaction, in particular through sectoral dialogue and dialogue; development cooperation and cooperation in the area of culture and science. In response to the communication, India issued a document – first ever of that kind – containing its strategy towards the EU. It stated that strategic partnership should be based on common values and mutual benefits, that it should concern the situation in South Asia and Afghanistan and that terrorism and weapon of mass destruction (WMD) are a common threat to India and the EU.

In 2004, at the fifth EU–India summit, the Indian Prime Minister described his country and the EU as 'natural partners', and a British MP added that they are natural partners, as they both believe in a multipolar world and are trying to build it. Ch. Patten, former European Commissioner for External Relations, said that the common values were the basis of EU–India relations at the beginning of the 21st century. In his opinion, the decision on launching the strategic partnership was not the result of strengthening economic and trade cooperation, but a reflection of the shared common values. He also added that India and the EU would be the guarantors of stability in the world. Shyam Saran, former Secretary of State

[4] *Political Declaration on the India-EU Strategic Partnership,* Brussels 2005, http://europa.eu/rapid/press-release_PRES-05-224_en.htm (last visited 22.07.2013); *The India-EU Strategic Partnership. Joint Action Plan,* New Delhi 2005, http://commerce.nic.in/India-EU-jap.pdf (last visited 22.07.2013).

in the Indian Foreign Ministry, stressed that India and the EU were important poles in this multipolar world.

In the matters of common values and risks (terrorism, WMD), there was a consensus among the political elites in India and the European Union, as shown by statements of Indian politicians and documents adopted by the government in New Delhi, both the one formed by the Bharatiya Janata Party (BJP) and the one formed by the Indian National Congress after 2004. In 2000, B. Mishra, adviser for national security, said that the Indian vision of the international order is no different than the European one, for both are rooted in pluralism and cooperation. Another event that served the purpose of building a multipolar world and realising common aspirations was the decision taken at the 6th ASEM (The Asia–Europe Meeting) Summit, a political and intercivilisational dialogue forum between the EU countries and 13 Asian countries. The decision concerned including India in the ASEM. In this context, we have to emphasise that both India and the EU support the process of integration in East Asia. We should also stress that, according to studies, business elites in India perceive the EU as model of integration and point out that the EU overcomes many differences by using instruments of economic integration. The EU law and structural funds are also perceived as positive elements.

While political elites focus on common values, human rights organisations, social organisations and academic teachers in India point to the positive role of the EU in the promotion of human rights, as well as social and development issues. The EU is seen as an important actor in areas such as: environment protection and food issues (India was positively assessed as the opponent of genetically modified food – GMO). According to S. Fioramonti, issues such as: the Union's humanitarian activities, its aid policy, support for democratisation (e.g. in Nepal), using diplomatic and trade instruments in external policy instead of military ones, were what has created a positive image of the EU in India.

Despite the development of political relations at the beginning of 21st century, what is still the most characteristic of the relations between New Delhi and Brussels is economisation. Although the Cold War has ended, the main dimension of cooperation is still trade. From 2000 to 2013, the trade between the EU and India increased by 80 per cent. The economic dimension is therefore the main catalyst of mutual relations. The value of trade rose from EUR 28.6 billion in 2003 to EUR 79.9 billion in 2011. In 2012, it was EUR 76 billion. Trade in services also substantially increased: from EUR 5.2 billion in 2002 to EUR 17.9 billion in 2010. In 2012, it reached EUR 22.5 billion. The EU is also an important investor in India. The investments tripled in 2003–2010: from EUR 759 million in 2003 to EUR 3 billion in 2010.[5] The dynamism of growth and investment in India was boosted by the elimination of restrictions in trade in cotton and in the telecom-

[5] http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_111515.pdf (last visited 22.07.2013).

munications sector. Furthermore, some phytosanitary regulations were made less strict. Since 2007, India has been negotiating a free trade area with the EU. At the same time, it should be stressed that, for India, the EU is the largest trade partner, while India is the ninth trade partner of the EU (in 2000, it was on the 17th place).

Table 3. India's international trade 2010–2011 (main directions)

Country/Region	Export		Import	
	billion USD	%	billion USD	%
EU	46.8	18.6	44.5	12.1
ASEAN	19.1	10.3	30.6	8.2
USA	25.1	10.4	20.05	5.6
China	19.6	7.8	43.5	11.5
Japan	5.1	2.1	8.6	2.6
South Korea	4.1	1.6	10.4	2.9
West Asia and North Africa (WANA)*	56.7	22.6	105.6	28.0
South Asia	12.8	5.1	2.1	0.6
Total	251.1	100.0	369.7	100.0

* UAE, Saudi Arabia, Iran, Egypt, Kuwait

Source: *Economic Survey*, 2010-11, Ministry of Commerce and Industry, Government of India, http://commerce.nic.in/eidb/default.asp (last visited 26.07.2013).

Table 4. India's main trade partners in 2010–2011 (million USD)

Rank	Country	Export	Import	Total trade
1.	UAE	34 349.10	32 753.16	67 102.26
2.	PRC	19 615.85	43 479.76	63 095.61
3.	USA	25 548.40	20 050.72	45 599.12
4.	Saudi Arabia	5 227.19	20 385.28	25 612.46
5.	Switzerland	677.56	24 802.00	25 479.55
6.	Hong Kong	10 329.65	9 415.40	19 745.06
7.	Germany	6 758.84	11 891.37	18 650.20
8.	Singapore	10 302.71	7 139.31	17 442.02
9.	Indonesia	6 245.33	9 918.63	16 163.96
10.	Belgium	6 296.21	8 609.82	14 906.02

Source: Ministry of Commerce and Industry, Government of India (last visited 26.07.2013).

India is strengthening its cooperation with the EU also in other areas. In particular space cooperation is developing fast at the beginning of the 21st century. In 2006, a memorandum on India's participation in the European Galileo programme was signed. India works with the EU in the areas of technology and science as well. The EU supports the involvement of India in the International Thermonuclear Experimental Reactor (ITER) project. The EU and India intensely strengthen their cooperation in science and education – Indian universities take part in Erasmus Mundus programmes. The EU has launched the EU–India Study Centres Programme, under which new European centres were established in India and Indian centres were in Europe (for example the Centre for Contemporary India Research and Studies at the Institute of International Relations, University of Warsaw).

At the same time, in recent years the role of the Hindi diaspora has been growing in countries such as: the UK, France or the Netherlands. New Delhi has been trying, since the beginning of the 21st century, to use the diaspora more effectively than ever before for economic and cultural promotion of India abroad. By improving its economic condition, India has become more active in foreign direct investment. In 2006, India was as the third largest foreign investor in the UK.

In this context, we should stress that since the 1990s, and especially since 2000, the exports of foreign investments have become an essential instrument of Indian foreign policy. What distinguishes it is a dynamic growth of investment to developed countries. In the 1980s, the value of these investments was only around USD 36 million, in the first half of the 1990s – USD 1.6 billion, and in 2000–2007 – over USD 15 billion. In 1990–1999, the main target of Indian investments was the European Union (over 30 per cent), followed by East Asia (14 per cent) and North America (11.5 per cent). The trend was maintained in 2000–2013. The major targets of Indian investments are particularly the UK and the Netherlands.[6]

Limitations and challenges to the India–EU cooperation

Despite their mutual declarations on strategic partnership, India and the European Union have not been treating each other as key political partners. The documents in question are mostly declarative. Indian researchers and politicians admit that there is more that divides the EU and India than unites them, for example, the method of fighting terrorism, the issue of Kashmir and the perception of international order, the issue of the international nuclear regime.[7] The EU and India differ in their approach to social standards as well. Brussels presses New Delhi to sign the ILO Convention on the Rights of the Child. These substantial differences between the Indian and European visions of international order were

[6] J.P. Pradham, *Emerging Multinationals: A Comparison of Chinese and Indian Outward Foreign Direct Investment*, "International Journal of Institutions and Economics" no. 1/2011, pp. 113–148.

[7] "The Hindu", 11.10.2002.

also mentioned by the then President of the European Parliament, J. Borrell, in his article titled *Giving Substance to EU–India Relations*.[8]

The main source of limitations in the EU–India relations is the fact that the European Union is not seen as a uniform whole. In fact, political and business elites perceive the EU through its individual Member States, and not as a single political organism. The shortcomings mentioned most often are the lack of an actual common foreign policy and the Union's institutional problems. India remains sceptical as regards the EU's capabilities in political and security matters, while some Indian researchers predict an economic crisis of the EU. The majority of the Indian society is not aware of the mechanics of the EU and its activities on a global scale. According to R.K. Jain, there is a huge deficit of EU-related information in India.

At the same time, the media and the political elites are much more interested in the strategy of the USA, as noted by the then President of the European Commission, Romano Prodi, who, when commenting on the lack of interest for the European Union in India, expressed his regret that India and Indians still perceived the USA as the most important and significant partner in almost all aspects of cooperation. He added that this negatively affected the perception of the European Union by the Indians. In this context, the American factor and the strengthening strategic cooperation between the USA and India effectively shape the Indian perception of the EU. As pointed out by an Indian expert – and stressed by the Europeans – India likes the EU, but loves the USA, although it is a difficult love.

At the same time, at the beginning of the 21st century India was strengthening its political relations with the USA. The key common point was the similar perception of international order represented by the USA led by G.W. Bush and India led by the nationalist BJP government. It was shown, for example by India's position on the conflict in Iraq expressed in 2002–2003, which was closer to the United States than to Western Europe. Unilateralism, emphasis upon military force, the concept of preventive attack made Indian and American visions of international order *'seem more and more akin'*.[9]

As pointed out by K. Sridharan, the development of closer relations between the USA and India was also possible due to the determination of A.B. Vajpayee's government to establish a strategic partnership with Washington.[10] C. Raja Mohan said that at the beginning of the 21st century that *'India formulated a new paradigm in its relations with the USA, as manifested by India's position assumed to the war in Iraq and to American National Missile Defence (NMD) programme'*.[11]

[8] J. Borrell, *Giving Substance to EU-India Relations*, "The EurAsia Bulletin" September-October 2006.

[9] C. Raja Mohan, *India and the U.S.-European Divide*, "The Hindu", 26.09.2002.

[10] K. Sridharan, *Explaining the Phenomenon of Change in Indian Foreign Policy Under the National Democratic Alliance Government*, "Contemporary South Asia" no. 1/2006, pp. 75–91.

[11] C. Raja Mohan, *Crossing the Rubicon. The Shaping of India's New Foreign Policy*, New Delhi 2006, p. 34.

To sum up, India does not treat the EU as its principal political partner. That role is attributed to the United States.[12] The situation did not change even after the Indian National Congress took over in India in 2004. This is manifested, among other things, by the agreement on military cooperation, signed in June 2005; the programme entitled "Next Steps in the Strategic Partnership", concerning four areas: civil nuclear and space technologies, trade in IT and defence cooperation, implemented since 2004; and the agreement between India and the USA of 2 March 2006 on civil aspects of cooperation in the field of nuclear energy.

Most experts agree that the India–USA relations will become even closer. A. Gupta argues that both share *'interests that are complementary to one another'* – especially in the long run.[13] In this context, we have to add that the Europeans do not perceive India as a potential counterbalance for the growing power of China. On the other hand, India believes that while emphasising the importance of democracy and human rights, the EU strengthens its relations with China, and treats Beijing much more seriously than New Delhi. Indians stress that the EU's strategy towards Asia (of 1994 and 2001) focuses on relations with China and points to Beijing as the main power in Asia.

Another factor that has negatively affected the extent of the relations between India and the EU and caused a greater interest in the USA than in any other country was the evolution of the Indian strategic thought. It should be stressed that in the recent years (roughly since 2003), Indian researchers have been increasingly emphasising the importance of force in international relations and considering the possibility of a preventive strike as one of the instruments for achieving its goals in foreign policy. In the dispute between Europe and the USA about the methods of solving the Iraq crisis in 2002 and 2003, they expressed support for the unilateral actions undertaken by Washington.[14]

India's neo-realist approach to international relations made the differences between it and the EU grow even further, for example in nuclear policy. Another example is the way the threats to security are perceived by both sides. India has mostly focused on traditional threats, such as: territorial integrity, separatist movements and border protection, while the EU has been paying more attention to non-traditional threats: immigration, organised crime. In the broader perspective, India is said to be more concentrated on hard power, while the EU – on soft power. India and the EU have also differed in the approach to the Pakistan issue, in particular until 2001, when the EU called India to settle the dispute with

[12] Idem, *India, Europe and the United States* in: *India and the European Union in the 21st Century*, R.K. Jain (ed.), New Delhi 2002, pp. 60–61.

[13] A. Gupta, *The U.S.-India Relationship: Strategic Partnership or Complementary Interests?*, Carlisle, Pa. 2005, pp. 44–45, http://www.carlisle.army.mil/sei (last visited 24.07.2013).

[14] G. Kanwal, *Coercive Force and National Security in the Indian Context*, "India Quarterly" no. 1/2006, p. 26; K. Sridharan, *Explaining the Phenomenon of Change in Indian Foreign Policy under the National Democratic Alliance Government*, "Contemporary South Asia" no. 1/2006, p. 87.

Pakistan peacefully, without looking at the problem from the angle of combating terrorism. However, even after 2001, the EU has been avoiding explicit support for India in the conflict with Pakistan.

Apart from the political dimension, there have also been substantial differences in the economic sphere. The EU has been criticised by the Indian government and business elites for its Common Agricultural Policy, agricultural subsidies, commercial policy, and lack of understanding for the needs and interests of developing countries during negotiations in the WTO. Regarding trade relations between India and the EU, it has also been observed that the most important trade partner for the EU in Asia is China, as proved by the increase of trade between the EU and the PRC by 150 per cent in 2000–2012 and by China being generally the second most important partner of the EU. Problems in the economic sphere are particularly evident in the context of the free trade area negotiations, which have been going on since 2007. The greatest differences exist in agriculture and social issues. In addition, the EU–India relations are still negatively affected by India's restrictive industrial policy.

India – EU: towards new partnership?

At the turn of the centuries, India and the European Union managed to extend their cooperation from purely economic to political relations. India treated the relations with the EU as multidimensional, not solely economic, as in the times of the Cold War. At the same time, the political cooperation between the two sides has been gradually institutionalised, for example through the EU–India summits. Furthermore, the trade between India and the EU has grown substantially and a strategic partnership was established in 2004. India has perceived the EU through the transformation of the international order, focusing on such elements as democracy and multipolarity.

However, India has not been treating the European Union as the priority partner, and the decision to launch the strategic partnership has remained largely declarative instead of shaping India's international strategy in the post-Cold War period. The differences were particularly evident in the approach to such issues as: the use of force in international relations, unilateralism and international nuclear regimes. Tensions and conflicts have existed also in the economic sphere, in issues such as agricultural subsidies and the protection of intellectual property. Thus, the relations between India and the EU have been called *'full of differences and tensions'*.[15] At the same time, at the beginning of the 21st century, we are facing a deficit of information about the EU in India. The Indian society as well as the Indian political and business elites perceive the EU through its individual major countries rather than as a single entity. Consequently, India focuses much more on strengthening the relations with individual countries (especially France

[15] H. Kapur, *The Uneasy India-EU Relationship*, "The EurAsia Bulletin" November–December 2006.

and the UK) than with the EU as a whole. Although it paid attention to the shared values, at the beginning of 21st century India in fact did not see the EU as a strategic partner. For example, during the celebration of independence in 2005 (a year after concluding the strategic partnership agreement with the EU), the Prime Minister of India did not mention the EU among India's strategic partners.[16]

Despite these problems, India and the EU continue to work together in the economic and political sphere. Both are aware that the problems mentioned above are not only challenges for their mutual relations but also indicate the need to redefine these relations to take into account the political aspirations of both India and the EU.[17] This awareness is expressed in the European Commission report of 2007 entitled *The European Union and India: A Strategic Partnership for the 21st Century* (India and the EU are called *'strategic partners in the global village'*),[18] which speaks about the substantial evolution of the India–EU relations after the Cold War and underlines the need to make them more dynamic. Another document highlighting the importance of these relations is the European Commission report of 1 August 2013 entitled *The EU's bilateral trade and investment agreements – where are we?* It stresses that, in the nearest future, 90 per cent of the world demand will come from outside the EU, therefore the EU should aim to conclude free trade agreements, including the one with India, as soon as possible.[19]

3. The European Union's policy towards Latin America

Towards strategic partnership

It was not until the 1990s that significant progress and revitalization took place in the relations between Europe and Latin America (LA). In the early 21st century, the European Union took measures to prevent political and economic domination of the United States in the region (cf. the signing of the North American Free Trade Agreement on 1 January 1994 between the US, Canada and

[16] *The Indian Prime Minister's 2005 Independence Day Address*, http:// www.pmindia.nic.in/speeches.htm (last visited 25.07.2013).

[17] On the India–EU relations, see further: L. Foramonti, *Diffrent Facets of a Strategic Partnership: How the EU is Viewed by Political and Business Elites, Civil Society and the Press in India*, "European Foreign Affairs Review" no. 4/2007, pp. 349–362; K. Lisbonne de Vergeron, *Contemporary Indian Views of the European Union*, London 2006; R.K. Jain, *India, the European Union and Asia Regionalism*, Paper presented at the EUSA-AP Conference on Multilateralism and regionalism in Europe and Asia-Pacific, Tokyo, December, 8–10, 2005; R.K. Jain, *India and the European Union – Building a Strategic Partnership* in: *India's New Dynamics in Foreign Policy*, S.K. Mitra, B. Hill (eds.), Munich 2006, pp. 83–93.

[18] *The European Union and India: A Strategic Partnership for the 21st Century*, European Commission, Brussels 2007.

[19] *The EU's bilateral trade and investment agreements – where are we?*, Press Release, Brussels, 1 August 2013, MEMO/13/734, http://europa.eu/rapid/press-release_MEMO-13-734_en.htm (last visited 7.08.2013).

Mexico) in order to secure its economic and political interests in Latin America. At the same time, since the 1990s, there has been an ongoing democratisation process in Latin America and the strengthening of economic cooperation between the countries of the region in various integration groups. A new concept of EU policy towards Latin America and the Caribbean was adopted in October 1994 by the General Affairs and External Relations Council, and approved later that year by the European Council in Essen.

The relations between the EU and Latin American countries function on two levels. On the one hand, through a whole sequence of dialogues on the subregional level and with the individual countries (we shall discuss this further in this text). On the other hand, the early 21st century has seen a high-level institutionalisation of inter-regional dialogue. On 28–29 June 1999, the first summit between the EU and the countries of Latin America and the Caribbean (LAC) was held in Rio de Janeiro. The participants issued the Declaration of Rio de Janeiro, consisting of 69 points and specifying the objectives of the proclaimed Strategic Partnership (which was to be based on three dimensions: political, economic and cultural, educational, scientific). Successive EU–LAC summits were held in Madrid in 2002, in Guadalajara (Mexico) in 2004 and in Vienna in May 2006, in Lima in May 2008, in Madrid in May 2010.[20] The Community of Latin American and Caribbean States (CELAC) is a new framework for political coordination among the 33 LAC countries, 17 from LA and 16 Caribbean. It was formally established at a regional summit in December 2011. The CELAC has become the EU's counterpart for the bi-regional partnership process, including at summit level. The summit which took place in Santiago de Chile on 26 and 27 January 2013 was therefore the 7th EU–LAC summit and the 1st EU–CELAC summit.[21] During the meeting, the leaders adopted a political Declaration and Action Plan for 2012–2015.

Latin American countries as emerging markets and the role of the EU – an outline

Since 2004, the LAC countries have again been exhibiting (after the period of prosperity in the first half of the 1990s) a stable and systematic economic growth. In 2004–2007, it was 5.5 per cent GDP on average, in 2008 – 4.5 per cent. The Latin American and the Caribbean economies have shown tremendous resilience in coping with the deep global economic and financial crisis of 2008–2009 and they have recovered much more vigorously than the European Union and the United States. After a period of a slight recession in 2009, the region's

[20] Comp. K. Zajączkowski, *Ameryka Łacińska w polityce Unii Europejskiej (Latin America in the Policy of the EU)* in: *Ameryka Łacińska we współczesnym świecie* (*Latin America in the Modern World*), M.F. Gawrycki (ed.), Warszawa 2006.

[21] *EU-Community of Latin American and Caribbean States (CELAC) Summit. Santiago de Chile, 26–27 January 2013. EU relations with Latin America and the Caribbean*, Press Release, Brussels, 18 January 2013, MEMO/13/15.

GDP grew by 6 per cent in 2010 and is forecast to expand by a further 3.9 per cent in 2012–2015.[22]

The region's seven leading exporters and importers – Brazil, Mexico, Argentina, Chile, Colombia, the Bolivarian Republic of Venezuela, and Peru – generated 85 per cent of the region's total trade in 2012.

The European Union is Latin America and the Caribbean's second most important trading partner, after the USA, with a market share of 14 per cent in both total exports and total imports, and the first trade partner for the Mercosur. However, according to the report of the Economic Commission for Latin America and the Caribbean (ECLAC), there is a noticeable negative trend for the EU. *'Since the 1980s, the European Union has steadily lost importance both as a destination for Latin American exports and as a source of its imports. Whereas in the 1980s and 1990s the European Union lost its share to the United States, in the first decade of the twenty-first century both the European Union and the United States lost market share to China'*.[23]

EU-27 international trade in goods with the Community of Latin American and Caribbean States has been characterised by steady growth between 2003 and 2008, a decline in 2009 and a strong recovery since then. It has almost doubled since 2000, which shows its scale and importance. EU-27 exports to CELAC in 2012 reached EUR 118 billion, including 110.3 to Latin America and 7.7 to the Caribbean. The imports in 2012 was EUR 115.2 billion, including 109.9 to Latin America and 5.3 to the Caribbean respectively. In the same year, CELAC accounted for 6.5 per cent of EU-27 exports and imports – around 6.3 per cent for LA and 0.4 per cent for the Caribbean.[24] Germany is the largest trading partner of CELAC amongst the EU-27 Member States.[25] Brazil, Mexico, Argentina

[22] The region's robust resistance to the external turbulence partly reflects the reforms implemented over the last two decades, which have resulted in greater fiscal and monetary prudence and stricter financial supervision. *Latin America and the Caribbean and the European Union: Striving for a renewed partnership*, Economic Commission for Latin America and the Caribbean (ECLAC), Santiago de Chile, February 2012, p. 7, 13; *World Economic Outlook 2013. Hopes, Realities and Risk*, IMF, Washington 2013, p. 60.

[23] Most projections expect China to grow in its relative importance as an export destination. China is likely to surpass the European Union already in 2014 to become the region's second largest export market. A similar pattern is predicted for imports, where China is expected to overtake the European Union in 2015. *Latin America and the Caribbean and the European Union: Striving...*, op.cit., pp. 29–31.

[24] *Caribbean ACP Countries. EU bilateral trade and trade with the world*, DG Trade. Statistics, 23 May 2013, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113476.pdf (last visited 28.07.2013); *Latin American Countries. EU bilateral trade and trade with the world*, DG Trade. Statistics, 23 May 2013, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113483.pdf (last visited 28.07.2013).

[25] Among the EU-27 Member States, Germany was by far the largest exporter to CELAC in the first nine months of 2012 (28 per cent of the total EU export to CELAC), followed by Italy (12 per cent), Spain (12 per cent) and France (11 per cent). The Netherlands was the largest importer (20 per cent), followed by Spain (18 per cent), Germany (16 per cent), the United

and Chile are the largest trading partners of the EU-27 amongst CELAC countries.[26]

In 2011, the EU-27 exported EUR 37.7 billion worth of services to CELAC, while imports amounted to EUR 24.9 billion. The LAC accounted for nearly 6 per cent of the EU-27's total trade in services in 2011. Among the members of the CELAC, and as for trade in goods, Brazil, Mexico, Argentina and Chile were the largest traders in services with the EU-27 in 2011.[27]

The EU remains the leading foreign investor in the CELAC countries, with total FDI amounting to EUR 385 billion in 2010. This represents 43 per cent of the region's total FDI. The EU FDI in CELAC countries is higher than the EU FDI in Russia, China and India combined. The FDI from the EU is also highly diversified, ranging from sectors with a traditional European presence, such as commerce and tourism, to new sectors, including construction and finance.[28]

Subregional cooperation and cooperation with selected countries

The European Union has concluded many agreements with individual countries and groups of countries in the region, including Association Agreements with Chile and Mexico, Strategic Partnerships with Brazil and Mexico, Association Agreement with Central America, as well as a Trade Agreement with Peru and Colombia and the EU–CARIFORUM Economic Partnership Agreement.

Mercosur

Mercosur[29] is the most important political and economic partner of the EU in the region. The EU signed an Interregional Framework Cooperation Agreement with Mercosur in Madrid on 15 December 1995 (it entered into force in its entirety on 1 July 1999). The factor which determined the process of institutionalisation of mutual relations is that this group puts together the two strongest Latin American economies – Brazil and Argentina – and that the main aim of Mercosur is the development of regional integration processes.

In 2000, the EU and Mercosur launched negotiations on an association agreement (broken off in 2004 and resumed in 2010). However, the efforts to liberalise

Kingdom (11 per cent). *EU-Community of Latin American and Caribbean States (CELAC) summit. EU-27 trade in goods with CELAC in balance in the first nine months of 2012. CELAC accounts for nearly 7 % of EU-27 trade in goods*, Eurostat Newsrelease, 25 January 2013, STAT/13/14.

[26] The share of Brazil, Mexico, Argentina, and Chile in total EU trade in goods in 2012 was 2.2, 1.4, 0.5, and 0.5 per cent respectively. *Latin American Countries. EU bilateral trade...*, op.cit.

[27] *EU-Community of Latin American and Caribbean States (CELAC) summit. EU-27...*, op.cit.

[28] *EU-Community of Latin American and Caribbean States (CELAC) Summit. Santiago...*, op.cit.

[29] Mercosur was founded in 1991 by Argentina, Brazil, Paraguay and Uruguay, by signing the Treaty of Asuncion. The Protocol of Ouro Preto of 1994 sanctioned Mercosur as a subject of international law. Venezuela is a full member since July 2012.

trade between these two groups of countries run into many obstacles. This is mainly due to the fact that for some EU Member States creating a free trade area with Mercosur would equal agreeing to a reform of the Common Agricultural Policy. Latin American countries demand access to the European market for their agricultural products and reducing agricultural subsidies in the EU. The EU, on the other hand, expects liberalisation of services and opening LA markets for industrial goods, as well as adopting EU standards in areas such as rules of origin, intellectual property, public procurement, or competition policy.[30] Mercosur itself is not without fault, due to its structural weakness and internal rivalry between its member countries. At the same time, we should stress that it would be a great breakthrough if the EU and Mercosur reached an agreement, regardless of the eventual extent of bilateral liberalisation of trade after negotiations. For the Latin American countries, such an agreement would mean greater independence from the United States. Moreover, after signing an agreement with Mercosur, the EU would have free trade areas negotiated with all the largest Latin American economies and would therefore be able to play a greater role in the region, which is traditionally considered a US sphere of influence.

Today, Mercosur is responsible for the majority of EU trade with Latin American countries (around 43 per cent). It is the EU's eighth most important trading partner, accounting for 3 per cent of the EU's total trade. The EU is Mercosur's first trading partner, accounting for 20 per cent of its total trade. The trade in goods between the two regions in 2012 was EUR 99.46 billion (the data does not include Venezuela).[31] The EU is also a major exporter of commercial services to Mercosur as well as the biggest foreign investor in the region, with a stock of foreign direct investment that has steadily increased over the past years and that amounted to EUR 236 billion in 2010, as compared to EUR 130 billion in 2000.[32] At the same time, it is emphasised that China shows an increasing interest in cooperation with Mercosur, which may negatively affect the EU's position in the region. In January 2012, the then Prime Minister of China Wen Jiabao proposed a free trade agreement between China and Mercosur. But most analysts see little chance that it will emerge anytime soon. In 2011, China's exports to Mercosur amounted to USD 48.45 billion, 34 per cent more than in the previous year, while

[30] B. Znojek, *Negocjacje UE-Mercosur. Bliżej umowy stowarzyszeniowej* (*EU-Mercosur Negotiations. Approaching an Association Agreement*), "Biuletyn PISM" no. 34(783)/2011; V. Bulmer-Thomas, *The European Union and Mercosur: Prospects for Free Trade Agreement*, "Journal of Inter American and World Affairs" January 2000, pp. 1–22.

[31] Mercour's biggest exports to the EU consist of agricultural products (48 per cent of total exports) while the EU mostly exports manufactured products to Mercosur and notably machinery and transport equipment (49 per cent of total exports) and chemicals (21 per cent of total exports). See: http://ec.europa.eu/trade/policy/countries-and-regions/regions/mercosur/ (last visited 28.06.2013); *Latin American Countries. EU bilateral trade...*, op.cit.

[32] http://ec.europa.eu/trade/policy/countries-and-regions/regions/mercosur/ (last visited 28.06.2013).

imports from Mercosur reached USD 51.03 billion. Beijing wishes to double this trade volume by 2016.[33] Latin American leaders express their willingness to cooperate with both sides, which is understandable in the context of their efforts to maximise political and economic gains of Mercosur.[34]

Brazil

Brazil is the main member of Mercosur, both in the political and in the economic dimension. It generates 75 per cent of trade between Mercosur and the EU and is the EU's strategic partner in the region. The institutional basis is governed by the EC–Brazil Framework Co-operation Agreement (1992) and the Agreement on scientific and technological cooperation (2004). The EU and Brazil established a Strategic Partnership in July 2007 in Lisbon. There are annual summits under this cooperation.[35] At the 2nd summit, held in Rio de Janeiro in 2008, the two parties adopted the first Joint Action Plan (JAP), which was implemented from 2009 to 2011. The second JAP, covering the three-year period 2012–2014, was endorsed by EU and Brazilian leaders at the 5th summit, in 2011. Some 30 dialogue areas are set in the JAP, including in matters such as: effective multilateralism, cooperation on human rights, climate change, sustainable energy, the fight against poverty, Latin America's stability and prosperity. The EU and Brazil stress their mutual strategic relations, in particular in the context of the development of the new international order after 2008.[36]

Brazil's trade with the EU accounts for 37 per cent of the EU's total trade with the Latin American region (in 2012). Brazil is the 8th biggest trading partner of the EU (not counting Mercosur), the trade volume between the two sides in 2012 reached EUR 76.7 billion, which is 2.2 per cent of total EU trade. As regards investments, Brazil holds 43 per cent of the entire EU investment stocks in Latin America. The EU is Brazil's first trading partner, accounting for 21.7 per cent of its total trade (in 2012). Brazil is the single biggest exporter of agricultural products to the EU. The EU's exports to Brazil consist mainly of manufactured products, such as machinery, transport equipment and chemicals.[37] Brazil is the EU's

[33] N. Ramos, *Experts sceptical about a China-Mercosur trade deal*, AFP, 26 June 2012.

[34] *Mercosur looks to enhance economic ties with China, EU*, 8 December 2012, http://www.chinadaily.com.cn/business/2012-12/08/content_15998241.htm (last visited 28.06.2013).

[35] http://eeas.europa.eu/brazil/index_en.htm (last visited 29.06.2013).

[36] *Karel De Gucht European Commissioner for Trade Brazil and the European Union: Allies in a Changing World International Conference: Strategic challenges in the EU-Brazil Relationship*, Press Release, Brussels, 7 May 2012, SPEECH 12/333.

[37] Among the EU-27 Member States, Germany was by far the largest exporter to Brazil in the first nine months of 2012 (30 per cent of EU exports of goods), followed by France (13 per cent), Italy (12 per cent). The Netherlands was the largest importer (22 per cent of EU imports), followed by Germany (18 per cent), France (10 per cent), *EU-Brazil Summit. A surplus of 1.0 billion euro in EU-27 trade in goods with Brazil in the first nine months of 2012. An EU-27 surplus of 4.3 billion in trade in services in 2011*, Eurostat Newsrelease, 18 January 2013, STAT/13/10.

biggest FDI recipient in Latin America (followed by: Mexico, Argentina and Chile).

Mexico and Chile

The Association Agreement with Mexico, which included a comprehensive Free Trade Agreement, was signed on 8 December 1997 (and entered into force in October 2000 in the part related to trade in goods and in 2001 in the one related to trade in services) and Chile, in 2002 (the FTA entered into force in February 2003). The deepened and more advanced political and economic dialogue between the EU and Mexico and Chile results from several factors. Mexico is a member of NAFTA, which combines the policies and economy of Mexico, the United States and Canada, and therefore it can be an intermediary in the relations between the EU and NAFTA. The EU also acknowledges the role that Mexico can play in representing the EU's interests in other regional and international forums of cooperation, such as: the Asia–Pacific Economic Cooperation Forum (APEC) or, since 1994, the OECD. Mexico is also a party to many free trade agreements in Latin America, in which the EU also sees some potential benefits.[38] The reasons for the EU's interest in Chile are largely similar to that for its interest in Mexico. Moreover the EU has signed association agreements with Mexico and Chile, as the economies of these countries are complementary, at least to a large extent, to the EU economy. The EU expects increased interest of Mexican exporters in the European market as an alternative to NAFTA and hopes that other Latin American countries will follow.[39] The EU also sees Mexico as a key ally in the fight to counter the risks of protectionism in Latin America and globally, especially in the context of the G-20's commitments to fight protectionism and to pursue an open trade regime.

The EU and Mexico established a Strategic Partnership in 2008, with regular consultations and summits held every two years. The EU is Mexico's second biggest export market after the USA and its third largest source of imports after the United States and China. The EU's key imports from Mexico are mineral products, machinery and electric equipment, transport equipment and optic photo precision instruments. Key EU exports to Mexico include machinery and electric equipment, transport equipment, chemical products, and mineral products.[40] We should notice the systematic growth in trade between these partners. Total bilateral trade has doubled since 2000. As regards trade in goods, in 2012 EU exports

[38] In 1991, Mexico signed a Free Trade Agreement with Chile; in 1994 – with Columbia, Venezuela, Bolivia and Costa Rica. J. Starzyk, *Wspólna Polityka Zagraniczna i Bezpieczeństwa Unii Europejskiej* (*European Union's Foreign and Security Policy*), Warszawa 2001, p. 257.

[39] The entry into force of the NAFTA agreement on 1 January 1994 caused European goods to be discriminated against at the Mexican market. Consequently, the EU had to sign an agreement with Mexico in order to avoid being entirely pushed out of the market.

[40] http://ec.europa.eu/trade/policy/countries-and-regions/countries/mexico/ (last visited 29.06.2013).

to Mexico stood at EUR 27.9 billion, while the EU imports from Mexico amounted to EUR 19.3 billion. Similarly, bilateral trade in services totalled EUR 8.2 billion (2010).[41]

To Chile, the EU is the second trade partner, with 15.4 per cent of Chile's total bilateral exchanges, behind China (20 per cent) but ahead of the US (15.3 per cent). The past decade has seen sustained growth in EU–Chile trade flows. They showed a positive annual average growth of 13 per cent between 2003 and 2012, with total trade in goods doubling from EUR 7.7 billion to EUR 18.12 billion.[42]

Andean Community, Central America, Caribbean countries

Mexico, Chile and Mercosur were not the only parties with whom the EU launched negotiations in Latin America in the 1990s. There was also the Andean Community (Bolivia, Ecuador, Columbia, Peru; in April 2006 the president of Venezuela announced that his country was withdrawing from the structures of the Andean Community).[43] The EU is the second largest trading partner of the Andean region after the US, while the Andean countries generate 0.8 per cent of total EU trade (2012). There are three essential reasons for the EU's interest in maintaining economic relations with the Andean Community. First of all, the Andean countries are among the main exporters of oil, which helps the EU diversify its supply sources. Secondly, the Andean countries are the largest producer of drugs, in particular of cocaine, in the world. Thus, special emphasis has been placed on the special dialogue between the two regions on combating the drugs business, negatively affecting e.g. the economic development of the USA. The basic instrument for supporting the Andean countries by the EU in their fight against illegal cultivation are *GSP-Drogas* – trade preferences introduced on 13 November 1990 for four countries of the region (Venezuela was the beneficiary of the system from 1995 to 2006). The aim of *GSP-Drogas* is to help the Andean countries export alternative products, i.e. such that can be cultivated in place of coca leaves, and to support industrialisation. Under the *GSP-Drogas* preferences over 80 per cent of products from the Andean Community are covered by customs reliefs.

In 2007, the EU launched talks with each individual country of the Community regarding Association Agreements. In June 2012, the EU signed a comprehensive Free Trade Agreement with Peru (the FTA entered into force on 1 March 2013) and Colombia (the FTA entered into force on 1 August 2013).

[41] *Factsheet: EU-Mexico Summit (Los Cabos, Mexico, 17 June 2012)*, Press Releases, Brussels, 13 June 2012, MEMO/12/430; *Latin American Countries. EU bilateral trade...*, op.cit.

[42] http://www.eeas.europa.eu/chile/index_en.htm (last visited 30.06.2013).

[43] Political dialogue between the EU and the Andean Community took place on the basis of the Joint Rome Declaration, signed on 30 June 1996. On 15 December 2003, in Rome, they signed the Agreement on Political Dialogue and Cooperation, which lists 43 areas of cooperation. It was also a confirmation that the main goal of the agreement was to pave the way for a future association agreement.

The European Union also continues to work with Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama) as part of the San José process, initiated in 1984. The cooperation has become especially intensive since 1996, when the civil war in Guatemala finally ended after 30 years. The two regions concluded the 1993 EU–Central America Framework Cooperation Agreement and the Political Dialogue and Cooperation Agreement signed in 2003. In June 2007, negotiations were launched for an Association Agreement between the EU and Central America (CA). The Agreement was signed in Honduras in June 2012 and was approved by the European Parliament on 11 December 2012. The trade provisions of the agreement apply with Honduras, Nicaragua and Panama since 1 August 2013, with Costa Rica and El Salvador since 1 October 2013 and with Guatemala since 1 December 2013.This agreement opens up markets on both sides, helping to establish a stable business and investment environment. In 2012, the EU was Central America's second trade partner after the US (and intra-regional trade), representing 9.6 per cent of the trade flows. Central American countries account for 0.4 per cent of EU's total trade. In 2012, bilateral trade in goods between Central America and the European Union was worth EUR 14.9 billion.[44]

Sixteen Caribbean countries are members of the African, Caribbean and Pacific (ACP) Group of States and of the CARIFORUM group. Fifteen of them (except for Cuba) signed the Economic Partnership Agreement (EPA) with the EU in 2008. The EU is CARIFORUM's second largest trading partner, after the US. In 2012, trade between the two regions reached over EUR 13 billion euro.[45]

4. The European Union's policy towards countries of Sub-Saharan Africa

The relations of both the European Community and the European Union with the Sub-Saharan countries[46] have undergone an evolution over the years. Further in this article, we will discuss the political and economic cooperation between the regions as well as the legal and institutional framework regulating the relations between them. The question of development aid, which is essential for mutual relations (the EU and its Member States jointly are the largest provider of development aid to Africa), and the mechanisms of granting this aid by the EU will be described in the next article in the present volume.

[44] *Comprehensive Association Agreement between Central America and the European Union*, Press Release, Brussels, 29 June 2012, MEMO/12/505; *EU Trade deal with Honduras, Nicaragua and Panama becomes operational*, Press Release, Brussels, 31 July 2013, IP/13/758; http://trade.ec.europa.eu/doclib/press/index.cfm?id=815 (last visited 30.06.2013).

[45] *Caribbean ACP Countries. EU bilateral trade*..., op.cit.

[46] By Sub-Saharan African states we mean the 48 African states belonging to the African, Caribbean and Pacific Group of States (South Sudan is not yet a full member of the ACP Group of States). North African countries include: Algeria, Egypt, Libya, Morocco, and Tunisia.

Institutionalisation process – from the Treaty of Rome to the Cotonou Agreement and EU–Africa summits

The earliest institutional relations between the European Community and a group of Sub-Saharan African states were established already in the Treaty of Rome in 1957. The provisions of Articles 131–136 of the Treaty stipulated for the association of overseas countries and territories with the Community. After most colonial countries gained independence, the European Community's relations with the countries of Sub-Saharan Africa were transformed into contractual relations, as manifested by the Yaoundé Conventions of 1963 and 1969,[47] followed by the Lomé I (1975), Lomé II (1979), Lomé III (1984) and Lomé IV (1989) Conventions. Apart from Sub-Saharan African states, signatories of the Lomé Conventions also included some Caribbean and Pacific countries, so that all of them began to be regarded as a uniform group – the African, Caribbean and Pacific (ACP) Group of States.[48]

As a result of changes occurring in the international balance of power, the gradual decline of the bipolar world order and deep transformations in international economic relations, since the mid-1990s efforts have been undertaken to redefine the model of relations between the EU and the ACP countries. Following 18 months of negotiation, on 23 June 2000 the Partnership Agreement between 77 members of the African, Caribbean and Pacific Group of States[49] and

[47] The Yaoundé Conventions (of 1963 and 1969) were concluded with eighteen African countries (including Madagascar). That group of countries has been called the Association of African and Malagasy States (AAMS). K. Zajączkowski, *The Relations Between the European Union and the Countries of Sub-Saharan Africa Following the End of the Cold War*, "Hemispheres. Studies on Cultures and Societies" no. 20/2005, p. 94; *Convention of Association between the European Economic Community and the African and Malagasy States associated with that Community and annexed documents. Signed in Yaounde on 29 July 1969,* http://aei.pitt.edu/4218/1/4218.pdf (last visited 10.07.2013).

[48] The African, Caribbean and Pacific Group of States was formed in 1975 under the so-called Georgetown Agreement. The document was signed by representatives of 46 countries. At present (as of 30 July 2013) the ACP Group consist of 79 States (48 countries from Sub-Saharan Africa, 16 from the Caribbean and 15 from the Pacific). The 80th member will be the Republic of South Sudan – for the time being, South Sudan has been granted observer status in the ACP Group of States since 20 November 2012. It should also be mentioned that despite having many things in common, the ACP countries have never formed a monolith.

[49] Cuba is not a signatory of the ACP–EC Partnership Agreement. Somalia has signed the Partnership but has not ratified it. Since the signing of the Partnership Agreement, the group of signatories has expanded. Timor-Leste became an ACP Member State in 2003, shortly after its independence, and ratified the ACP–EC Partnership Agreement on 19 December 2005. Somalia's political transformation has influenced the decision of the country as regards the EU. On February 2013, Somalia presented a request for accession in accordance with Article 94 of the ACP–EC Partnership Agreement and a request for observer status enabling it to participate in the joint institutions set up by that Agreement, until the accession procedure is completed. The ACP–EU Council of Ministers approved this request in Brussels in June 2013. The Republic of South Sudan made the same request a bit earlier, on 20 March 2012. It was approved by the ACP–EU Council of Ministers in Vanuatu in June 2012. South Sudan has been granted observer status in the Partnership since 20 November 2012. *More than €31 billion for EU cooperation with the African,*

the European Community and its Member States was signed in Cotonou (Benin).[50] It was concluded for 20 years – from March 2000 to February 2020. Although the Agreement formally entered into force after the process of ratification, on 1.04.2003, it was agreed that it would in fact be valid from 1 March 2000.[51] It was revised in 2005 in Luxembourg and in 2010 in Ouagadougou.[52]

The Cotonou Agreement focuses upon three areas: economic, development and political. In line with the basic arrangement, its objective is to reduce poverty and to ensure social and economic development of the ACP countries.

The EU showed its deep interest in cooperation with Africa by the first Africa–Europe (EU) summit held in Cairo on 3–4 April 2000. It was agreed there that the two groups of countries would build a global dialogue based on strategic and interregional partnership consisting of many dimensions of mutual relations.[53] The second Africa–EU summit took place on December 2007 in Lisbon and included the establishment of the Strategic Partnership and the adoption of the Joint Africa–EU Strategy (JAES). The JAES defines eight specific areas of cooperation: 1. Peace and Security; 2. Democratic Governance and Human Rights; 3. Trade, Regional Integration and Infrastructure; 4. Millennium Development Goals (MDGs); 5. Energy; 6. Climate Change and Environment; 7. Migration, Mobility and Employment; 8. Science, Information Society and Space. The third Africa–EU summit was held in November 2010 in Tripoli. The leaders renewed their commitments, calling for reinforced cooperation in the eight priority areas and the setting up of support mechanisms to facilitate the process.[54] The next Africa–EU summit will be held in Brussels in 2014.[55]

Caribbean and Pacific countries – Somalia accede to the Cotonou Agreement, 17 June, 2013, http://www.africa-eu-partnership.org/newsroom/all-news/more-eu31-billion-eu-cooperation-african-caribbean-and-pacific-countries-somalia (last visited 10.07.2013); http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:150:0026:01:EN:HTML (last visited 10.07.2013); http://ec.europa.eu/development/icenter/repository/summary_tl_csp10_en.pdf (last visited 10.07.2013).

[50] *Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000*, OJ L 317, 15.12.2000; B. Martenczuk, *From Lomé to Cotonou: The ACP–EC Partnership Agreement in Legal Perspective*, "European Foreign Affairs Review" no. 4/2000, pp. 25–39.

[51] The retroactive date was set in order to ensure continuity with the previous agreements (Article 95 of the Cotonou Agreement).

[52] The Agreement (Article 95) provide for the option of revision every five years.

[53] Declaration of Cairo in: *Africa-Europe Summit Under the Aegis of the OAU and the EU Cairo, 3–4 April 2000*, Press Release, Brussels, 7 April 2000, PRES/00/901.

[54] *Key facts on the Joint Africa-EU Strategy*, Press Release, Brussels, 23 April 2013, MEMO/13/367.

[55] According to the experts from the European Centre for Development Policy Management, *'the 2014 Africa–EU Summit could potentially be a turning point in the relations between the two continents. In addition to resolving the various strategy issues raised above and breathing new life into the JAES, EU and African leaders should ideally use the Summit to agree on joint action on specific global issues such as climate change or the post-2015 global development framework'*.

Political dimension

The EU uses a broad range of political instruments towards Sub-Saharan Africa, including: summit meetings, dialogue and consultations, declarations, common positions, election assistance, diplomatic and economic sanctions, civil and military crisis response operations.

The Africa–EU summits mentioned in the previous section are the highest-level form of political cooperation with the entire continent. They play an important role in defining the aims of future mutual cooperation.

The European Union, in accordance with the political commitments of its dialogue with Sub-Saharan Africa, has taken action aimed at strengthening democracy in Africa. In the years 2000–2013 (until 30 July 2013) the EU dispatched a total of 111 EU Election Observation Missions (EU EOMs), half of which were sent to Africa. They assess matters such as: the right to participate in governing through periodic, universal and equal elections; the right to secret ballot; free expression of the voters' will.[56] In 2013, EOMs were sent to Mali and Kenya.

Within the framework of the Common Foreign and Security Policy (CFSP), the European Union applies political and economic sanctions (restrictive measures) to those countries, in which principles of democracy and rule of law are seriously infringed upon or in which there are violations of international law or human rights. In 2013, more than a dozen countries around the world were under EU sanctions, including 11 Sub-Saharan ones, among them: Democratic Republic of Congo, Côte d'Ivoire, Republic of Guinea, Guinea-Bissau, and Zimbabwe.[57] An important aspect of EU activities in the context of restoring peace in Sub-Saharan Africa is the financing of mine clearing projects, for example in Angola, and educational actions for juvenile guerrilla fighters and preventing them from being conscripted into regular military units. In accordance with Article 8 of the Cotonou Agreement, the EU conducts regular dialogue with the ACP countries on human rights, including the issue of torture.

Some obstacles in the political dialogue between the EU and Sub-Saharan states may appear during the implementation of Article 96 of the Cotonou Agreement, referring to the consultation procedure and 'appropriate measures' taken against the countries that do not respect human rights, democratic principles and the rule of law, and therefore, in practice allowing sanctions consistent with

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See: *EU–Africa relations: what's in store for 2013?*, European Centre for Development Policy Management, http://www.ecdpm-talkingpoints.org/eu-africa-relations-whats-in-store-for-2013/ (last visited 15.07.2013).

[56] The basic source of financing the EU Election Observation Missions is the European Instrument for Democracy and Human Rights (EIDHR). In order to avoid duplication, the EU does not deploy observation missions in the countries belonging to the OSCE, as it is already done by the OSCE itself, http://eeas.europa.eu/eueom/faq/index_en.htm (last visited 15.07.2013).

[57] European Union, *Restrictive measures (sanctions) in force*, updated on 5 June 2013, http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf (last visited 15.07.2013).

international law. Understanding the principles of sovereignty and cultural differences by the parties to the Agreement may prove to be a problem.

The European Union is striving to be a comprehensive actor, taking actions in all stages of international crises in Africa. The EU executes its tasks through, among others, civilian and military missions and operations under the Common Security and Defence Policy (CSDP). In the recent years, the EU has exhibited particular activity in this respect in the DRC, Sahel and Horn of Africa, which is related with the risks and challenges appearing in these regions, negatively affecting not only the regions but international security as well.

So far (as of 30 September 2013), the EU has executed the following civilian missions in Africa: EUPOL KINSHASA in the DRC (2005–2007); EUSEC RD CONGO (2005–2013); EUPOL RD CONGO (2007–2013); EU SSR Guinea-Bissau (2008–2010); EUCAP SAHEL Niger (2012–2014); EUCAP NESTOR (2012–2014) – mission in order to enhance the maritime capacities of four countries: Somalia, Djibouti, Kenya and the Seychelles in the Horn of Africa and the Western Indian Ocean; EUAVSEC (2012–2014) – the EU Aviation Security Mission in South Sudan.

So far (as of 30 September 2013), the EU has executed the following military missions in Africa: ARTEMIS in the DRC (12 June 2003 – 1 September 2003); EUFOR RD Congo (30 July 2006 – 30 November 2006); EUFOR Tchad/RCA (2008–2009); EU NAVFOR – Atalanta (2008–2014) – the first ever naval operation conducted by the EU; European Union Training Mission (EUTM) Somalia (2010–2015); EUTM Mali (2013–2014).

The Artemis operation is considered successful, *'a military operation of a new type in Africa'* while R. Kuźniar calls it *'lightning-fast and bold (...), a fully successful operation, whose scale, speed and efficiency surprised observers and politicians in Washington'*.[58] At the same time, the role and importance of the EU's civil and military missions should not be overestimated. They are *ad hoc* operations and they only support UN forces or forces of regional organisations (e.g. African Union) and subregional organisations (e.g. ECOWAS).

At the turn of the century, the EU was also involved in the support of preventive diplomacy and improving Africa's capability to conduct peacekeeping operations.[59]

The authorities in Brussels believe the African Union (AU) to be the main organisation in terms of peace, stability and safety in Africa. Its role in EU policies was shown by the appointment of the EU Special Representative for the AU by the Council on 6 December 2007 (K. Vervaeke; on 1 November 2011 the role was taken over by Gary Quince). In June 2002, the European Union allocated

[58] R. Kuźniar, *Europejska Strategia Bezpieczeństwa* (*European Security Strategy*), "Polska w Europie" no. 2/2004, p. 14.

[59] G.R. Olsen, *Promoting Democracy, Preventing Conflict: The European Union and Africa*, "International Politics" no. 3/2002, vol. 39, pp. 311–328.

EUR 10 million for the development and functioning of the Peace and Security Council of the African Union and EUR 2 million for the process of institutionalisation of the AU. In November 2003, the EU allocated EUR 25 million for the development of the AU's first peacekeeping mission – the African Mission in Burundi (AMIB), involving 2700 soldiers from South Africa, Ethiopia and Mozambique. Since 2004, the EU has been systematically supporting the AU and other subregional organisations in Africa through the African Peace Facility (APF). During the AU mission in Sudan under the code name AMIS, from spring 2004 to 31 December 2007, the EU contribution was over EUR 305 million (through the APF), while for the AU mission in the Comoros in 2006 and 2008 (AMISEC) the EU contributed EUR 8.5 million through the APF.

The European Union also stresses the role of the other subregional structures in Africa. It supports their structures and institutions financially and politically; it backed the ECOWAS actions in Liberia, Sierra Leone and Guinea Bissau, IGAD in Somalia and Sudan and SADC in the DRC and Burundi. The most recent activities supported by the EU are: the African Union Mission in Somalia (AMISOM),[60] the Mission for Consolidation of Peace in the Central African Republic (MICOPAX) and its successor, the UA mission – African-led International Support Mission in the Central African Republic (AFISM-CAR, Fr. MICSA),[61] as well as the AFISMA mission in Mali in 2013.[62]

One of the most important tools in shaping the African prevention and collective security system is the African Peace Facility, established under the decision of the ACP–EU Council of Ministers of 11 December 2003, in force since

[60] The EU is one of the biggest donors to the AMISOM, mandated by the UN Security Council, which was launched in January 2007 to create the necessary conditions for reconstruction, reconciliation and the sustainable development of Somalia. From 2007 to the end of 2013, the total committed APF contribution to AMISOM amounted to over EUR 560 million. *New EU support to continue improving security in Somalia*, Press Release, Brussels, 19 March 2013, IP/13/241; *African Peace Facility. Annual Report 2012*, European Commission, Brussels 2013, p. 19.

[61] From 12 July 2008, the MICOPAX was the responsibility of the Economic Community of Central African States (ECCAS). It succeeded the FOMUC operation established on 25 October 2002. Since 1 November 2004, the peace support operations in the CAR have been financed from the African Peace Facility to an amount of almost EUR 102 million. The transfer of authority between MICOPAX and the AFISM-CAR took place on 19 December 2013. The EU financial support for AFISM-CAR comes from the APF and amounts to EUR 75 million (as of 31 January 2014) *African Peace Facility. Annual Report 2012...*, op.cit., pp. 21–23.

[62] The African-led International Support Mission to Mali (AFISMA) is an Economic Community of West African States (ECOWAS) organized military mission sent to support the government of Mali against Islamist rebels. The mission was launched in early January 2013. In accordance with the United Nations Security Council Resolution 2100 (April 2013), on 1 July 2013 AFISMA transferred its authority to the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). The EU's financial support (EUR 50 million) for AFISMA came from the African Peace Facility. *The EU confirms its pledge of € 50 million to support an African-led peace operation (AFISMA)*, Press Release, Brussels, 29 January 2013, SPEECH/13/70.

2004. Through this instrument, the EU supports the AU and other African regional organisations in finding 'African solutions to African problems'. From the moment of establishing the APF until mid-2013, the EU has committed more than EUR 1.1 billion to it.[63] APF is part of the European Development Fund.

In the context of risk management, the EU uses the Instrument for Stability (IfS), established in November 2006 (in force since 1 January 2007). It is one of the key European Union instruments for external assistance. The IfS had a budget of EUR 2 062 million for 2007–2013 in current prices. In the new financial perspective 2014–2020, the allocation for the Instrument contributing to Stability and Peace (IfSP) is EUR 2 339 million in current prices (2 075.1 million in 2011 prices). It has been re-named from its earlier title Instrument for Stability and streamlined to better contribute to a comprehensive EU approach to conflict prevention and peace-building, crisis response and security threats.[64] Funds not subject to programming are allocated to responding to conflicts and crises around the world. The programmable funds concentrate on capacity building: early warning systems, conflict prevention, crisis preparedness and peace building and on tackling global and transregional threats to international peace and security. Although the IfS does not focus solely on African problems, in the period 2007–2013 around one-third of the IfS funds went to Africa – to the DRC, the Central African Republic, Chad, Somalia and Mali, among others.

The EU perceives the cooperation of African countries on the regional level as one of the methods for improving security in Africa. According to M.W. Solarz, *'the African peacekeeping forces and regional security institutions may ultimately become an effective way for the Western countries to withdraw from direct participation in African civil wars. At the same time, a more indirect participation of the EU in Africa will let it retain influence on the continent, minimising own costs'*.[65]

Countries of Sub-Saharan Africa as emerging markets: challenges and opportunities

Since the first decade of the 21st century, African countries have been experiencing a stable and systematic economic growth (the average growth in 2002–2008 was 5.6 per cent).[66] Despite many unsolved development problems, Africa

[63] *Key facts on the Joint Africa-EU Strategy*, Press Release, Brussels, 23 April 2013, MEMO/13/367; *African Peace Facility. Annual Report 2012...*, op.cit., pp. 6–14.

[64] *Multiannual Financial Framework (2014–2020) – List of programmes*, Council of the European Union, 8288/13, Brussels, 9 April 2013, http://register.consilium.europa.eu/pdf/en/13/st08/st08288.en13.pdf (last visited 10.07.2013); http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0566+0+DOC+XML+V0//EN (last visited 14.12.2013).

[65] M.W. Solarz, *Francja wobec Afryki subsaharyjskiej. Pozimnowojenne wyzwania i odpowiedzi* (*France's Policy towards Sub-Saharan Africa. Post-Cold War Challenges and Answers*), Warszawa 2004, p. 291.

[66] *African Economic Outlook 2011. Africa and its Emerging Partners,* African Development Bank (AfDB), OECD Development Centre, UN Development Programme (UNDP), UN Economic Commission for Africa (UNECA), Paris 2011, p. 21.

is becoming an attractive partner in global economy, especially the Sub-Saharan part – according to the IMF, the average growth in this part of the world in 2004–2008 was 6.4 per cent;[67] after a decline to 2.8 per cent in 2009, the region has again been showing high economic growth. The Sub-Saharan region's economic outlook shows its healthy resilience to internal (Arab Spring) and external shocks (global economic crisis) and its role as a growth pole in global economy.[68] The growing importance of Africa in international economic relations is confirmed by data and analyses of the World Bank, the IMF, annual reports of the African Economic Outlook (AEO) and the UN Economic Commission for Africa (UNECA) and the Ernst&Young report.[69] According to the African Economic Outlook 2013, the economic growth in Africa in 2012 was 6.6 per cent – 5.2 per cent for Sub-Saharan Africa and as much as 9.5 per cent for the northern part of the continent.[70] The report also predicts that Africa's economy will grow by 4.8 per cent in 2013 and accelerate further to 5.3 per cent in 2014. For Sub-Saharan Africa the following figures are expected: in 2013 – 5.4 per cent, in 2014 – 5.8 per cent. For North Africa:[71] in 2013 – 3.9 per cent, in 2014 – 4.3 per cent.[72]

In the last 15 years, Africa's global trade has increased. According to the UNCTAD report, lately *'African merchandise trade has been rising faster than those of the developed and developing economies'*.[73] The level of African merchandise trade (exports and imports) with the world rose from USD 251 billion in 1996 to USD 1 151 billion in 2011. In 2011, exports and imports for Africa totalled USD 582 billion and 569 billion respectively. Despite its fast growth in merchandise trade, Africa accounts for only about 3 per cent of world trade.

[67] *Regional Economic Outlook. Sub-Saharan Africa. Building Momentum in a Multi-Speed World*, International Monetary Fund, Washington 2013, p. 2; *World Economic Outlook 2013*..., op.cit., pp. 67–69.

[68] *African Economic Outlook 2012. Promoting Youth Employment. Pocket Edition*, African Development Bank (AfDB), OECD Development Centre, UN Development Programme (UNDP), UN Economic Commission for Africa (UNECA), Paris 2012, pp. 11, 16; *Regional Economic Outlook. Sub-Saharan Africa. Building*..., op.cit., p. 2;

[69] *Ernst & Young's attractiveness surveys. Africa 2013. Getting down to business*, 2013.

[70] In 2012, Africa's growth was mainly due to the rebound of oil production in Libya. Excluding Libya, Africa's growth was 4.2 per cent in 2012. *African Economic Outlook 2013. Structural Transformation and Natural Resources. Pocket Edition*, African Development Bank (AfDB), OECD Development Centre, UN Development Programme (UNDP), UN Economic Commission for Africa (UNECA), Paris 2013, pp. 7, 10.

[71] In the statistical data quoted in the African Economic Outlook (AEO), North Africa is considered to consist of: Algeria, Egypt, Libya, Mauritania, Morocco, and Tunisia. The report of 2012 and 2013 takes into account 53 of 54 African countries, excluding Somalia.

[72] The data is based on the assumption that the situation in North Africa will stabilise. According to the AEO of 2013: *'Two years after the revolutions in Tunisia, Egypt and Libya, political stability in the region remains elusive and social tensions linger on'*, which is proved, for example, by the events of June/July 2013 in Egypt. *African Economic Outlook 2013*..., op.cit., p. 9.

[73] *Economic Development in Africa Report 2013. Intra-African Trade: Unlocking Private Sector Dynamism*, United Nations Conference on Trade And Development, New York and Geneva 2013, pp. 8–10.

However, economists highlight the dynamics of trade and Africa's significant potential in this respect (for example, the dynamically developing middle class).[74]

Africa is also exhibiting a substantial FDI growth. According to the African Economic Outlook, in 2001 the FDI in Africa was USD 20 billion in current prices, and it rose to USD 50 billion in 2012.[75] It is estimated that in 2013 the FDI level will be similar to that of 2008 – around USD 57 billion.[76] Although Africa enjoys only around 3.7 per cent of all global FDI inflows, the annual UNCTAD report of 2013 calls Africa *'a bright spot for FDI'*.[77] The Sub-Saharan region is particularly attractive to investors. The FDI inflows to Sub-Saharan Africa increased from around USD 27 billion in 2007 to USD 38.5 billion in 2012.[78] It is worth stressing that not so long ago, in 2006, over 50 per cent of all FDI inflows to Africa went to North Africa, and since 2007 a gradual change of the trend to Sub-Saharan Africa has been observed. According to the authors of the report titled *Africa–Europe on the Global Chessboard: The New Opening*: *'Sub-Saharan Africa now offers the greatest overall investment potential of all frontier markets, beating East and South Asia, Eastern Europe, and Latin America'*.[79]

This dynamism of the African economy determines the trade relations with the EU as well. From 2004, the value of the EU's trade in goods with Africa rose substantially, but the economic crisis abruptly ended this trend. Since 2010, we have been again observing an increase in trade. In 2011, it reached the record value of EUR 285.7 billion (export – 136.2; import – 149.5).[80] Estimations for 2012 indicate another record in mutual trade – EUR 336 billion, of which 173 billion was achieved by the 48 ACP countries (South Sudan was not yet taken into account) and EUR 163 billion by the 5 countries of North Africa.[81] To illustrate the

[74] *African Economic Outlook 2012...*, op.cit., p. 12; *Economic Report on Africa 2013. Making the Most of Africa's Commodities: Industrializing for Growth, Jobs and Economic Transformation*, United Nations Economic Commission for Africa, Addis Ababa 2013, p. 47.

[75] In 2012, the recipients of the highest FDI inflows in Africa were: Nigeria (ca. USD 7 billion), Mozambique (over USD 5 billion), South Africa (USD 4.6 billion), the DRC and Ghana (over USD 3 billion). *The World Investment Report 2013: Global Value Chains: Investment and Trade for Development*, United Nations Conference on Trade and Development, New York and Geneva 2013, pp. 39–41.

[76] *African Economic Outlook 2013...*, op.cit., p. 12

[77] *The World Investment Report 2013...*, op.cit., pp. XVI, 38.

[78] The WIR defines North Africa as: Algeria, Egypt, Libya, Morocco, Sudan, and Tunisia. *The World Investment Report 2013...*, op.cit., pp. 39–40, 213.

[79] *Africa-Europe on the Global Chessboard: The New Opening*, Central and Eastern Europe Development Institute (CEED Institute), Warsaw 2013, p. 28.

[80] *International trade and foreign direct investment. 2013 edition*, Eurostat, Luxembourg 2013, p. 13.

[81] Eurostat defines North African countries as: Algeria, Egypt, Libya, Morocco, and Tunisia. *ACP. EU bilateral rrade and trade with the world*, DG Trade. Statistics, 23 May 2013, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113340.pdf (last visited 10.07.2013); *African ACP Countries. EU bilateral trade and trade with the world*, DG Trade. Statistics, 23 May 2013, http://trade.ec.europa.eu/doclib/docs/2011/january/tradoc_147192.pdf (last visited

difference, in 2000 the trade volume was EUR 151.4 billion, and in the peak period before the 2008 crisis – EUR 277.1 billion.[82] The five North African countries and South Africa and Nigeria are the key African partners of the EU. They generate around EUR 250 billion of the trade volume with the EU. In terms of EU-27 imports, the main African partners in 2012, were Nigeria, Libya and Algeria (each of them generates 1.8 per cent of total extra EU-27 imports), followed by South Africa (1.1). South Africa led the ranking of EU-27 exports to Africa (1.6 per cent of total extra EU-27 exports), and was followed by Algeria (1.2), Morocco (1.0), Egypt (0.9), Nigeria and Tunisia (0.7).[83] Most of the trade with Africa is generated by several EU Member States. They are, in the order of trade volume: France, Italy, Germany, Spain, the Netherlands, the United Kingdom, and Belgium.[84] Machinery and vehicles accounted for 40 per cent of EU-27 exports to Africa, while energy made up nearly 60 per cent of EU-27 imports. At the detailed level, the main EU-27 exports included petrol, medicine and cereals, while the main imports from Africa included oil, gas and diamonds.[85] In Africa, the main destinations for outward stocks of EU-27 FDI are South Africa, followed by Nigeria (before the beginning of the Arab Spring Egypt was the third largest recipient of European FDI).[86] South Africa remained among the top ten partners for outward stocks of the EU-27 FDI. France and the UK accounted for most of the total EU FDI in Africa and a vast majority (over 50 per cent) of FDI inflows to Africa is of European origin.[87]

African countries also influence the economic relations between the EU and the ACP countries. In 2012, the volume of trade with the ACP reached EUR 185.84 billion, of which approximately EUR 173 billion (ca. 90 per cent) was generated by the African members of the ACP. The top ten ACP trading partners are African countries. South Africa, Nigeria and, to a lesser extent, Angola account for more than 60 per cent of the total EU-27 trade in goods with the ACP countries.[88] Due to the essentially African character of the ACP group, the trade structure of the EU–ACP exchange is identical to the trade structure of Africa in

10.07.2013); *Caribbean ACP Countries. EU bilateral trade...*, op.cit.; *Pacific ACP Countries. EU bilateral trade and trade with the world*, DG Trade. Statistics, 23 May 2013, http://trade.ec.europa.eu/doclib/docs/2011/january/tradoc_147359.pdf (last visited 10.07.2013).

[82] *EU-Africa Summit. Revival of EU-27 trade in goods with Africa in the first nine months of 2010. Africa accounts for 9 per cent of EU-27 trade*, Eurostat Newsrelease, 26 November 2010, STAT/10/178.

[83] *ACP. EU bilateral trade...*, op.cit.

[84] Por. *EU-Africa Summit. Revival...*, op.cit.

[85] *The European Union and the African Union. A statistical portrait. 2012 Edition*, Eurostat, Luxembourg 2012, p. 14.

[86] *International trade and foreign direct investment...*, op.cit., p. 68.

[87] *EU-27 and Africa: selected indicators, comparisons and trends – 2009–2010*, Statistics in focus 19/2012, Eurostat.

[88] *ACP. EU bilateral trade...*, op.cit.; por.: *EU–27 trade in goods with ACP countries: a continued small trade surplus in 2010*, Statistics in focus 20/2011, Eurostat.

general. However, we should also stress the increased role and importance of the United Kingdom. It has the highest share in trade with the ACP (in particular with North Africa) among the EU members, next to France and Germany.[89]

As regards trade relations, we can observe the following trends:

1) The EU is already Africa's biggest trading partner, accounting for about 35 per cent of imports and exports (in goods). The United States was overtaken by China in 2009 as Africa's major trading partner, both these countries, however, remain behind the level of trade volumes with the EU total.[90] If we count only the Sub-Saharan countries, Europe's share in their trade is around 25 per cent on average (China – 14 per cent, US – 12 per cent).[91]
2) At the same time, we should emphasise the increasing diversification of African trade. Back in the 1960s and for a long time afterwards, the Community's share was 2/3, but today the role of China and countries of the South is growing. One of the reports has a very convincing and much-telling chapter title: *'Europe is taking a nap, while others are waking up'*.[92] On the other hand, according to the OECD, the members of this organisation still dominate African trade and continue growing, although less rapidly than the other emerging partners.[93] Africa's trade volumes with its emerging partners have doubled in nominal value over the decade. According to the AEO of 2013: *'the emerging economies are steadily eating into the lion's share of the African export market held by Europe and the United States'*.[94] The emerging economies took 8 per cent of Africa's exports in 2000. This had mushroomed to 22 per cent in 2011. The European Union and the United States saw their share of Africa's exports fall – from 47 per cent in 2000 to 33per cent in 2011 in the case of Europe and from 17 per cent to 10 per cent for the United States. China increased its share of African exports from 3.2 per cent in 2000 to 13 per cent in 2011; India from 2.8 to 6 per cent; Brazil from 2 to 3 per cent.[95] The EU's share in Africa's imports in 2011 was around 34 per cent, as compared to around 42 per cent in 2001. The American share remains at around 8–10 per cent. Imports from China rose three-fold from 3 to 10 per cent and that from India doubled from 1 to 2 per

[89] *Trade between EU and West Africa, 2000–2010*, Statistics in focus 5/2012, Eurostat.

[90] *Lamy urges EU to forge closer trade ties with Africa*, 23 May 2013, http://www.euractiv.com/development-policy/lamy-urges-eu-forge-closer-trade-news-519961 (last visited 10.07.2013); http://www.oecd-ilibrary.org/sites/factbook-2011-en/04/01/05/index.html?itemId=/content/chapter/factbook-2011-37-en (last visited 11.07.2013).

[91] *Africa-Europe on the Global Chessboard*..., op.cit., p. 46.

[92] Ibidem, pp. 38, 45.

[93] http://www.oecd-ilibrary.org/sites/factbook-2011en/04/01/05/index.html?itemId=/content/chapter/factbook-2011-37-en (last visited 11.07.2013); por.: *The Economic Development in Africa Report 2010. South-South Cooperation: Africa and the New Form of Development Partnership*, United Nations Conference on Trade and Development, New York and Geneva 2010.

[94] *African Economic Outlook 2013*..., op.cit., p. 14.

[95] Ibidem, p. 14.

cent.[96] Africa's bilateral trade with China almost doubled over the last years, from USD 91 billion in 2009 to USD 166 billion in 2011. In 2012, China's trade with Africa hit USD 220 billion.[97]

3) In terms of foreign direct investment (FDI), the European Union and the United States still dominate FDI to African countries, accounting for about 60 per cent of FDI flows – 41 per cent and over 20 per cent respectively. However, the share of non-OECD countries has risen. In this context, the BRICS countries are becoming significant investors in Africa – in 2010 the share of BRICS in FDI inward stock to Africa reached 14 per cent and their share in inflows reached 25 per cent. As the UNCTAD special report puts it: *'This trend is likely to be reinforced in the future'*.[98] In 2011, four of the BRICS countries – South Africa, China, India, and the Russian Federation – have grown to rank among the top investing countries in Africa on FDI stock and flows.[99] Among the BRICS countries, China is particularly active, with 1/3 BRICS FDI in Africa. In 2011, Chinese FDI inflows to Africa reached over USD 3.2 billion. By the end of 2011, Chinese investment stock in Africa exceeded USD 16 billion.[100]
4) From the European perspective, Africa accounted for around 1/8 of EU-27 value of imports and exports in 2011 (approx. 12–13 per cent).[101] This amount was generated mainly by North African countries, South Africa and Nigeria. Taking into account only the African ACP countries, they had a relatively small share (just 5 per cent) of total extra EU-27 trade in goods.

Despite the declarations adopted by the EU in its economic relations with Africa, we should stress that there are challenges and problems which essentially affect the trade between Europe and Africa.

For Sub-Saharan countries, the sale of their agricultural products in EU markets remains an important question, which the Cotonou Agreement failed to solve. This would require reducing export subsidies and eliminating barriers to imports in EU countries. In Africa, agriculture generates the most jobs, while in the EU it is the most protected sector. Over half of EU budgetary funds are spent on

[96] *Report on International and Intra-African Trade*, UN Economic Commission for Africa (UNECA), Addis Ababa, Ethiopia, 7 September 2012, E/ECA/CTRCI/8/3, p. 12; *Economic Report on Africa 2013. Making...*, op.cit., p. 48.

[97] R. Emmott, *Europe holds out hope of Africa trade deals by 2014*, Reuters, 27 September 2012, http://www.reuters.com/article/2012/09/27/ozatp-eu-africa-trade-idAFJOE88Q02C20120927 (last visited 29.06.2013); K. Ighobor, *China in the heart of Africa. Opportunities and pitfalls in a rapidly expanding relationship*, Africa Renewal, January 2013, http://www.un.org/africarenewal/magazine/january-2013/china-heart-africa (last visited 11.07.2013).

[98] *The Rise of BRICS FDI and Africa,* Global Investment Trends Monitor. Special Edition, United Nations Conference on Trade and Development, 25 March 2013, p. 6.

[99] Top 6 investors in Africa in 2011 a) on FDI flows are: France, United States, Malaysia, China, India, Germany; b) on FDI stock are: France, United States, United Kingdom, Malaysia, South Africa, China. Ibidem, p. 7; cf. also: *The World Investment Report 2013...*, op.cit., p. 40.

[100] *The Rise of BRICS FDI...*, op.cit., pp. 7–8.

[101] *The European Union and the African Union. A statistical...*, op.cit., p. 14.

agriculture. The World Bank estimates that subsidies in developed countries cause an annual decrease of the GDP of the South by ca. USD 32 billion.

The Cotonou Agreement provides for Economic Partnership Agreements (EPAs) that will set up an entirely new framework for trade and investment flows between the EU and the contracting ACP states. They were essentially meant to be free trade agreements, in accordance with the aims of the EU, helping developing countries fully integrate with the global economy. The EPAs negotiations were commenced in Brussels in September 2002.[102] Under the Cotonou Agreement, the ACP states which would fail to negotiate an EPA by 2007 would lose the preferences given to them by the Lomé conventions and would only remain the beneficiaries of the GSP system.[103] Only fifteen Caribbean countries which are parties to the ACP–EC Cotonou Partnership Agreement (Cuba is not a party to the Agreement) signed a comprehensive EU–CARIFORUM Economic Partnership Agreement. They conclude the EPA in December 2007, and the next one was signed in October 2008 (Haiti signed it on 11 December 2009) and approved by the EP in March 2009. The other regional groups did not decide to conclude comprehensive EPAs. As a temporary solution, the EU initiated the conclusion of Interim Economic Partnership Agreements, concerning, for example, trade exchange. The interim agreements were signed with 21 ACP countries.[104] As a result, the 36 ACP countries that managed to negotiate comprehensive or interim EPAs by the end of 2007 are covered by the duty/quota free access system to the European market, in accordance with the Market Access Regulation (MAR) adopted by the Council on 20 December 2007.[105] The ACP countries that failed to conclude the EPAs and that are not beneficiaries of the 'Everything But Arms' arrangement (EBA),[106] have been exporting to the EU market under the GSP rules since 1 January 2008.

[102] The first phase included problems and issues characteristic of the entire ACP group. The second one concerned issues specific for the individual regional groups within the ACP. The ACP EPA group divided themselves into seven regions: five in Africa, one in the Caribbean (CARIFORUM group) and one in the Pacific. The African ones are: Eastern African Community (EAC), Eastern and Southern Africa (ESA), West Africa, Central Africa, Southern African Development Community (SADC).

[103] The EU's Generalised System of Preferences (GSP) allows developing country exporters to pay lower duties on their exports to the EU. The current GSP will terminate at the end of 2013. The new system will be put in place in January 2014. http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/index_en.htm (last visited 12.07. 2013).

[104] *EU's first Economic Partnership Agreement with an African region goes live*, Press Release, Brussels, 14 May 2012; *European Parliament backs EU's first Economic Partnership Agreement with Africa,* Brussels, 17 January 2013, http://trade.ec.europa.eu/doclib/press/index.cfm?id=863; *Overview of EPA*, European Commission, 5 July 2013, http://trade.ec.europa.eu/doclib/docs/2009/september/tradoc_144912.pdf (last visited 12.07.2013).

[105] http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/preferential/article_785_en.htm (last visited 12.07.2013).

[106] 'Everything But Arms' arrangement (EBA) was set up in 2001 to give all LDCs full duty free and quota-free access to the EU for all their exports with the exception of arms and armaments. There are currently 49 beneficiaries under this arrangement (October 2013). *Everything But Arms (EBA) – Who benefits?*, http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_150983.pdf (last visited 12.07.2013).

On 30 September 2011, the European Commission adopted a proposal amending the MAR. It provides that unless one of the countries covered by it ratifies and implements the EPAs by January 2014, they will lose the duty/quota free access of their goods to the European market. In the end, the European Parliament agreed on 17 April 2013 to extend the deadline by nine months until 1 October 2014. So far, 15 African countries, one Caribbean and one Pacific country have concluded negotiations with the EU but have not ratified their respective agreements (only Madagascar, Mauritius, the Seychelles, and Zimbabwe managed to fulfil this condition). The 17 countries are Botswana, Burundi, Cameroon, the Comoros, Fiji, Ghana, Haiti, Ivory Coast, Kenya, Lesotho, Mozambique, Namibia, Rwanda, Swaziland, Tanzania, Uganda and Zambia.[107] The impact of being removed from the Market Access Regulation would be different for each country. Nine of them – Burundi, Comoros, Haiti, Lesotho, Mozambique, Rwanda, Tanzania, Uganda and Zambia – are LDCs. These countries can benefit from the European Union's 'Everything But Arms' (EBA) scheme. Six are low income or lower middle income countries (Cameroon, Fiji, Ghana, Ivory Coast, Kenya, and Swaziland) that could benefit from the Generalised System of Preferences regime, meaning that their main exports will be taxed when entering the European market. Botswana and Namibia are upper middle income countries and, under the new EU's Generalised System of Preferences which will apply from 2014, they would no longer qualify for the GSP. They will therefore revert to the higher, normal level of tariffs on their exports to the EU. According to the estimates for Namibia, this means an average of 19.5 per cent duties on its exports (almost EUR 60 million, as the EU is Namibia's main export market outside Southern Africa and accounts for about 30 per cent of Namibia's exports).[108]

Since the beginning, the EPAs have given rise to many doubts. The question is, whether the countries of Sub-Saharan Africa that decide to sign the agreements and fulfil the conditions required by the EU will be sufficiently prepared for the strong global competition. African countries have to be ready for huge costs of restructuring and modernising many sectors of their economies. Another question that comes to mind is whether they can afford this. African countries fear these processes. They stress that they lack funds for creating new industries in the place of the liquidated ones[109] and that partners should be

[107] *Extended access to EU markets for ACP exporters*, 25 April 2013, http://brussels.cta.int/index.php?option=com_k2&view=item&id=7668:extended-access-to-eu-markets-for-acp-exporters (last visited 12.07.2013).

[108] *EU wants to force ACP countries to sign EPAs*, http://www.aefjn.org/index.php/352/articles/european-commission-wants-to-force-acp-countries-to-sign-epas.html (last visited 12.07. 2013).

[109] African countries quote the example of liberalisation of the textile industry, as a result of which 8 factories in Lesotho have been closed since May 2004, with 12 thousand workers generating 20 per cent of the country's textile goods; in Namibia, 1600 workers were laid off in 2005. M. Meyn, *The Impact of EU Free Trade Agreements on Economic Development and Regional Integration in Southern Africa. The Example of EU-SACU Trade Relations*, Frankfurt am Main 2006, p. 204.

equal in developing economic development strategies.[110] As bilateral agreements between the EU and individual countries of the region, the EPAs may indeed help liberalise trade between the North and the South, but at the same time may lead to the neglect of economic cooperation between non-European states (South–South).[111]

South Africa – the most important partner in Africa

South Africa (SA) is one of the most important countries at the African continent. It is the only African member of the G-20 and the BRICS; in 2011–2012 it was a non-permanent member of the UN Security Council; it is also one of the most important trade and political partners of the EU in Africa (in economic terms, in 2012, it was the second trade partner after Algeria and the first one in Sub-Saharan Africa).

A strong relationship has evolved between the European Union and South Africa since 1994, when South Africa held its first universal elections in 1994. Both parties signed the Trade, Development and Cooperation Agreement (TDCA) in 1999, which constitutes the legal basis for the overall relations between SA and the EU. The significance of South Africa for the EU was consolidated with the establishment of a Strategic Partnership in 2007. Since 2008, EU–South Africa summits are held annually (first in Bordeaux in 2008; the most recent, 6th summit, was held in Pretoria, on 18 July 2013). In addition, 2012 marks the fifteenth anniversary of the entry into force of the EU–South Africa agreement on science and technology[112].

The EU is the most important trading partner of South Africa and South Africa's main destination for exports, with a share of 17.6 per cent of the total country's exports in 2012. The EU is also the main source of South Africa's imports, with a share of 24.4 per cent of the total country's imports in 2012[113]. South Africa's exports to the EU are growing and the composition of these exports is becoming more diverse. The EU is the largest importer of manufactured goods

[110] *European Union Trade Politics and Development. 'Everything but Arms' unravelled*, G. Faber, J. Orbie (eds.), London–New York 2007; D. Kohnert, *EU-Africa Economic Relations: Continuing Dominance, Traded for Aid?*, "MPRA Paper" no. 9434/2008, p. 16.

[111] Intra-African trade, which remains very low – representing 11.3 per cent of African trade with the world – is still a problem, compared with the share of intra-European trade is more than 70 per cent, while shares of intra-Asian and intra-North American trade are around 50 per cent, and the share of intra-South American trade is above 25 per cent. *Economic Development in Africa Report 2013...*, op.cit., pp. 2, 11–13.

[112] South Africa was the fifth most active third country partner in FP7 (EU Research framework programme 2007–2013), after Russia, the US, China and India. *EU strategic partnership with South Africa*, Press Release, Brussels, 17 September 2012, MEMO/12/677.

[113] It should be stressed, however, that the EU share in South Africa's foreign trade has fallen, as compared to 2010. At the same time, the importance of the countries of the South, i.e. the emerging markets, in South Africa's trade policy, has been rising. Ibidem; *EU-South Africa relations*, Press Release, Brussels, 16 July 2013, MEMO/13/686.

from South Africa. In contrast, South Africa's exports to BRIC countries are mostly dominated by raw materials[114].

Since 2004, total trade between South African and the EU has increased by 128 per cent. After the decline in EU-27 trade in goods with South Africa observed in 2009, both exports and imports recovered in 2010–2012. EU–South Africa trade in goods represented EUR 47.1 billion in 2012, topping the pre-crisis totals of 2008. EU–South Africa trade in services amounted to EUR 11.6 billion in 2011. South Africa was the EU's 17th largest trading partner (in goods) in 2012 (Algeria was 13th)[115].

Among the EU-27 Member States, Germany was the largest exporter of goods to South Africa in 2012 (33 per cent of EU-27 exports), followed by the United Kingdom (16 per cent), the Netherlands (9 per cent) and France (7 per cent). The United Kingdom was the largest importer of goods (36 per cent of EU-27 imports), followed by Germany (20 per cent), the Netherlands (11 per cent) and Belgium (9 per cent)[116].

Bilateral foreign direct investment has grown five-fold since 2004, with the EU providing over three quarters of foreign direct investment inflow to South Africa. However, EU-27 foreign direct investments in South Africa stood at EUR 1.5 billion in 2011, compared with EUR 7.1 billion in 2010 and EUR 10.8 billion in 2009[117]. This abrupt fall was caused mainly by the global crisis, the problems in the euro area, as well as South Africa's internal problems (e.g. economic slowdown as compared to other emerging African economies, and growing social problems – as shown by miners' strikes in 2012/2013). It seems, however, that in the next years South Africa will return to the levels from former years.

The EU is by far the most important donor in South Africa. Together, the EU and its member countries provide roughly 70 per cent of all external assistance funds (not only development assistance) given to South Africa – which accounts for 1.3 per cent of its budget and 0.3 per cent of South African GDP. EU's development cooperation with South Africa is financed from the EU budget (EU's Development Cooperation Instrument). The EU's annual financial commitments in the framework of development cooperation to South Africa have averaged EUR 125 million since 1995. The sum allocated for 2007–2013 was EUR 980 million. In 2014–2020 the EU intends to focus its development funding on the world's poorest countries, so the EU institutions are currently debating whether upper middle-income countries like South Africa should

[114] *EU–South Africa relations*, op.cit.

[115] *EU-South Africa Summit. EU27 surplus in international trade in goods with South Africa up to 6 billion euro in 2012*, Eurostat Newsrelease, STAT/13/108; 15/07/2013; *South Africa. EU bilateral trade and trade with the world*, DG Trade. Statistics, 5 July 2013, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113447.pdf (last visited 14.07.2013).

[116] *EU – South Africa Summit. EU27 surplus...*, op.cit.

[117] Ibidem.

continue to receive funding after 2013. A decision is expected before the end of 2013.

Towards an actual partnership between EU and Sub-Saharan Africa?

In the recent years, Sub-Saharan Africa has been exhibiting a considerable dynamism of growth and economic change. That Africa is not only a region of poverty, but much rather of a huge potential and economic opportunities, is proven by the headlines of newspapers and magazines. *The Economist* of 13 May 2000 titled its front page 'The hopeless continent' referring to Africa, while the issue of 3 December 2011 was already titled 'Africa rising'. At the same time, Africa is becoming an increasingly important political partner, who aspires to having real influence on the shape of the contemporary world. On the other hand, weakened by the economic crisis, the EU is trying to find a new political and economic identity, and Africa, with its huge and largely unused potential, seems the perfect strategic partner for Europe.

In the early years of the second decade of the 21st century, the relations between the European Union and Sub-Saharan Africa have been increasingly intensive. The crowning achievement was the conclusion of the Strategic Partnership in 2007. It seems however, that the most important developments are yet to come. The coming years will show whether the Strategic Partnership is honest and essential to the shaping of the mutual relations, or just a couple of pages with little actual meaning and value for either party. We could say that after a period of institutionalisation of the relations between the EU and Africa (The Cotonou Agreement, EU–Africa summits), now the time has come for actual implementation of the provisions, promises and decisions.

The European Union and Africa face many challenges and tasks – ranging from economic ones (the issue of agricultural subsidies, future EPA agreements, promotion of African commodities in European markets, European products in the African markets in the context of the Chinese expansion), to political (stabilisation, consolidating state institutions, the issue of terrorism) and global (fulfilment of development goals after 2015, climate negotiations, a new distribution of power in the economic order after 2008).

One of the analyses mentioned before defined the challenges facing the EU and Africa in the following words: *'As Chinese, Indian, Brazilian and US interest in Africa grows, both Africans and Europeans need to rethink their relationship that has for so long been taken for granted (...). As both sides prepare for the next summit between the leaders of the two continents in early 2014, the intercontinental relationship clearly needs an overhaul. A new vision is also needed as the end of the Cotonou Agreement approaches in 2020'*.[118]

[118] *EU-Africa relations: what's in store...*, op.cit.

Conlusions

Nowadays, we are witnessing the development of a new international order. Although its precise framework and characteristics have not yet been specified, it is still certain that it will differ considerably from what we had in the last two decades. Even now we can see a significant fall of the Western domination in world economy in relation to selected emerging markets – as evidenced by their ever greater share in global trade, investments, production, and GDP. Consequently, the West is 'fading' and the emerging markets are becoming ever stronger (especially in economic terms). The world is becoming multipolar. Western domination is no longer self-evident. A historical process is taking place of transition to a new multipolar structure of international relations, in which the economic potentials will probably be distributed more evenly between several centres, with no clear domination of the West (the EU and the USA). This was already pointed out by Zbigniew Brzeziński in *The Grand Chessboard: American Primacy and Its Geostrategic Imperatives* and later restated in his latest book *Strategic Vision: America and the Crisis of Global Power*. The thesis is also confirmed by analytical and strategic centres based in the USA.[119] In this context, it seems highly justified that the EU is developing and consolidating relations with non-European developing countries, particularly China, India and selected countries of Latin America and Sub-Saharan Africa.

These regions exhibit a considerable economic growth and have a huge potential (although we also have to note that they are facing serious problems and challenges). They differ from the others not only in that they have a higher growth rate, but mainly in that most of these countries are developing along non-Euro-Atlantic paths. It would seem that the European slowdown will be accompanied by a further growth of emerging economies. Furthermore, next to China and India, the political significance of which has already considerably grown in the last two decades, other countries of the South, such as Brazil, South Africa or Nigeria, will be playing a greater role as well.

The changes which have been taking place in the world make it necessary to search for new principles and forms of legal, political and economic relations between the European Union and the countries of the South.

In the early 21st century, the relations between the European Union and the countries of the South are characterised by complexity and a multi-layered structure, as well as considerable intensification, which is a consequence of the processes of globalisation and internationalisation of contemporary international relations.

[119] *Study Predicts Future for U.S. as No. 2 Economy, but Energy Independent*, http://www.nytimes.com/2012/12/11/world/china-to-be-no-1-economy-before-2030-study-says.html?_r=0 (last visited 29.06.2013).

At the same time, the dynamism and scale of changes in global politics and economy require that a broader field of cooperation between the EU and the South be delimited. Thus, Europe faces not only the challenge of developing the vision of what Europe is to be in a decade, but also the challenges of effectively using the mechanisms available under the EU's external policy and of optimising the action strategy towards new emerging markets. This strategy should put more emphasis on the multidimensional nature of the future actions and take into account the dynamically changing international environment. The goal of the actions undertaken by the EU and the countries of the South in the form of summits, meetings, documents, etc., is facing up to these challenges and the problems they entail. Only the future, however, will show whether the interests of the regions converge and coincide. This will largely depend on the good will of the partners, especially the EU. The EU's relations with the world, including Asia, Latin America and Sub-Saharan Africa, should involve greater determination of Brussels and the internal problems of the EU may not directly influence the EU's external relations.

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Kamil Zajączkowski

European Union's Development Assistance – Framework, Priorities and Directions

Introduction

Development assistance is one of the key areas of the European Union's external relations. Since their establishment, the European Communities/European Union have been supporting the development of many regions of the world – initially Africa, the Caribbean and the Pacific, and later all the developing countries. As the provider of the largest assistance in the world, financing more than 50 per cent of global Official Development Assistance (ODA), the European Union and its Member States confirm their long-term dedication to combating poverty, which is the main objective of the European development policy. Furthermore, the EU as a whole, that is the European Commission and the Member States, is the largest single provider of humanitarian aid in the world and accounts for almost half the total financial outlays on this aid.

The significance of the development policy has increased under the Treaty of Lisbon. At the same time, development assistance is an important element through which the EU is expanding on its role as an active entity in the international arena. A characteristic feature of the EU is that it plays the role of a so called civilian power, as it interacts with the international environment principally through economic, financial and political instruments, and not military ones.[1] One of them is development assistance, which belongs to the economic instruments of foreign policy[2] and constitutes the so called *soft power*

[1] Cf.: D. Milczarek, *The International Role of the European Union As a "Civilian Power"*, "The Polish Foreign Affairs Digest" no. 4/2003.

[2] O. Stokke notes that: '*The aid policy is part of the foreign policy of a donor country*'. O. Stokke, *The Changing International and Conceptual Environments of Development Co-operation* in: *Perspectives on European Development Co-operation. Policy and performance of individual donor countries and the EU*, P. Hoebink, O. Stokke (eds.), London-New York 2005, pp. 33, 53.

of the EU.[3] It would be unjustified to claim that EU development assistance is functioning independently of any political and economic goals and that it is only driven by motives related to the desire to mitigate the dissonance resulting from the existence of poverty and underdevelopment. G.R. Olsen notes that *'it is increasingly inappropriate to see the aid policy of the European Union in isolation from its other external activities'*.[4] He stresses that especially after the end of the Cold War, we have been discovering numerous evidence supporting the thesis that development assistance is an integral component of the political and economic relations between the EU and the developing countries. Consequently, instruments of development assistance used by the EU are one of the elements defining its external actions and one of the main factors shaping its position in the world. As P. Hoebink and O. Stokke note, especially after the establishment of the common foreign policy under the Treaty of Maastricht, the political significance of development assistance has been increasing.[5] Other EU documents prove this as well (e.g. the Conclusions of the EU summit in Seville of June 2002 or Article 58 of the European Consensus on Development) and point to the important role of development assistance as an important instrument in the totality of EU foreign policy.[6]

The aim of this paper is to present the principles, goals and mechanisms of providing development assistance by the EU. It characterises the main instruments and areas of EU humanitarian and development assistance.

Development assistance and humanitarian aid – definitions

By development assistance we understand the transfer of goods and services with good prices and financial resources in the form of long-term loans with lower interest than those offered in the private capital market,[7] debt reliefs, providing technical assistance through free or partially paid provision of technology and management techniques, financing training programmes, granting scholarships. Development assistance is a manifestation of international solidarity, the willingness to equalise civilisational opportunities, and to improve international security. It implies unilateral actions of the donors aimed at changing the situation of the beneficiaries.

[3] J. Nye, *Bound to Lead: The Changing Nature of American Power*, New York 1990; R. Morgan, *High Politics, Low Politics. Towards a Foreign Policy for Western Europe*, London 1973; S. Ostry, *Governments and Corporations in a Shrinking World. Trade and Innovation Policies in the United States, Europe and Japan*, London–New York 1990, pp. 17–52.

[4] G.R. Olsen, *The European Union's Development Policy: Shifting Priorities in a Rapidly Changing World* in: P. Hoebink, O. Stokke (eds.), *Perspectives...*, op.cit., p. 573.

[5] P. Hoebink, O. Stokke, *Introduction: European Development Co-operation at the Beginning of a New Millenium* in: P. Hoebink, O. Stokke (eds.), *Perspectives...*, op.cit., p. 18.

[6] G.R. Olsen, *The European Union's Development Policy...*, op.cit., p. 602.

[7] R. Cassen et al., *Does Aid Work? Report to an Intergovernmental Task Force*, Oxford 1986, p. 2.

Development assistance and foreign aid are not identical notions. In the formal sense, it is assumed that development assistance is a subcategory of foreign aid. It is associated with specific objectives in the form of actions aimed at socio-economic development in countries receiving the assistance. Foreign aid, in turn, is a broader category, comprising actions which exceed supporting development in the classical meaning or play a protecting role in relation to development. This term is relatively frequently used in the Anglo-Saxon countries.[8]

For statistical purposes, as well as for a better systematisation, the definition of development assistance devised by the Development Assistance Committee of the OECD (DAC OECD) is commonly applied. In its definition, the Committee complemented the term 'development assistance' with the word 'official' in order to emphasise that what is meant are government transfers.[9] Consequently, in the OECD nomenclature, the aid provided by the donor state is considered Official Development Assistance if and when it meets all three of the following criteria:

- it is provided by official state institutions of the donor country (including local self-government institutions) or by international organisations,[10]
- it supports economic development and serves the improvement of prosperity in developing countries,
- it is concessional in character, which means that it has a grant element of at least 25 per cent of assistance must be non-returnable (calculated against a notional reference rate of 10 per cent per annum).[11]

The DAC compiles a List of ODA Recipients which shows all countries and territories eligible for Official Development Assistance (ODA). The DAC revises the list every three years. Countries that have exceeded the high-income threshold for three consecutive years at the time of the review are removed.[12] It should be noted that development assistance does not only come down to financial aid, but it also includes scientific and technical cooperation, as well as the exchange of experience. Development assistance can be provided directly (bilateral assistance) or indirectly, through international organisations (multilateral assistance).

[8] In practice, however, there is no common agreement in this regard. These terms are often used as and considered synonyms. R.C. Riddell notes that in more than 80 per cent definitions of foreign aid, it is used as a synonym of development assistance. R.C. Riddell, *Does Foreign Aid Really Work?*, Oxford 2007, p. 21; cf.: D. Kopiński, *Pomoc rozwojowa. Teoria i praktyka* (*Development Assistance. Theory and Practice*), Warszawa 2011, p. 14; O. Stokke, *The Changing...*, op.cit., p. 32.

[9] The definition of ODA was established in 1969 and it was made more specific in 1972.

[10] The application of this definition results in omitting the entire sector on non-governmental aid, thus limiting development assistance to a specific part of public aid.

[11] *Is it ODA? – Factsheet*, OECD, November 2008, http://www.oecd.org/dataoecd/21/21/34086975.pdf (last visited 10.04.2013).

[12] The most recent revision of the list by the DAC in line with this review process took place in October 2011. The next one will take place in the second half of 2014, http://www.oecd.org/development/stats/49483614.pdf (last visited 10.04.2013).

In accordance with the current interpretation of the DAC OECD, Official Development Assistance does not include the following expenses:

- on military aid, including the supply of military equipment and military services, remission of loans taken for military purposes, anti-terrorist operations;[13]
- related to peacekeeping actions;
- on trainings of police forces related to performing paramilitary functions, such as combating insurrectionist movements (regular police trainings are qualified as ODA) and on police services provided by donor states in relation to controlling social unrest;
- on implementation of socio-cultural programmes taking the form of one-time events or promoting the donors;
- related to aid provided to refugees, as long as they concern a stay in the donor country no longer than 12 months;
- related to military applications of nuclear power (peaceful application, or the so called civilian purposes, are qualified as ODA);
- on research not directly related to the problems of developing countries.[14]

A notion broader than 'development assistance' is 'development cooperation'. It can be identified as a comprehensive and long-term cooperation aimed at eliminating differences in the level of development between the countries and regions of the world. By definition, development cooperation involves both a developed country and a developing country, and the partners strive for maintaining equality between each other. Consequently, this term implies minimisation or elimination of the asymmetry between the two groups.[15] 'Development policy', in turn, denotes an overall concept of supporting the development of less developed countries and regions, executed through a series of related undertakings. Therefore, it differs from development cooperation, as it is unilateral.[16]

In its documents and on its official websites, the European Union uses all of the aforementioned terms. Through taking this approach, the EU seeks to recon-

[13] Except for the costs related to performing duties and actions under humanitarian aid and development assistance by the donor's armed forces.

[14] *Is it ODA?...*, op.cit.

[15] P. Bagiński, *Polityka współpracy rozwojowej Unii Europejskiej w kontekście polskiej prezydencji w Radzie UE w 2011 roku. Przewodnik dla posłów i senatorów* (*The European Union Development Cooperation Policy in the Context of Polish Presidency in the EU in 2011. A Guide for Members of Parliament and Senators*), Warszawa 2011, p. 18; ibidem, *Europejska polityka rozwojowa. Organizacja pomocy Unii Europejskiej dla krajów rozwijających się* (*European Development Policy. Organisation of EU Aid for Developing Countries*), Warszawa 2009, p. 14; U. Triulzi, P. Montalbano, *Development Cooperation Policy: A Time Inconsistency Approach*, Eldis Document Store 2000, http://www.eldis.org/fulltext/TriulziMont albano.pdf (last visited 20.02.2013), p. 4; J.S. Sewell, *The Changing Definition of Development and Development Cooperation*, http://pdf.usaid.gov/pdf_docs/PCAAA960.pdf (last visited 20.02.2013).

[16] P. Bagiński, *Polityka...*, op.cit., p. 18.

cile its essential arguments with maintaining a certain degree of political correctness. At the same time, the use of the term 'development co-operation policy' by the EU is an attempt to combine all these notions in one.[17]

The term 'humanitarian aid' is used when aid is provided by several types of entities: states, international organisations and individuals provide relief to people suffering from disasters and armed conflicts, often with no intermediary role played by the governments of beneficiary countries. This is direct, short-term aid, provided on an *ad hoc* basis in reply to emergency situations.[18] Its objectives include avoiding depopulation of areas struck by wars and disasters and preventing a further worsening of the situation in a given region and, in consequence, in broader international relations.[19]

In the present chapter, the operative definition is the notion of 'development assistance', complemented with the OECD definition.

Legal and institutional framework of the Community/EU development policy

From Maastricht to Lisbon

Until the adoption of the Maastricht Treaty, Community activity in the area of development aid had no real basis in the Treaty provisions, mainly due to the lack of agreement between the Member States regarding full inclusion of that area into the scope of Community competence. During the negotiations over the Single European Act (SEA), the government of the Netherlands proposed the inclusion of provisions on development policy in the Treaty, claiming that in both the legal and physical sense, the Community measures in this field constitute a separate area of activity, independent of the Common Commercial Policy (CCP). The proposal was not accepted. Without explicit Treaty competence for actions in the field of development cooperation, the Communities were taking measures under the available Treaty legal base in the form of bilateral and multilateral agreements (principally with African countries, and then with the African, Caribbean and Pacific Group of States – ACP group).

One consequence of the Treaty of Maastricht was that development cooperation was singled out as an independent Treaty policy – as stated in Title XVII 'Development cooperation' (Title XX of the amended version of the Treaty Establishing the European Community – TEC). In Article 130u TEU (177 TEC), the following objectives of cooperation in the area of development were defined:

- sustainable social and economic development of the developing countries, and more particularly the most disadvantaged among them;

[17] Ibidem, p. 18.

[18] It is usually assumed that the time frame of humanitarian aid does not exceed one year from the occurrence of the given event.

[19] G. Michałowska, *Pomoc humanitarna dla państw Afryki* (*Humanitarian Aid for Countries of Africa*), "Stosunki Międzynarodowe" no. 1–2/2003, vol. 27, p. 83.

- smooth and gradual integration of the developing countries into the world economy;
- campaign against poverty in the developing countries.[20]

In the Treaty of Amsterdam, the legislative procedure called cooperation procedure, involving the Council and the Parliament and concerning the measures adopted by the Council when fulfilling the goals of development cooperation, was replaced with the so called codecision procedure, regulated by Article 251 TEC. This procedure has remained the applicable legislative procedure until now – Article 294 TFEU.[21]

In the 1990s, on the initiative of the UN and the OECD, the approach to the issue of international development cooperation was revised. The new approach mainly resulted in a series of international conferences held under UN leadership.[22] In addition, in 1996 the OECD came up with the so-called new strategy for development cooperation, known as the partnership strategy.[23] This led to the adoption, in 2000, of the Millennium Declaration and the formulation of the Millennium Development Goals (MDGs).[24] These documents favoured redefinition of the very concept of development (described as human development), according to which economic growth as such was insufficient and it was equally important to take other aspects of human development into account as well, such as health care, provision of food, education and the natural environment.

The changing international environment and the striving after tighter coordination and cooperation between the Member States and the Community institutions were among the key reasons for the decision to adopt a document regulating the EU development cooperation in the mid-2000s. A common position of the

[20] *Traktat ustanawiający Wspólnotę Europejską* (*The Treaty Establishing the European Community*) in: *Polska w Unii Europejskiej. Wybór dokumentów* (*Poland in the European Union. Selected Documents*), J. Barcz, A. Michoński (eds.), Warszawa 2003, pp. 468–469.

[21] The Treaty of Nice has not introduced any changes, neither formal nor material, to the wording of Title XX TEC. For more see: P. Dąbrowska-Kłosińska, *Tytuł III, Współpraca z państwami trzecimi i pomoc humanitarna (komentarz do art. 208-211)* (*Title III, Cooperation with Third Countries and Humanitarian Aid – Comments to Artiles 208–211*) in: *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz* (*Treaty on the Functioning of the European Union. A Commentary*), vol. II, A. Wróbel (ed.), Warszawa 2012, pp. 1465–1466.

[22] During the United Nations Conference on Environment and Development (known as the Earth Summit) in 1992 in Rio de Janeiro, the so-called Rio Declaration was adopted, concerning efforts to be undertaken for sustainable development. In 1994 the UN Secretary-General B. Boutros-Ghali presented a document entitled An Agenda for Development (supplementing the Agenda for Peace published in that same year).

[23] *Shaping the 21st Century: The Contribution of Development Co-operation*, OECD, Paris 1996.

[24] The Millennium Summit committed UN members to achieve the following eight Millennium Development Goals: (1) to eliminate extreme poverty and hunger, (2) to ensure universal education at elementary level, (3) to promote gender equality and social advancement of women, (4) to control children mortality, (5) to improve health care for mothers, (6) to control the dissemination of HIV/AIDS, malaria and other diseases, (7) to use sustainable methods of natural resource management and (8) to create a global partnership for development.

Council, the EP and the Commission titled the European Consensus on Development was approved on 20 December 2005. The Consensus constitutes a programme of implementing the development policy as a part of the EU foreign policy and the external relations of the EU.[25] It is composed of two parts. The first part ('The European Union vision of Development') contains the common values, objectives, principles and commitments of all the participants of the EU aid system. It was assumed that the principal goal of EU development cooperation is elimination of poverty in the context of sustainable development, including the efforts to reach the MDGs. The second part of the Consensus ('The European Community Development Policy') contains provisions concerning the allocation of aid, the priority sectors of Community activity, strengthening the horizontal issues, as well as reforms of the management of development assistance. The importance of the European Consensus on Development is shown by the fact that this document is the first one to define aid activities on the Community level. It is a way to inform the world about the EU's determination to reach the MDGs.

The entry into force of the Treaty of Lisbon (1 December 2009) strengthened development-related issues on the EU level. As regards structural aspects, the Treaty introduced a new Part Five to the TFEU – 'The Union's External Action', which consolidates all the past provisions regulating the external actions, e.g. the CCP, the EU's international agreements, membership in international organisations. The Treaty of Lisbon placed development cooperation within the framework of external actions of the EU. Consequently, development and eliminating poverty will be treated as one of the goals of the EU's international activity, and not only of its development policy.[26] The objective specified in Article 21(2)(d) TEU is of particular importance. It states that while performing its external actions, the EU will *'foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty'*. The only objective specified *expressis verbis* in Article 208(1) TFEU is *'the reduction and, in the long term, the eradication of poverty'*. Apart from this objective, Article 208 TFUE does not lists any separate goals nor does it repeat

[25] Until 2005, the most important document defining EU strategy towards development cooperation was the joint position of the Council and the Commission on the development policy of 10 November 2000. It was the first attempt to approach the Community aid programme strategically and to adjust it to the conditions of international development cooperation at the beginning of the new century. However, according to P. Bagiński, it was purely declarative and did not sufficiently translate into the principles of distributing the aid funds between specific partner countries and fields and into the process of managing Community aid. Furthermore, an important argument for updating this position was the fact that there was no mention of the MDGs adopted two months earlier. Joint statement by the Council and the representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus', OJ C 46, 24.2.2006; P. Bagiński, *Europejska polityka*..., op.cit., pp. 57–59.

[26] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012.

the content of the TEU. This is surely meant to emphasise the importance of this aim as the overriding principle in the EU development policy.[27]

Towards changes

The entry into force of the Treaty of Lisbon and the decade of implementing the Millennium Development Goals ending in 2010 result in the fact that a discussion was started in the EU on the results of the EU policy regarding global development.

It should be noted that the MDGs virtually determine the EU development policy. In the Communication of 24 June 2008, the EU Council stressed that *'missing the Millennium Development Goals would be a disaster for developing countries, a failure for Europe and a potential threat to global stability'*.[28] In reaction to the global economic crisis and its implications for the developing countries, in May 2009 the EU Council issued Conclusions in which it maintained its millennium commitments.[29]

On 21 April 2010, the European Commissioner for Development, Andris Piebalgs, presented a twelve-point action plan for reducing poverty and reaching the remaining MDGs. During its meeting on 14 June 2010, the Foreign Affairs Council voiced a positive opinion of this plan. It provides for, among others: conducting coordinated aid activity aimed at improving the effectiveness of development assistance, relocating funds to countries which have the most trouble reaching the MDGs, focusing on results in the most important sectors (education, healthcare, food safety).[30]

On 10 November 2010, the European Commission published a Green Paper titled "EU development policy in support of inclusive growth and sustainable development. Increasing the impact of EU development policy". It stressed that progress in reaching the MDGs will not be possible without quicker and more just economic development. *'Aid is not a panacea and is one of several financial flows towards developing countries. It must tackle the roots of poverty rather than its*

[27] M. Broberg, *Something Old, Something New, Something Borrowed, Something Blue – EU Development Cooperation After Lisbon*, http://www.uaces.org/pdf/papers/1102/broberg.pdf (last visited 18.02.2013).

[28] Council of the European Union, "The EU as Global Partner for pro-poor and pro-growth development – EU Agenda for Action on MDGs", Brussels, 24.06.2008, doc. 11096/08, p. 4; http://ec.europa.eu/development/icenter/repository/citizen-summary-DEV-2008-00064-03-02-EN.pdf (last visited 20.04.2013).

[29] Council Conclusions on Supporting developing countries in coping with the crisis, 2943rd External Relations Council Meeting, Brussels, 18.05.2009, doc. 10018/09.

[30] Council Conclusions on the Millennium Development Goals for the United Nations High-Level Plenary meeting in New York and beyond – Supporting the achievement of the Millennium Development Goals by 2015, Brussels, 15.06.2010, doc. 11080/10; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, "A twelve-point EU action plan in support of the Millennium Development Goals", Brussels, 21.04.2010, COM (2010) 159 final; *Getting the Millennium Development Goals back on track: a twelve points EU action plan*, Brussels, 21 April 2010, MEMO/10/147.

symptoms, and primarily be a catalyst of developing countries' capacity to generate inclusive growth [...]*'*.[31]

As a consequence of all these events, on 13 October 2011 the Commission issued a Communication concerning a reform of the EU development policy titled "Increasing the impact of EU Development Policy: an Agenda for Change".[32] The document heralds changes in the development policy which are to allow the EU to keep playing the leading role in international cooperation for development until and after 2015. The Agenda for Change holds that *'difficult economic and budgetary times make it even more critical to ensure that aid is spent effectively, delivers the best possible results and is used to leverage further financing for development'*.[33] According to the Agenda for Change, the supreme goal of EU aid and external actions is reducing and eliminating poverty. At the same time, the role of political issues (human rights and democracy) and of providing aid where it is most needed were stressed. In this context, it was pointed out that the EU should particularly support the development of countries neighbouring on the EU and Sub-Saharan Africa.[34]

However, the reform of the development policy does not mean that it will be completely communitarised. The hypothesis that the EU aid policy will be heading towards passing the entirety of competences to the EU level seems incorrect. One has to remember that the EU ODA is mostly provided through bilateral channels, that is directly to the developing countries. Furthermore, it is used by states as one of the elements of their external policy. Therefore, it is rather hard to imagine a situation where the Member States would reduce their powers to the role of donors or executors of EU policy. We should also point out the fact that the EU competence to perform the development policy is shared with the Member States. Article 4(4) TFEU states that: *'In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs'*. The wording of in the Treaty determines the special character of this competence.[35] Furthermore, after the Treaty of Lisbon, Article 208(1) TFEU states that *'the Union's development cooperation policy and that of the Member States complement and reinforce each other'*. Thus, the competences of states and of the EU are neither equal nor equivalent and exercising the competence by the EU does not prevent the states from exercising their competence, because the EU's competences regarding

[31] Green Paper, "EU development policy in support of inclusive growth and sustainable development. Increasing the impact of EU development policy", Brussels, 10.11.2010, COM (2010) 629 final, p. 4.

[32] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Increasing the impact of EU Development Policy: an Agenda for Change", Brussels, 13.10.2011, COM (2011) 637 final.

[33] Ibidem, p. 4.

[34] Ibidem, pp. 4–5.

[35] For more see: P. Dąbrowska-Kłosińska, op.cit., p. 1483.

development cooperation are not meant to replace the actions of the Member States, but rather to ensure coexistence of parallel competences, as results from the previously cited Article 4(4) TFEU.[36]

The '4 Cs'

The principles of complementarity,[37] coordination,[38] coherence[39] added to the Treaty of Maastricht and consistency,[40] included in the provisions of the Treaty of Amsterdam, determine the EU development policy. These principles, referred to as the '4 Cs', have become particularly important in the context of reaching the MDGs and the EU's international commitments concerning global development. In the European Consensus, it was considered necessary to improve the procedures and instruments of the development policy on all levels, which gave the political impetus and legitimisation to intensifying the actions concerning the implementation of the '4 Cs'.

In its Conclusions of May 2005, the Council of the EU highlighted twelve thematic areas important from the point of view of coherence of the development policy.[41] They were also listed in the European Consensus (Point 35) and in the Communications of the Commission of October 2005[42] and of September 2009.[43]

[36] Ibidem, p. 1484.

[37] It consists in donor states undertaking actions which bring the greatest added value in relation to what the other Member States are doing.

[38] This is to limit the risk of the EU donors undertaking overlapping actions in developing countries.

[39] Coherence refers to the positive synergy between the development policy of the EU and the Member States and their activity in other fields which can affect the developing countries, such as trade policy, agricultural policy, environment protection policy. It is in this context that the notion of ensuring Policy Coherence for Development (PCD) appears. P. Bagiński, *Spójność polityki na rzecz rozwoju jako element reformy światowego systemu pomocowego* (*Coherence of Policy for Development as an Element of the Reform of the Global Aid System*) in: *Wyzwania międzynarodowej współpracy na rzecz rozwoju* (*Challenges of International Cooperation for Development*), K. Czaplicka (ed.), Warszawa 2008, p. 72; *Policy Coherence: Vital for Global Development*, "OECD Observer" 2003, July, p. 5.

[40] The essence of this principle is the definition of the relation between development policy and the CFSP.

[41] These areas are: trade, the environment, climate change, security, agriculture, fishing, the social dimension of globalisation, employment and decent work, migration, research and innovation, the information society, transportation, energy. Conclusions of the Council and the Representatives of the Governments of the Member States Meeting within the Council, "Millennium Development Goals: EU Contribution to the Review of the MDGs at the UN 2005 High Level Event", Brussels, 24.05.2005, doc. 9266/05, p. 9.

[42] Communication from the Commission to the Council and the European Parliament, "Accelerating progress towards attaining the Millennium Development Goals – Financing for Development and Aid Effectiveness", Brussels, 12.4.2005, COM (2005) 133 final.

[43] Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, "Policy Coherence for Development - Establishing the policy framework for a whole–of–the-Union approach", Brussels, 15.09.2009, COM (2009) 458 final.

Furthermore, the Conclusions of the Council of May 2005 pointed out the need to publish biennial reports concerning the progress in the implementation of coherence in the indicated areas (the first one was published by the Commission in 2007).

In February 2007, the European Commission adopted, and then in May 2007 the Council accepted the document titled "EU Code of Conduct on Complementarity and Division of Labour in Development Policy".[44] In the absence of an internationally recognised definition of complementarity, it is defined as the optimum division of work between various entities in order to better use the human and financial resources. The Code is voluntary and in principle, it is meant to organise the relations between the aid institutions of the individual EU donors.

The provisions of the Treaty of Lisbon stressed the importance of the principles of coherence, complementarity and coordination. Under the provisions of previous Treaties, complementarity was only one-sided – which meant that the Community development policy was complementing the development policies of the individual Member States.[45] After the Treaty of Lisbon, Article 208(1) TFEU states that *'the Union's development cooperation policy and that of the Member States complement and reinforce each other'*. Apart from underlining the equality of the actions undertaken by the EU and by the Member States, this expression should also be understood as a kind of obligation of the EU and the Member States to make sure that their actions under the said policy will be complementary and coherent and that they will not be contradictory or exclude each other.[46] Article 210(1) TFEU states that *'in order to promote the complementarity and efficiency of their action, the Union and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences'*. This provision is chiefly aimed at improving the EU's external coherence.

In his book published in the mid-1990s, reviewing the issue of EU development policy, economics scholar Enzo R. Grilli summed up the European Communities' efforts in this field as follows: *'Despite the progress achieved* (such as Communitarisation of the development policy in the Treaty of Maastricht – note by K.Z.), *genuine Europeisation of development aid is still not in sight. It has not yet become multilateral, and the forms and practice of development aid among the European Community members are far from uniform'*.[47] Although two decades

[44] Conclusions of the Council and of the Representatives of the Governments of the Member States meeting within the Council, "EU Code of Conduct on Complementarity and Division of Labour in Development Policy", Brussels, 15.05.2007, doc. 9558/07.

[45] The Treaty of Maastricht (Article 177 TEC) confirmed the subordinate character of the European Community development policy in relation to the policies of the EU Member States. It was secondary to the programmes of the individual Member States. P. Bagiński, *Europejska*..., op.cit., p. 56

[46] P. Dąbrowska-Kłosińska, op.cit., p. 1484.

[47] E. Grilli, *The European Community and the Developing Countries*, Cambridge 1993, p. 10.

have passed since these observations were made, they well illustrate the present evolutionary stage of EU development policy. Despite the actions undertaken by the EU and its commitments, we should note the existence of the so called '4 Cs' deficit in EU development policy.[48]

Despite appropriate provisions in the treaties, EU Member States are highly sceptical about fostering closer coordination of their development policies. Individual Member States clearly intend to take advantage of their involvement in the European Union's development policy to enhance their political position in relations with developing countries, in particular the 'emerging markets'.

EU Member States differ on matters of aid and its nature (should it be untied or tied), priorities (France allocates considerable sums for science and education, Spain for infrastructure) as well as directions and concepts of development policy. It is also important that coordination of policies within the respective donor countries be ensured at government administration level, true to the saying that 'policy coherence starts at home'.

The practice of recent years has shown that EU development assistance is based on the principle of 27(28)+1, with the European Commission filling up the gaps or outright overlapping the role and initiatives of individual EU Member States. Differences of opinions are also rife within EU institutions themselves. This leads to the disintegration of EU development policy strategy and impairs its effectiveness.

The European Union's declared aspirations to promote the development of the countries of the South and their real policies are incoherent. The functioning of the Common Agricultural Policy is a case in point. The EU subsidises each kilogram of beef sold in Western Africa to the tune of 2 to 4 euro. The economic consequences of doing so are grave for countries such as Niger, Burkina Faso and Mali. At the same time the EU provides these very countries with technical and financial aid to support the local meat market.

Note should also be taken of the lack of coordination and links between the various programmes of combating poverty. Too many aid donors go to the same countries and to the same sectors. Working in Mozambique, for example, are 27 donors helping to combat HIV. It has, therefore, been recommended by the European Commission that EU donating countries reduce the number of active donors by 2010 down to three per sector.[49] Some countries, notably Central African Republic and Somalia, have felt the 'Donor Fatigue Syndrome', that is donors leaving them almost entirely to cater for themselves. Clearly, EU development policy has its 'darlings' and 'orphans'. The particular EU member countries and

[48] P. Bagiński, *Spójność polityki na rzecz rozwoju*..., op.cit., p.72.

[49] The Dutch, in order to improve coordination between various development programmes, reduced the number of priority countries (from over 70 to 20) through the use of three selection criteria: the level of poverty, macroeconomic figures and efficiency of management. *EU Aid: Genuine Leadership or Misleading Figures*, NGO Report, Concord, April 2006, Brussels 2006, p. 23.

bodies commit themselves usually in countries where prospects are auspicious and ignore those which are apparently unpromising.

Non-governmental organisations, as well as the European Commission itself – in a Communication of March 2006 – point out that the European Union and the Member States should not take any funds from the budget of cooperation for development and submit as cooperation for development such initiatives as: remitting debts, expenditure on education related to the stay of foreign students from ACP countries at European universities (in the EU), expenditure related to the settling of refugees in EU Member States. At present, these constitute 1/3 of the EU's development assistance for Africa. An NGO activist described this situation as follows: *'the money is not moving 5000 kilometres from Denmark to Africa, but 500 metres from the Ministry of Foreign Affairs to the Treasury'*.[50]

Although the TEU and EU documents highlight the need for closer cooperation on matters related to the EU development policy, the present situation is far from perfect in this respect. It is not easy to conduct a common (not only by name) development policy with respect to developing countries. Complementarity still remains a political catch-phrase rather than a fact.

The European Union and the problems of development in the international forum

The actions undertaken by the EU to increase the effectiveness of development assistance should be discussed in the context of the High Level Forum on Aid Effectiveness and the documents adopted there: the Rome Declaration on Harmonisation of 2003, the Paris Declaration on Aid Effectiveness of 2005, the Accra Agenda for Action of 2008, and the Busan Partnership for Effective Development Cooperation of 2011.

The principal commitments of the EU and most Member States (except for Hungary and the Baltic countries) were specified in the Paris Declaration, during the 2nd Forum, held between 28 February and 2 March 2005. Donors from the entire world and the recipient countries (91 representatives of governments and 26 largest non-governmental organisations) came to an understanding and adopted the key principles concerning the effectiveness of aid. These are: the developing countries' ownership of the development processes, managing for results, harmonisation, mutual accountability, alignment (including development partnership).[51] The negative evaluation of the implementation of the Paris Declaration was addressed by the EU at the 3rd Forum in Accra on 2–4 September 2008, among others.[52]

[50] Ibidem, p. 7.

[51] Paris Declaration On Aid Effectiveness – Ownership, Harmonisation, Alignment, Results and Mutual Accountability, High Level Forum, Paris, 28 February–2 March 2005.

[52] *Aid Effectiveness 2005–10: Progress in implementing the Paris Declaration*, OECD, Paris, 2011.

The position of the EU at the 4th Forum in Busan was characterised by a comprehensive approach. It stressed the need to undertake actions which would constitute a turning point in the context of increasing the effectiveness of development assistance. It was also emphasised that aid is only one of many instruments which can be the catalyst for development transformations (next to trade, foreign direct investments, etc.).[53] However, the conference in Busan (29 November – 1 December 2011) has not brought about any breakthrough decisions regarding development assistance. In the Busan Partnership Agreement the EU managed to emphasise the importance of transparency of aid (harmonisation), the inseparable connection between development and democracy, and the principle of untying aid. In accordance with the position of the EU (and the expectations of the African countries), the Busan Agreement obligates the donors of aid to use the national systems of the beneficiary countries as the basis solution. It also confirms the principles of effective aid included in the Paris Declaration. Furthermore, the important role of the new (non-traditional) donors, including in particular the emerging markets, was also emphasised. However, China and the other countries of the South do not want to make any binding commitments regarding aid.[54] The EU has also failed to fulfil another key objective, namely to adopt global standards of providing aid (opposition of the new donors, especially China). What is more, the framework for an effective role of the private sector in providing aid has not been defined.[55] One of the analyses prepared by the non-governmental organisation Eurodad has a much telling title, very relevant in this context, namely: *Busan Partnership for Effective Development Cooperation: Some progress, no clear commitments, no thanks to the EU*.[56] The analysis points out the fact that in contrast to the previous meetings in which the EU played the role of the leader, at the Forum in Busan the leading role belonged to the emerging economies, especially China. This undoubtedly reflects the changes that are taking place in the international order at the beginning of the second decade of the 21st century. Furthermore, the period in which the decisions of Busan were discussed is a period of crisis in the euro area and of plans to save it. This explains, to some extent, why the EU was representing this particular position at the conference.

The European Union has been systematically confirming its millennium commitments concerning development in the UN, at summits dedicated to this issue. So far, they took place in 2005 (The Global MDGs Summit), in 2008 (UN High

[53] Council Conlusions, "EU Common Position for the Fourth High Level Forum on Aid Effectiveness (Busan, 29 November – 1 December 2011)", 3124th Foreign Affairs Development Council meeting, Brussels, 14 November 2011.

[54] China and the countries considered emerging markets are in favour of provisions defining South–South cooperation as complementary and not as a substitute of North–South cooperation.

[55] P. Kugiel, *Skuteczność pomocy w międzynarodowej współpracy rozwojowej po Forum w Pusan* (*Effectiveness of Aid in International Development Cooperation after the Forum in Busan*), "Biuletyn PISM" no. 2(867)/2012.

[56] B. Ellmers, *Busan Partnership for Effective Development Cooperation: Some progress, no clear commitments, no thanks to the EU*, Eurodad, 7 December 2011.

Level Event on the Millennium Development Goals), in 2010 (UN High Level Summit on the Millennium Development Goals), and in 2013.

At the summit in 2008, the President of the Commission declared not only *'more aid'*, but also *'more effective aid'*.[57] The effectiveness of aid and the progress in reaching the development goals were issues discussed at the next UN summit concerning the MDGs in 2010. A few days before the summit, the President of the Commission said that there was no reason for self-satisfaction and that the EU had to gear up to reach the development goals within five years.[58] The EU declared that it would, among others, publish a list of priority countries in terms of needs concerning the reaching of the MDGs.[59] Between 15 June 2012 and 15 September 2012, the Commission conducted a public consultation titled "Towards a Post-2015 Development Framework". They constituted one of the forms of the EU's preparations for the UN summit in 2013 concerning the MDGs, as well as global development in the post-MDGs period. This was also the aim of two European Reports on Development titled: *Development in a Changing World: Elements for a Post-2015 Global Agenda*, published in May 2012 and *Post-2015: Global Action for an Inclusive and Sustainable Future*, published in April 2013.[60] The Reports present the main development challenges for the next 15 years and are an attempt to answer the question how the EU can contribute to limiting poverty. In 2012, the UN secretary General Ban Ki-Moon established the High Level Panel on post-2015 development agenda (composed of 27 members) – in which Commissioner Piebalgs was involved.[61] The results of work of this panel were published in the report presented at the end of May 2013. The report points out main goals: to eradicate poverty within a generation and ensure a sustainable development for all by 2030. It also recommends that a new Global Partnership be established, which should include all players – governments at all levels, the private sector, civil society and citizens.[62]

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[57] *José Manuel Durão Barroso President of the European Commission Address to the Opening Session of the United Nations High Level Event on Millennium Development Goals New York, 25 September 2008*, Press Release, Brussels, 25 September 2010, SPEECH/08/462.

[58] *President Barroso at the UN High Level Summit on Millennium Development Goals to push for a global commitment and shared responsibility in the fight against poverty*, Press Release, Brussels, 16 September 2010, IP/10/1137.

[59] Council Conclusions on the Millennium Development Goals for the United Nations High-Level Plenary meeting..., op.cit.

[60] *Commission welcomes new report on Post-2015 Development priorities*, Press Release, Brussels, 9 April 2013, IP/13/308.

[61] The Panel is co-chaired by David Cameron, UK Prime Minister, Ellen Johnson Sirleaf, President of Liberia, and Susilo Bambang Yudhoyono, President of Indonesia. The first meeting of the Panel was held in September 2012 during the United Nations General Assembly. *Commissioner Piebalgs appointed as a member of the High level Panel on post-2015 development agenda*, Press Release, Brussels, 31 July 2012, IP/12/875.

[62] *EU Commissioner Piebalgs commends an „ambitious and inspiring" final report of the UN High Level Panel on the post-2015 development agenda*, Press Release, Brussels, 31 May 2013, MEMO/13/477; http://www.post2015hlp.org/featured/high-level-panel-releases-recommendations-for-worlds-next-development-agenda/ (last visited 31.05.2013).

In autumn 2013, a UN General Assembly special event took stock of the efforts made towards achieving the MDGs, discuss ways to accelerate progress before 2015, and start exchanging on what could follow after that date. At the same time, at the Rio+20 Conference in June 2012, the international community agreed to step up action on key sustainability challenges and started the process for the formulation of Sustainable Development Goals (SDGs), which will replace the MDGs. A report on SDGs is due to be presented to the UN General Assembly by September 2014. The Communication "A Decent Life for All: Ending poverty and giving the world a sustainable future", presented in February 2013 by the European Commission, calls for these two processes to converge as soon as possible and be integrated into a single framework after 2015.[63]

The positions of the EU prepared for the UN summits and the Forum have the nature of political declarations and confirm the commitments and actions already taken by the EU. First of all, they are to show the EU as a global donor and one of the most important players in the field of international development cooperation.

EU development assistance – volume, trends and scope

The EU and its Member States collectively are the world largest donor, providing more than half of Official Development Assistance. While attempting an analysis of the numerical data illustrating the extent and scope of EU development assistance, we should take into account several important premises:

- The value of Official Development Assistance granted by the Development Assistance Committee of the OECD (DAC OECD) takes into account the assistance provided by members of the Committee. This paper presents data as of the end of 2012, and thus takes into account the assistance provided by the 15 countries of the 'old' EU which at that time were members of the Committee in this regard. In mid-2013, the number of EU countries being members of DAC OECD increased.[64]
- The data of the DAC OECD and the EU concerning development assistance of the Member States (EU-15 or EU-27(28)) does not take into

[63] *EU to take leading role in global fight against poverty and strive for sustainable development*, Press Release, Brussels, 27 February 2013, IP/13/166; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "A Decent Life for All: Ending poverty and giving the world a sustainable future", Brussels, 27.2.2013, COM (2013) 92 final.

[64] The DAC OECD is currently composed of 28 members: Australia, Austria, Belgium, Canada, Czech Republic (joined May 2013) Denmark, Finland, France, Greece, Germany, Iceland (joined March 2013), Ireland, Italy, Japan, Slovak Republic (joined September 2013), South Korea, Luxembourg, the Netherlands, New Zealand, Norway, Poland (joined October 2013), Portugal, Spain, Sweden, Switzerland, the United Kingdom, the USA, the European Commission (since 1961).

account the aid provided by EU institutions which takes the form of funds from the national budgets of the Member States, as they are already counted into the development assistance of the individual Member States as multilateral aid.

- Using the term 'EU institutions', both the DAC OECD data and the EU data mainly refer to the European Commission as an executive body. Pursuant to the Treaties, it fulfils specific coordinative functions regarding development cooperation. At the same time, the European Commission is a unique institution in the context of the international community of donors. On the one hand, it performs the role of a multilateral organisation (it collects funds from the Member States), and on the other hand, it is a donor of development assistance (it provides funds to other multilateral organisations). Although in many cases the EC is treated as a bilateral donor of aid, the DAC OECD classifies the Commission's aid as multilateral aid.[65]
- The EU presents its data in Euro values, while the DAC OECD uses US dollars (USD).[66]
- To present the results of development assistance, the EU uses values in nominal terms (in current prices). The DAC OECD presents data both in nominal and in real terms (in constant prices), but it calculates changes only in constant prices, taking into account exchange rates.

The Official Development Assistance (ODA) of the DAC OECD members counted in current prices amounted to USD 133.7 billion in 2011 and USD 125.6 billion in 2012. This constitutes, respectively, 0.31 per cent and 0.29 per cent of the GNI of the members of the DAC OECD. Again in current prices, the 'old' EU-15 provided total assistance of USD 72.08 billion in 2011 and USD 63.7 billion in 2012.[67] The new EU Member States, which are not members of the DAC OECD, allocated more than USD 1 billion to this goal. In total, the entire European Union (i.e. the 27 Member States and the European Commission) spent USD 70.8 billion (EUR 53.5 billion) on Official Development Assistance in 2010,

[65] For more see: R.C. Riddell, op.cit., p. 77.

[66] As a result, when the value of the euro increases in relation to the dollar the same amount in euro converted into dollars will be higher. This was the case between 2010 and 2011. The DAC OECD data in USD in current prices showed an increase of ODA in the EU-27 countries (from USD 70.8 to 73.4 billion), while according to EU data, conveyed in euros, it showed a decrease (from EUR 53.5 to 52.8 billion). This difference, resulting from the exchange rate, affects both the general statistics and the statistics of individual Member States. *Publication of preliminary data on Official Development Assistance, 2011*, Press Release, Brussels, 4 April 2012, MEMO/12/243; *'In times of crisis, the EU must not forget the poorest in the world', says Commissioner Piebalgs. EU confirms its position as the world's largest aid donor in 2011*, Press Release, Brussels, 4 April 2012, IP/12/348.

[67] *Aid to poor countries slips further as governments tighten budgets*, OECD, 3 April 2013; *Statistics on resource flows to developing countries*, Table 1 – DAC Members' Net Official Development Assistance in 2011, OECD, (updated on 20 December 2012).

USD 73.4 billion (i.e. EUR 52.8 billion) in 2011, and USD 65 billion (EUR 50.5 billion) in 2012.[68]

The data for the years 2010–2012 showed that with the global economic crisis the ODA is falling. In 2011, there was a visible decrease of ODA of the DAC members in real values – in comparison to 2010 of 2.3 per cent. This is also true of the 'old' EU-15. In real values, their assistance fell by 3.1 per cent.[69] Development aid of the DAC members fell by 4 per cent in real terms in 2012 compared to 2011. Since the peak year 2010 the ODA has fallen by -6.0% in real terms. The continuing financial crisis and euro zone turmoil has led several governments to tighten their budgets, which has had a direct impact on development aid. In 2012, only four Member States increased (Austria, Latvia, Luxembourg, Poland) and seven maintained their ODA levels, while 16 Member States reduced their effort.[70]

Africa, including Sub-Saharan Africa, is the largest recipient if development assistance provided by the DAC OECD members. In 2011, total development assistance (bilateral and multilateral) for Africa amounted to USD 50.51 billion in current prices, of which a significant majority went to Sub-Saharan Africa (USD 28.90 billion bilateral and USD 16.28 billion multilateral). In comparison, in 2011 Asia received USD 31.36 billion.[71] But the crisis has not entirely spared Africa. In 2012, bilateral aid to Sub-Saharan Africa was USD 26.2 billion, representing a fall of -7.9 per cent in real terms compared to 2011. Aid to the African continent fell by -9.9 per cent to USD 28.9 billion, following exceptional support to some countries in North Africa after the Arab Spring in 2011.

The EU as a whole (i.e. the EC and the Member States) is the largest donor in Africa, providing more than half the general development assistance for this continent. In 2011, official EU development assistance for Africa amounted to EUR 25.3 billion (approx. USD 33.40 billion), which was a significant portion (45 per cent) of total EU development assistance.[72] Similarly as in the case of total

[68] *Publication of preliminary data on Official Development Assistance, 2012*, Press Release, Brussels, 3 April 2013, MEMO/13/299; *The European Commission calls on Member States to fulfil their commitments towards the world's poorest*, Press Release, Brussels, 3 April 2013, IP/13/299.

[69] In 2011, the greatest reduction in ODA expenditure was recorder by: Spain (–32.7 per cent) and Greece (–39.3 per cent). The ODA expenditure also fell significantly in Austria (–14.3 per cent) and in Belgium (–13.3 per cent). The countries which increased their ODA budgets included: Germany (+5.9 per cent), Sweden (+10.5 per cent) and Italy (+33 per cent). This considerable increase in Italy was determined by subsidies for remission of loans and by the increase of the number of refugees from North Africa. *Aid to developing countries decreases*, OECD, 4 April 2012; *Development Aid at a Glance. Statistics by Region. Africa. 2012 Edition*, OECD, Paris 2012, p. 4.

[70] *Aid to poor...*, op.cit.

[71] *Statistics on resource flows to developing countries*, Table 1 – DAC..., op.cit.

[72] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Improving EU support to developing countries in mobilising Financing for Development", Brussels, 9.7.2012, COM (2012) 366, p. 9.

ODA, a great majority of EU aid provided to Africa goes to the Sub-Saharan region (more than 90 per cent).

The largest donors, by volume, (including aid to Africa) were the United States, the United Kingdom, Germany, France and Japan. For most countries of the EU-15, Africa is a priority target of their bilateral development policy – as proven by the average share of the aid they provide to Africa in their total aid budgets in the years 2008–2010. In this classification, the first place goes to Ireland – 81 per cent of its entire bilateral ODA in 2008–2012 went to Africa – followed by Belgium (77 per cent), Portugal (73 per cent), France (63 per cent), the Netherlands and Denmark (61 per cent each), Luxembourg (55 per cent), Finland (53 per cent), the United Kingdom and Sweden (52 per cent each).[73]

The European Commission, in turn, is the largest donor of multilateral development assistance, including aid to Africa, among international institutions, such as regional banks and UN agencies. In current prices, it provided aid amounting to USD 5.47 billion in 2011 (including USD 4.4 billion to Sub-Saharan Africa). Next to the Commission, the second largest donor of multilateral assistance to Africa is the International Development Association (IDA).[74]

Supporting the fulfilment of the Millennium Development Goals (MDGs), the European Union adopted the commitments agreed upon at the summit of the European Council in Göteborg on 15–16 June 2001 and concerning reaching the UN target for Official Development Assistance at the level of 0.7 per cent GNI by 2015. They were confirmed in the Conclusions of the Council of the EU of 24 May 2005[75] and in the European Consensus on Development (Point 23). At the same time, the EU set the thresholds for the ODA/GNI ratio – taking into account the differences between the old and the new Member States. For each of the old EU countries, the ODA/GNI target was no less than 0.51 per cent in 2010 and 0.7 per cent GNI in 2015. For the countries newly accepted to the EU, due to their lower level of economic development, these values were lower and amounted to 0.17 per cent until 2010 and 0.33 per cent GNI until 2015. Collectively, the EU pledged to reach the target of 0.56 per cent GNI by 2010 and 0.7 per cent GNI by 2015.

In 2012, the share of ODA in the total GNI of all the EU Member States was 0.39 per cent, in 2011 it was 0.42 per cent, and in 2010 it was 0.44 per cent. There are considerable disproportions between the old and the new Member States.

In 2011, the old EU-15 countries were spending a total of 0.44 per cent GNI on development assistance in the world (USA 0.20 per cent, Japan 0.18 per cent). In 2012, the ratio fell to 0.41 per cent. The target level of 0.7 per cent GNI was reached in 2012 by Luxembourg (1 per cent), Sweden (0.99 per cent), Denmark

[73] *1. Key facts about the strategic partnership between EU and Africa/ 2. Key facts about our cooperation with Africa*, Brussels, 25 January 2013, MEMO/13/35.

[74] *Development Aid at a Glance...*, op.cit., p. 6; *Statistics on resource flows to developing countries*, Aid (ODA) disbursements to countries and regions [DAC2a], OECD.

[75] Conclusions of the Council and the Representatives of the Governments of the Member States Meeting within the Council, "Millennium Development Goals: EU Contribution...", op.cit.

(0.84 per cent), and the Netherlands (0.71 per cent). Among the countries of the EU-15, Portugal, Italy, Greece, and Spain spend the least (in relation to their GNI) on development assistance – respectively: 0.27 per cent, 0.13 per cent (in 2011 it was still 0.20 per cent), 0.13 per cent, 0.15 per cent. The considerable decrease in, Spain was caused by the country's difficult economic situation, as in 2010 it provided as much as 0.43 per cent.

Among the new EU members, Malta and Cyprus were the only ones to reach the interim target in 2010, with Cyprus' aid amounting to 0.23 per cent GNI and Malta's to 0.18 per cent GNI. But whereas Malta reached 0.23 per cent GNI in 2012, the development assistance granted by Cyprus in the same year fell to 0.12 per cent.[76]

In the aforementioned Conclusions of the Council of the EU of May 2005 and the European Consensus (Point 23), as well as in the context of the agreements of the G8 summit in Gleneagles in 2005, the European Union committed itself to increase the financial assistance for Africa and to allocate to the assistance for Africa at least 50 per cent of the new funds by which the EU development aid was to be increased by 2010 and by 2015 (as a result of adopting relevant ODA/GNI targets).[77] Since 2005, collective aid to Africa increased by EUR 6.2 billion in constant prices (of 2004), which constituted 28 per cent of the total amount of the increased EU ODA funds in 2004–2011. Among the EU Member States, in 2009 and 2010 only Belgium, Denmark, Finland, Luxembourg and Portugal spent more than half of the additional funds on help to Africa.[78]

The data for 2011 and 2012 show that both the countries of the old EU-15 and the new Member States have problems with reaching the target level of development assistance of 0.7 per cent GNI. The threat of failing to reach the target level seems even more real if one takes into account the fact that the decreases in 2011 and 2012 break the trend and return the EU ODA to the levels below 2008. Even five years before 2015, the European Commission believed that if equal burden sharing was observed in the EU, the goal of 0.7 per cent GNI would still be possible to achieve.[79] At the same time, in its report of 2010, the Commission stressed that a sudden one-time increase of aid to 0.7 per cent GNI in 2015 – only to show that the objective has been achieved – is not a desirable solution, as the idea

[76] *Publication of preliminary data on Official Development Assistance, 2012*, op.cit.

[77] In the Conclusions of the Council of the EU of May 2005, paragraph 22 points to Sub-Saharan Africa. Point 23 of the Consensus mentions Africa. Conclusions of the Council and the Representatives of the Governments of the Member States Meeting within the Council, "Millennium Development Goals: EU Contribution…", op.cit., paragraph 22; *'The European Consensus'*, OJ C 46, op.cit., p. 5.

[78] *Financing for Development – Annual Progress Report 2010. Getting back on track to Reach the EU 2015 target on ODA spending?*, Brussels, 21.4.2010, SEC(2010) 420 final; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Improving EU support...", op.cit., p. 9.

[79] *Financing for Development – Annual Progress Report 2010. Getting back...*, op.cit.

behind this target is to gradually increase funds and create suitable mechanisms financing development cooperation.[80] In the context of the crisis in the euro area, optimism is dwindling. The European Commission estimated that without additional efforts of the Member States, in 2015 the total EU aid account for 0.45 per cent GNI. In order to reach the target 0.7 per cent ODA/GNI, by 2015 additional funds of approximately EUR 46 billion would have to be mobilised.[81] The decrease of EU development assistance in 2012 was commented rather dramatically by the Development Commissioner Andris Piebalgs who said: *'The EU is still the leading donor, but we are not moving in the direction of reaching our collective target of providing 0.7% of the EU Gross National Income (GNI) for development purposes'*.[82]

Attempting to reach the accepted financial commitments and aware of the challenges related to this, the European Union stresses the need for greater focus on obtaining external funds for development goals, for instance by supporting the tax systems in the developing countries (e.g. combating corruption), increasing the influence of private funds on development and intensification of work on innovative and long-lasting mechanisms of financing development on the global level.

Decision-making and division of competences regarding the provision of EU development assistance

EU development assistance is executed in two ways. It is either granted directly by the individual Member States under bilateral agreements with the recipient countries (bilateral aid, not financed from EU funds) or through the European Commission (to a minimal extent by the EIB) and financed from EU funds. The aid provided directly by the EU Member States constitutes the majority of aid. Consequently, the EU development policy conducted through the European Commission (and the EIB) complements the activity of the Member States in the bilateral dimension (this is true of the countries of the old EU-15; in the case of the new members, the proportion is inversed – the aid provided through the European Commission constitutes a considerable majority of total aid).

The main source of EU development assistance is the EU budget and the European Development Fund (EDF), from which approximately 75 and 20 per cent of all EU funds come. The rest is provided by the European Investment Bank.

[80] Ibidem.

[81] Council Conclusions, "Annual Report 2012 to the European Council on EU Development Aid Targets", Brussels, 14 May 2012, doc. 9372/12.

[82] *The European Commission calls on EU Member States to fulfil...*, op.cit.

The European Development Fund was established in 1958 under the Implementing Convention annexed to the Treaty establishing the European Economic Community of 1957. Initially, the Fund was an instrument of providing technical and financial aid to the African countries. Presently, it supports the development of countries of the ACP group (except for South Africa) and the Overseas Countries and Territories (OCTs).[83] The European Development Fund does not constitute a part of the general EU budget and is not financed from it. It is subject to separate financial regulations. The EDF's resources come from contributions of the EU Member States and reflect their share in the GNI, as well as their historical relations with the ACP countries.

The EU development assistance for the ACP countries is provided by the EDF in two forms: non-repayable grants (donations), which constitute a vast majority of the aid, and loans under the Investment Facility. The former are administered and managed by the European Commission, while the latter by the European Investment Bank.

The EDF's size and the division of competences between the Member States are negotiated periodically. Each edition of the EDF is established for a period of approximately five years. Since the commencement of the first partnership agreement with the African countries in 1963, the EDF cycles have usually coincided with the cycles of the partnership agreements. Under the 10th EDF, the European Union set a total aid amount for 2008–2013 of EUR 22.7 billion in current prices.

At the meeting of heads of state or government held on 8 February 2013, the decreased total EU budget for 2014–2020 was agreed, under which the amount of EUR 30.5 billion in current prices was allocated to the EDF, that is EUR 26.9 billion in prices of 2011. This was a very considerable decrease compared with the initial proposal of the Commission (EUR 30.3 billion in prices of 2011).[84]

[83] OCTs are territories which have a special relation to one of the following four EU Member States: the United Kingdom, France, the Netherlands, Denmark. They have been associated with the European Community (and then with the EU) since its very beginning. The aim of the association is to support their economic and social development. The British OCTs are: Anguilla, Bermuda, Cayman Islands, Falkland Islands, South Georgia and South Sandwich Islands, Montserrat, Pitcairn, Saint Helena, British Antarctic Territory, British Indian Ocean Territory, Turks and Caicos Islands, British Virgin Islands. The French OCTs are: Mayotte, New Caledonia, French Polynesia, St. Pierre and Miquelon, French Southern and Antarctic Territories, Wallis and Futuna Islands. The Dutch OCTs are: Aruba, the territories of the former Netherlands Antilles – Curação, Sint Maarten, Bonaire, Saba and Sint Eustatius. The Danish OCT is Greenland. Since 2012, the new 26th territory subject to the OCTs statute is the French Saint Barthelemy (St. Barth). http://ec.europa.eu/europeaid/where/octs_and_greenland/index_en.htm (last visited 20.04.2013).

[84] Communication from the Commission to the European Parliament and the Council, "Preparation of the multiannual financial framework regarding the financing of EU cooperation for African, Caribbean and Pacific States and Overseas Countries and Territories for the 2014–2020 period (11th European Development Fund)", Brussels, 7.12.2011, COM (2011) 837 final, pp. 10–11.

Table 1. Financing by the European Development Fund

1.	EDF: 1959–1964	
2.	EDF: 1964–1970	(Yaoundé Convention I)
3.	EDF: 1970–1975	(Yaoundé Convention II)
4.	EDF: 1975–1980	(Lomé Convention I)
5.	EDF: 1980–1985	(Lomé Convention II)
6.	EDF: 1985–1990	(Lomé Convention III)
7.	EDF: 1990–1995	(Lomé Convention IV)
8.	EDF: 1995–2000	(Lomé Convention IV and its revision IV a)
9.	EDF: 2000–2007	(Cotonou Agreement)
10.	EDF: 2008–2013	(revised Cotonou Agreement)
11.	EDF: 2014-2020	(revised Cotonou Agreement)

Source: http://europa.eu/legislation_summaries/development/overseas_countries_territories/r12102_en.htm (last visited 20.04.2013).

The 11th edition of the EDF will be the last one remaining outside the general EU budget. From 2021 on, the EDF will be included in the EU budget. In the Commission Communication "A Budget for Europe 2020" it was stressed that in the current circumstances, the proposed inclusion of the EDF in the EU (budgetisation of the EDF) would not be a wise move.[85] The decision-makers were concerned that in the context of the global crisis, reductions of budget expenses could be introduced. The EDF was to be included in the budget from 2021 on, at the end of the 2014–2020 financial framework, and was to coincide with the expiry of the Cotonou Agreement. It was very unusual of the Commission to take such a position, as in the past it always explicitly supported the inclusion of the EDF in the EU budget, which in the Commission's opinion would increase its supervision over the EDF, allow for greater freedom in allocating the funds for aid and improve transparency of the EU expenses.[86]

Article 209(3) TFEU codifies the practice of the EIB's functioning in the system of EU development assistance, which has existed since the first Yaoundé Convention concluded in 1963. Presently, the EIB manages and administers the

[85] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "A Budget for Europe 2020", Part I, Brussels, 29.6.2011, COM (2011) 500 final, p. 24.

[86] Already in 1973, and then in 1979, the European Commission proposed including the EDF in the general budget. In both cases, the proposal was rejected. In the following years, the Commission repeated its recommendations concerning the inclusion of the EDF in the EU budget many times.

Investment Facility and the loans from its own funds. The Investment Facility is a renewable fund, established under the Cotonou Agreement, financed by the EU Member States under the EDF. Its aim is to support investments of enterprises, private or public, conducting business activity, including investments in profit-making economic and technological infrastructure of importance to the private sector. Low-interest loans from the EIB's own funds are, in turn, meant mainly for financing projects in the countries in which the economies are ready to use them properly (another important aspect is the credibility of governments, which have to start repaying the loans at a certain point – although under preferential conditions). They usually concern the energy sector, restructuring of the industry, development of tourism, modernisation of transport. The EIB loans are usually given for a period of less than 25 years. Since 1 November 2011, amended provisions governing the EIB's granting of loans outside the EU have been in force. Their goal is to facilitate the loan procedure and to improve the EIB's ability to react to global challenges, such as climate change or development-related problems. The amended mandate of the EIB provides for closer cooperation of the Bank with the European External Action Service and the European Commission in order to fulfil the objectives of EU policy, including the development policy[87].

Within the framework of the EU budget, we should distinguish the EU external action instruments. In the 2007–2013 financial framework, funds for these instruments were included in section (heading 4) 'EU as a global partner'. The amount of EUR 55.9 billion was allocated to this section, which was 5.7 per cent of the total expenditure from the EU budget. These funds were used not only to finance aid for developing countries, but also for those which apply for membership in the EU, as well as to finance aid offered under the neighbourhood policy.

As a result of the budget reform under the financial framework 2007–2013, in place of the existing 35 external action instruments financed from the EU budget, only nine were left, classified as geographic or thematic. This resulted in the establishment of a simplified system in which one financing instrument replaces a whole series of instruments – so that all actions of the EU can be endorsed on the basis of the same principles and in a simpler decision-making process. Two concerned specific geographical regions, one was both geographic and thematic, while the remaining six were thematic.[88] The 10th instrument, not financed from the EU budget, was the aforementioned EDF.

[87] *EIB and European Commission welcome adoption of new mandate for lending outside the EU*, 13 October 2011, http://www.eib.org/about/press/2011/2011-146-eib-and-european-commission-welcome-adoption-of-new-mandate-for-lending-outside-the-eu.htm (last visited 20.04.2013).

[88] The thematic ones were: European Instrument for Democracy & Human Rights (EIDHR), Instrument for Stability, Instrument for Nuclear Safety Cooperation, humanitarian aid, macroeconomic aid, Instrument for Cooperation with Industrialised and other High-Income Countries and Territories; Development Cooperation Instrument (thematic and geographic); and the geographic ones were: European Neighbourhood and Partnership Instrument, Pre-accession Instrument.

It should be stressed that not all funds provided by the EU through external instruments meet the criteria of Official Development Assistance. Therefore, some of them cannot be considered 'development assistance', but rather a different form of aid. The principal tools for financing development policy by the European Commission in the years 2007–2013 were the EDF, and within the EU budget – the Development Cooperation Instrument (DCI). The instrument for humanitarian aid meets the ODA criteria, but it is meant to focus on *ad hoc* aid and not long-term development goals.

The proposals of the European Commission highlight 9 out of 11 instruments concerning the EU's external relations which are to be accessible in the new financial framework 2014–2020 (including one which would have to be funded outside the EU budget, as it was in the previous framework – the EDF), divided into geographic and thematic instruments. These are:

- Pre-accession Instrument (IPA),
- European Neighbourhood Instrument (ENI),
- Development Cooperation Instrument (DCI),
- Partnership Instrument (PI),
- Instrument for Stability (IfS);the final name of this instrument, approved by the Council, is the Instrument contributing to Stability and Peace (IfSP),
- European Instrument for Democracy & Human Rights (EIDHR),
- Instrument for Nuclear Safety Cooperation,
- Instrument for Greenland,
- European Development Fund.[89]

Although not presented in detail in the Commission's documents, the instruments of humanitarian aid and macroeconomic aid were specified for financing under the EU budget.

In consequence of the political agreement reached at the European Council meeting of 8 February 2013, the form of future instruments was agreed upon and a decision was made on the reduction of funds spent on external actions financed from the EU budget for 2014–2020 (heading 4 – 'Global Europe') – in the end, the amount of EUR 66.2 billion in current prices was set, that is EUR 58.7 billion in the prices of 2011. This implied a great reduction – of more than 15 per cent – in comparison with the initial proposal of the Commission (EUR 70 billion in prices of 2011). The reduction seems rather justified from the point of view of the interests of the individual Member States. Cuts in this particular section seemed inevitable, given the adamant position of the proponents of maintaining the level of expenditure on the CAP and the cohesion policy on the one hand, and of the representatives of countries (particularly Germany and the United Kingdom)

Communication from the Commission to the Council and the European Parliament, "External Actions through Thematic Programmes under the Future Financial Perspectives 2007–2013", Brussels, 3.8.2005, COM (2005) 324 final.

[89] Joint Communication to the European Parliament and the Council, "Global Europe: A New Approach to financing EU external action", Brussels, 7.12.2011, COM (2011) 865 final, pp. 9–12.

Table 2. The EU's multiannual financial framework (MFF) 2014–2020 and 2007–2013 – comparative table (in 2011 prices)

	New MFF 2014–2020	Last MFF 2007–2013	Comparison 2014-2020 and 2007–2013	
Commitment appropriations	EUR million	EUR million	EUR	%
1. Smart and Inclusive Growth	450 763	446 310	+4.5 bn	+1.0
2. Sustainable Growth: Natural Resources	373 179	420 682	–47.5 bn	–11.3
3. Security and Citizenship	15 686	12 366	+3.3 bn	+26.8
4. Global Europe	58 704	56 815	+1.9 bn	+3.3
5. Administration	61 629	57 082	+4.5 bn	+8.0
6. Compensations	27 000	n/a	+0.0027 bn	n/a
Total commitment appropriations	959 988	994 176	–35.2 bn	–3.7
Outside the MFF				
Emergency Aid Reserve	1 960	1 697	+0.3 bn	+15.5
European Globalisation Fund	1 050	3 573	–2.5 bn	–70.6
Solidarity Fund	3 500	7 146	–3.6 bn	–51.0
Flexibility Instrument	3 300	1 429	+1.9 bn	+130.9
European Development Fund	26.984	26 826	+0.2 bn	+0.6
Total Outside	36 794	40 670	–3.9 bn	–9.5
Total MFF + Outside	996 782	1 035 031	–38.2 bn	–3.7

Source: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/139831.pdf (last visited 10.12.2013).

demanding a significant decrease of the EU budget on the other hand. On 2 December 2013 the Council adopted the regulation on the multiannual financial framework (MFF) for 2014–2020 after the European Parliament gave its consent to it on 19 November 2013. The funding confirms the earlier political agreement of the European Council of February 2013.

The most important financial instruments of the development policy executed by the EU under the financial framework 2014–2020 will remain the EDF and the Development Cooperation Instrument (DCI).

As in the previous framework, the DCI comes in two forms – as a geographical and thematic instrument. As a geographical instrument, the DCI still concerns countries other than the ACP, that is Asian countries, Latin American, Middle Eastern, and exceptionally South Africa.[90] At the same time, under the financial framework 2007–2013, the DCI included a programme concerning restructuring of the

[90] At the same time, the number of countries covered by the geographic instrument DCI was reduced, which is to allow for a higher concentration of the DCI in the countries which need it the most. Some of the countries so far covered by the DCI were included in the new Partnership Instrument. This concerns 17 Upper Middle Income Countries – (Argentina, Brazil, Chile, China, Columbia, Costa Rica, Ecuador, Kazakhstan, Iran, Malesia, Maldives, Mexico, Panama, Peru, Thailand, Venezuela and Uruguay) and two Lower Middle Income Countries – the GDP of which exceeds 1 per cent of the global GDP (India, Indonesia). Ibidem, p. 11.

sugar industry in 18 ACP countries and five thematic budget lines, from which actions in the given field could be financed in the developing countries, including the ACP countries. The lines were as follows: investing in people; environment and sustainable management of natural resources; non-state actors and local authorities; food security; migration and asylum. Under the financial framework 2014–2020, the number of thematic budget lines was reduced to two – the first one is the programme 'Global public goods and challenges', which covers such issues as: climate change and the natural environment (no less than 25 per cent of the programme's funds will be allocated to these objectives), energy, social development and social integration (at least 20 per cent of the programme's funds will be allocated to these objectives), food security, sustainable agriculture and migrations. The second thematic programme is titled 'Civil society organisations and local authorities'. Its aim is to strengthen these entities in terms of involvement in the strategies and processes for development.[91] The agreed budget for the new DCI is EUR 19 662 million in current prices (EUR 17 390 million in 2011 prices).

An important event in the relations between the EU and Africa was the establishment of the 'Pan-African programme' under the DCI aimed at supporting the implementation of the Joint Africa – EU Strategy (JAES). The primary aim of the programme is to fund transregional and continental undertakings.

The main body charged with managing the current affairs of the EU programme of development assistance, its programming and implementation, is the European Commission, and within it the DG Development and Cooperation – EuropeAid (DG DEVCO). Article 210(2) TFEU provides for a special role of the EC in the implementation of the development policy, namely the coordination of aid initiatives undertaken by the EU and the Member States. Until the entry into force of the Treaty of Lisbon, there functioned the EuropeAid Cooperation Office (established on 1 January 2001). It was a separate DG of the European Commission. The Office was responsible for all the phases of the cycles of aid operations, i.e. identification, formulation, financing, implementation, and evaluation. With the entry into force of the Treaty of Lisbon, the Office was merged with the DG for Development and Relations with African, Caribbean and Pacific States, of which the new DG Development and Cooperation – EuropeAid (DG DEVCO) – emerged on 3 January 2011. On 15 February 2012, the Scientific Advisory Board for EU Development was appointed at the European Commission. The Board is composed of eight members who are academic authorities in the field of development economy and is to constitute an advisory body providing advice on the future of the EU development policy in the context of post-millennial order. The Board is headed by the Commissioner for Development.[92]

[91] *The Multiannual Financial Framework: The Proposals on External Action Instruments*, Brussels, 7 December 2011, MEMO/11/878; Joint Communication to the European Parliament and the Council, "Global Europe...", op.cit., p. 10.

[92] *Commission joins up with top academics in fight against poverty*, Press Release, Brussels, 15 February 2012, IP/12/136.

The issues of development cooperation have also been included in the scope of activity of the European External Action Service (EEAS), established under the Treaty of Lisbon. The Service will be involved in programming and allocation of funds, among others. Pursuant to the Treaty of Lisbon, the High Representative of the Union for Foreign Affairs and Security Policy will represent the EU externally, will coordinate all its actions, including the development policy, and will chair the meetings of the Foreign Affairs Council.

On January 2012 the working arrangements for cooperation between the EEAS and DEVCO were signed. According to this arrangements, *'under the 11th EDF, the EEAS will be responsible for strategic planning of geographic programming for individual countries and regions. DEVCO will implement these programmes and retain funding control. DEVCO will also be responsible for thematic programming and implementation under the DCI, with the EEAS having oversight. The EEAS will do the planning in agreement with the Commission and DEVCO. Decisions emerging from this process are to be submitted jointly by the Commissioner for Development, Andris Piebalgs and the HR/VP, Catherine Ashton for adoption by the Commission. It is the Commissioner for Development who has the final responsibility in both the thematic and geographic programming'*.[93]

EU humanitarian aid

The European Union as a whole, i.e. the European Commission and the Member States, are the largest provider of humanitarian aid in the world contributing almost half the global funds for this aid. Between 1992 and 2004, the main body coordinating the EU humanitarian aid was the European Community Humanitarian Aid Office (ECHO),[94] which in 2004 was transformed into the Directorate General for Humanitarian Aid (DG ECHO) and in 2010 into the Directorate General for Humanitarian Aid and Civil Protection, which also uses the abbreviation DG ECHO. The new Directorate General additionally supervised civil protection in order to ensure better coordination and capability to react to catastrophes in the EU and beyond. In 2010, Kristalina Georgieva was appointed the first European Commissioner for International Cooperation, Humanitarian Aid and Crisis Response (before that, these issues belonged to the competences of the European Commissioner for Development and Humanitarian Aid).

[93] J. Mosley, A. Soliman, A. Vines, *The EU Strategic Framework for the Horn of Africa: A Critical Assessment of Impacts and Opportunities*, European Parliament, Directorate-General for External Policies of the Union, Policy Department, September 2012, http://www.chathamhouse.org/sites/default/files/public/Research/Africa/0912ep_report.pdf (last visited 18.04.2013); S. Lightfoot, B. Szent-Ivanyi, *The Lisbon Treaty, the External Action Service and Development Policy* in: *Europe in the World. Can EU Foreign Policy Make an Impact?*, A. Hug (ed.), London 2013, pp. 26–29, http://fpc.org.uk/fsblob/1535.pdf (last visited 10.08.2013).

[94] Until the 1990s, the Communities had not been providing any coordinated humanitarian aid. It was dealt with by various departments of the European Commission, depending on the tasks assigned to them.

The main tasks of the EU related to humanitarian aid are set by a regulation of the Council of 20 June 1996.[95] Pursuant to this regulation, the ECHO is responsible for: providing humanitarian aid to victims of conflicts, natural disasters, and catastrophes caused by human activity in third countries; limiting and preventing suffering, as well as guarding justice and dignity of people affected by humanitarian crises.[96]

Acknowledging the increasingly more difficult conditions of conducing humanitarian activities and striving after a more effective and coordinated approach, on 17 December 2007 the European Parliament, the Council and the Commission signed the European Consensus on Humanitarian Aid.[97]

EU humanitarian aid is based on the principles of humanitarianism, neutrality, impartiality, independence, which are the foundation of the European Consensus of Humanitarian Aid. The obligation to observe these principles is also included in the Treaty of Lisbon (Article 214 TFEU).[98]

Under the Treaty of Lisbon, humanitarian aid, next to development aid, is provided in accordance with the principles and objectives of EU external actions. The activities of the Member States and of the European Union concerning humanitarian aid should complement each other. In its Article 214(5), the Treaty of Lisbon has established the European Voluntary Humanitarian Aid Corps. In September 2012, the European Commission presented a plan of developing and establishing the institutional foundations of the Corps. The plan provides for, among others, training of more than 20 thousand volunteers in the period 2014–2020.[99]

The Commission is not executing programmes of humanitarian aid on its own. It is fulfilling its mission to finance the EU humanitarian aid through entities which have signed a Framework Partnership Agreement (FPA), such as intergovernmental and non-governmental organisations (e.g. those acting under the Red Cross) or a Financial and Administrative Framework Agreement (FAFA) in the case of UN agencies. Overall, the European Commission's aid is provided through more than 200 organisations – 14 specialised UN agencies, 191 non-governmental organisations and 3 intergovernmental organisations (International Committee of the Red Cross/Red Crescent, International Federation of the Red Cross/Red Crescent, International Organisation for Migration).

[95] Humanitarian aid was not explicitly mentioned in the EU Treaties. However, relevant provisions of the Treaties (Article 130 of the Treaty of Maastricht (Article 179 TEC)) allowed for the adoption of the Council Regulation of 20 June 1996.

[96] Council Regulation no. 1257/96 of 20 June 1996 Concerning Humanitarian Aid, OJ L 163, 2.7.1996.

[97] European Consensus on Humanitarian Aid. Adopted by the Council, the European Parliament and the Commission on 18 December 2007, OJ C 25, 30.1.2008; Commission Staff Working Paper, "European Consensus on Humanitarian Aid – Action Plan", Brussels, 29.5.2008, SEC(2008)1991.

[98] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning..., op.cit.

[99] *EU Aid Volunteers: Commission proposes new global humanitarian initiative*, Brussels, Press Release, Brussels, 19 September 2012, IP/12/980.

DG ECHO provides financial aid to victims of conflicts and natural disasters in third countries on the basis of the Global Needs Assessment. The Assessment consists in ordering the third countries according the their general vulnerability (vulnerability index) and taking into account whether they are undergoing a humanitarian crisis (crisis index). Following this methodology, in the strategy for 2013 the Commission selected 68 priority countries/territories, of which 15 were considered 'extremely and very vulnerable' to a humanitarian crisis.[100]

Similarly as in the case of development assistance, the humanitarian aid distributed by the European Commission under the ECHO is complementary to the actions of the EU Member States. The assistance is non-returnable. The main source of ECHO funding is the EU budget. Should the ECHO exceed the funds allocated to it in the budget for the given year, it may use the Commission's Emergency Aid Reserve.

The ECHO budget is being systematically increased and for more than five years has amounted to approximately EUR 1 billion – in 2012, the total amount of ECHO aid was EUR 1 334 million in commitments, and was provided in more than 90 non-EU countries and 122 million people. In 2012, the division of funds between the ECHO's partners was as follows: 47 per cent of funds was given to non-governmental organisations, 44 per cent to UN agencies and 9 per cent to international organisations.[101]

According to the geographical criterion, the recipients of aid under the ECHO in 2011 were countries of Sub-Saharan Africa[102] (EUR 681 million – i.e. 51 per cent of the ECHO budget at completion), then Middle East and the Mediterranean region (EUR 265 million – 20 per cent), Asia and Pacific region (EUR 198 million – 15 per cent), as well as the countries of Latin America and the Caribbean (EUR 68 million – 5 per cent).[103]

A comparative analysis of the division of decisions concerning the financing under ECHO in 2003–2013 according to the geographical criterion shows that the relative share of funds for Sub-Saharan Africa is constantly increasing; except for 2005, when the tendency was reversed and when a significant share of funds was allocated to Asia in relation to the two main crises in that part of the world: the tsunami and the earthquake in Kashmir.

[100] Commission Staff Working Paper, "General Guidelines on Operational Priorities for Humanitarian Aid in 2013", 27.11.2012, SWD(2012) 405 final, p. 6.

[101] Report from the Commission to the European Parliament and the Council, *Annual Report on the European Union's Humanitarian Aid and Civil Protection Policies and their Implementation in 2012*, Brussels, 25.9.2012, COM (2013) 658 final, pp. 2, 12–13.

[102] The statistics use the name Africa, although it refers only to countries to the south of Sahara. Countries of Northern Africa are included in the category of Mediterranean states.

[103] Report from the Commission to the European Parliament and the Council, *Annual Report on the European Union's Humanitarian Aid…*, op.cit; *DG ECHO – Geographical breakdown of commitments 2005-2012. Budget implementation by Region and Country*, http://ec.europa.eu/echo/files/funding/figures/budget_implementation/AnnexIII.pdf (last visted 20.10.2013).

The role of Sub-Saharan Africa in EU humanitarian aid is emphasised by the fact that on 26 December 2005, the anniversary of the tragic events related to the tsunami in South-East Asia, the European Commission decided to assign EUR 167.5 million under humanitarian aid to 10 African countries suffering from various natural disasters. Louis Michel, who was the Commissioner for Development and Humanitarian Aid at that time, noted: *'Today we remember the victims of the tsunami in South East Asia. But millions of vulnerable people in Africa are exposed to natural disasters like droughts, floods and insect infestations as well as armed conflicts* [...] *These are silent tsunamis. Many of these catastrophes do not hit the headlines in the western media but they still lead to great suffering'*.[104]

Africa is also the largest recipient of humanitarian aid provided directly by the EU Member States. In 2011, the value of bilateral assistance for Africa amounted to EUR 708.2 million, while Asia received EUR 231.1 million, the Middle East, Mediterranean, Europe and Caucasus – EUR 233.8 million.[105]

According to the thematic criterion, EU humanitarian aid under the ECHO, including aid provided to Sub-Saharan Africa, focuses on three main issues: food and nutrition; water, sanitation and hygiene (WASH);[106] health and medical aid.

The European Commission is one of the largest donors of humanitarian aid in the form of food. In 2011, the Commission provided EUR 509 million under the ECHO to this aim (through 57 partner organisations from 47 countries). In 2012, the amount was EUR 515 million.[107] In 2011, there was a humanitarian crisis in the Horn of Africa. The combination of high food prices and drought resulted in a sudden drop in the levels of food security and nutrition in the region. In the second half of 2011, the crisis affected more than 13 million people. In response, the Commission allocated more than EUR 181 million for aid. In 2012, the Commission provided aid to the region amounting to EUR 162 million. In total, including bilateral aid provided by the EU Member States, from 2011 to mid-2013 the EU provided humanitarian aid amounting to over EUR 1 billion. These funds were mainly spent on ensuring food security, as well as on medical aid, water, sanitation and hygiene.[108]

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[104] *Africa's 'silent tsunamis': Commission adopts humanitarian aid decisions worth €165.7 million*, Press Release, Brussels, 26 December 2005, IP/05/1711.

[105] Commission Staff Working Paper, Accompanying the document, "Report from the Commission to the European Parliament and the Council, Annual Report on the European Union's Humanitarian Aid and Civil Protection Policies and their Implementation in 2011", Brussels, 6.9.2012, SWD(2012) 254 final, p. 72.

[106] *Water, sanitation and hygiene (WASH)*, European Commission, Humanitarian Aid and Civil Protection, 13.03.2012.

[107] *ECHO Factsheet Humanitarian Food Assistance*, European Commission, August 2013.

[108] *ECHO Factsheet Horn of Africa*, European Commission, August 2013; *Joint Statement by Commissioner Kristalina Georgieva and Commissioner Andris Piebalgs on the Horn of Africa, a year after the declaration of famine*, Press Release, Brussels, 20 July 2012, MEMO/12/589; *Disaster resilience in the Horn of Africa to be strengthened further with new aid injection from the European Commission*, Press Release, Brussels, 31 July 2012, IP/12/864.

Another humanitarian challenge to the EU is the situation in the Sahel region. Apart from development assistance (EUR 164.5 million in 2012), the EU actively supports the region with short-term aid. Similarly as the Horn of Africa, the Sahel region suffered in late 2011 a sudden drop in the level of food security and nutrition. This phenomenon was further intensified by the outbreak of the conflict in Mali in January 2012. In total, more than 18 million people were considered under threat of food insecurity in nine countries of West Africa. Under the ECHO, in 2012 the EU provided the Sahel region with EUR 173 million in food aid (in 2011, the amount was more than three times lower, i.e. EUR 56.2 million).[109]

The EU provides funds for food aid mainly through the World Food Programme (WFP). Furthermore, the EU cooperates with the International Red Cross and the European non-governmental organisations in matter related to food aid. On 27 June 2011, the European Commission, as well as the WFP, FAO, and the International Fund for Agricultural Development (IFAD) signed the Statement of Intent on Programmatic Cooperation on Food Security and Nutrition.[110] On 1 August 2012, the European Commissioner for International Cooperation, Humanitarian Aid and Crisis Response, Kristalina Georgieva, signed the Food Assistance Convention in the name of the EU. It is an international agreement between 35 countries (27 EU Member States, as well as Argentina, Australia, Canada, Croatia, Japan, Norway, Switzerland and the USA) and the EU concerning the principles of providing humanitarian food aid by the principal donors. The convention entered into force on 1 January 2013,[111] replacing the Food Aid Convention, which was concluded in 1967 and amended in 1999.[112]

An essential part of Community humanitarian aid for Sub-Saharan Africa (approximately 1/3) is medical aid, that is provision of medicines, medicaments, medical equipment, as well as medical personnel.[113]

Furthermore, the Commission is one of the largest providers of humanitarian aid concerning WASH. On average, it allocates between 12 and 15 per cent of the ECHO budget to these issues (in 2011, it was 14 per cent), which in total is approximately 32–46 per cent of the global contribution. In some cases, in relation to individual events/disasters this percentage is higher – due to the special role of ensuring drinking water and sanitary facilities during draughts and floods.[114]

Under the ECHO, two special programmes are executed. The first one concerns the so called 'forgotten crises'. This expression refers to situations in which,

[109] *2012 Sahel Food & Nutrition Crisis: ECHO's response at a glance*, European Commission, February 2013; *Factsheet, The European Union and the Sahel*, Brussels, 16 January 2013.

[110] *ECHO Factsheet Humanitarian Food Assistance*, European Commission, August 2012.

[111] *Statement by EU Commissioner Kristalina Georgieva on the signature of the new Food Assistance Convention*, Press Release, Brussels, 1 August 2012, MEMO/12/614.

[112] http://www.foodassistanceconvention.org; http://www.foodaidconvention.org (last visited 18.07.2013).

[113] http://ec.europa.eu/echo/policies/sectoral/health_en.htm (last visited 18.07.2013).

[114] http://ec.europa.eu/echo/policies/sectoral/wash_en.htm (last visited 23.07.2013); *Water, sanitation and hygiene (WASH)*, op.cit.

after an initial euphoria, donors and mass media pay little attention to the considerable humanitarian needs, which translates into low level of aid.[115] In 2012, the ECHO set itself a goal of spending 15 per cent of its funds on these crises.

The second programme is the Disaster Prevention and Preparedness Programme (DIPECHO). It was established in 1996 (in operation since 1998) and deals with disaster preparedness in regions at risk of natural disasters. Its creators assumed that although many disasters cannot be prevented, one can prepare for them to a certain extent in order to limit their human and material effects.[116] Initially, the main regions of activity were the Caribbean, Central America and South-East Asia, to which South Asia and South America were later added, and in 2003 also Central Asia and South Caucaus. In 2009, under the DIPECHO programme, a new action plan was launched in South-East Africa and the region of the Indian Ocean and the Pacific. In 1998–2011, EUR 255 million was spent on the actions conducted under the programme.[117]

A special role in the execution of humanitarian aid in Africa is played by the humanitarian air service ECHO Flight. This system was established by the European Commission in May 1994. Its goal is to support the humanitarian actions undertaken by various organisations in areas of the Horn of Africa and the African Great Lakes Region which are not easily accessible. Air service operates from Nairobi, Goma and Bunia. In 2012, the Commission spent EUR 10.7 million on maintaining the air service, which transported a total of 19 thousand people.[118]

The subject of the debate on EU humanitarian aid is the issue of developing a suitable strategy of cohesion between short-term humanitarian aid, rebuilding after the humanitarian disaster and long-term development, which is described by the term 'Linking relief, rehabilitation and development' (LRRD).[119] At the EU level, the communications issued in 1996 and 2001 stressed that there is a need to eliminate the so called grey zone which often exists between the actions connected with humanitarian aid and those connected with development assistance. At the same time, it was stressed that there was a close correlation between these policies. In 2007, a list of pilot countries was created in which the LRRD concept was to be implemented. Among the Sub-Saharan countries, the countries listed were Kenia, Liberia, Mauretania, and Uganda.

[115] Every year, the DG ECHO publishes a list of countries and regions considered 'forgotten crises'.

[116] The DIPECHO programme emerged in response to a UN appeal for greater interest in preventing the effects of natural disasters in developing countries, as it is estimated that the countries of the South account for approx. 97 per cent of all casualties of natural disasters.

[117] http://ec.europa.eu/echo/policies/prevention_preparedness/dipecho_en.htm (last visited 18.07.2013); G. Michałowska, *Problemy ochrony praw człowieka w Afryce (Problems with human rights protection in Africa)*, Warszawa 2008, p. 414.

[118] http://ec.europa.eu/echo/aid/sub_saharian/echo-flight_en.htm (last visited 18.07.2013).

[119] The concept of the LRRD is not a new one. Its origins lie in the 1980s, when during a food crisis in Africa, researchers and representatives of humanitarian organisations discovered the existence of a gap (the so called grey zone) between humanitarian aid and development aid.

Conclusions

The determination and consistency with which the EU and its Member States keep declaring that they will reach the millennium financial commitments should be discussed in the context of the EU's striving after maintaining the leading role and position in international development cooperation. It shows the importance of global development in the EU policy, despite the pressure to reduce aid-related expenditure resulting from the economic crisis in the world and in the euro area. At the same time, the European Union actively participates in the debate on the post-2015 framework. The voice and position of the EU in this debate reflect its ambition and aspirations as the provider of more than a half of Official Development Assistance and a global actor who has interests and objectives in the modern world. However, we should also remember that the new architecture of development cooperation will require a compromise, both of the traditional donors, including the EU, and of the new players, that is the emerging markets. The Rio +20 Conference, the Busan Forum and the debates in the UN prove that all parties agree on the main objective – the elimination or, at least, significant reduction of poverty. Nevertheless, the countries of the North, understood as the EU and the USA, and of the South differ in the choice of preferred methods. The position and place of the EU in the post-2015 global system of development assistance depends, to a considerable degree, on the EU's strength and cohesion.

The initiatives taken by the EU are meant to result in better coordination of the actions of the Commission and the Member States, making them more effective, as well as in optimum usage of the limited funds. Europe faces the challenge of devising the target vision of the EU's global development aid. Catherine Ashton said: *'with these new external instruments the EU will also be much better placed to promote its own core values and interests, like human rights, democracy and the rule of law, but also to contribute to fighting poverty, preserving peace and resolving conflicts across the world'*.[120] However, what really matters is not the declarative approval of the new instruments, but their actual implementation in the various fields of EU aid policy. At the same time, the EU should emphasise to a greater extent the multidimensional aspect of its actions and take into account the dynamically changing international reality. The lack of flexibility and progress in implementing the '4 Cs' will have an adverse impact on the position and role of the EU in the global system of development assistance, and it will have negative effects in international relations as well. As it has been already noted in the text, the use of instruments related to development assistance is one of the characteristics of external relations of the EU and one of the fundamental factors shaping its position in the world.

[120] *The Multiannual Financial Framework: The Proposals...*, op.cit.; http://ec.europa.eu/commission_2010-2014/piebalgs/headlines/news/2011/12/20111207_en.htm (last visited 5.07.2013).

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Part VII

Society and Culture in the European Union

Krzysztof Wielecki

European Social Order. A Case of Civilizational Disorder

Introduction

Europe's long history has been full of tumultuous and turbulent processes of formation of the social framework in which Europeans have led their lives. Sociologists call this framework the social order. What makes this notion useful is that it allows us to look at the society from a global and macrostructural perspective as well as perceive the key dimensions of collective existence, in their mutual correlation.

It emerged in the industrial period and can nowadays be understood as a dynamic and relatively fluid structure of changeable and diverse internal balance within the *continuum* between anarchy and authoritarianism, where particular forms of order are rather conventional extents of that *continuum* than well defined points. In the social framework there is an ever changing, internally heterogeneous, complex and dynamic state of permanent structuring and restructuring, or crystallisation, reproduction, decomposition and transformation – of relatively solid and relatively constant foundation of organisation of social living practice in a relatively isolated large society.

There are five factors or dimensions making up social order:[1] the social structure, culture, the institutional order, the economic order, and the demographic order. We can also distinguish four types of social order: authoritarian, totalitarian, democratic, and anarchic. Perceived in this way, social order determines more or less crystallised, always changeable (at least to a certain degree) and internally complex framework of common living practice.

The dramatic history of Europe of the industrial era belongs to the past. If we limit our interest to its post-war course (since 1945) and to the space in which the

[1] K. Wielecki, *Kryzys i socjologia* (*Crisis and Sociology*), Warszawa 2012; K. Wielecki, *European Social Order Transformation, Mass Culture and Social Marginalisation Processes*, "Yearbook of Polish European Studies" vol. 9/2005, pp. 115–133.

processes of European integration have been taking place since then (systematically expanded up to the current extent), we could say that there are three fundamental factors shaping the contemporary European social order: liberal democracy, pro-social market economy and the aforementioned European integration.

But in what sense can we talk of a European social order? Does this notion suggest that there is already a single society – not in the whole of Europe, of course, but perhaps in the European Union? The answer is not a simple one. There is definitely no such thing as a uniform society, even in Europe in this narrowed down sense. But if we were to consider the individual dimensions of order, we would immediately notice that it is an area of strongly integrated economic systems, closely co-operating institutional systems, a community with strong and long-standing culture, a significant degree of similarity of the social structure, as well as of a similar demographic situation. However, we can rather speak of ongoing structure-forming processes creating favourable conditions for the emergence of the common social order framework than of an already existing uniform order.

Therefore, when speaking of the European social order, we refer either to the structuring process taking place alongside the formation of the European Union or the various social orders of the individual states which we consider similar, to a certain degree. Consequently, it is not a single empirical, integrated social order that we are talking about, but a certain type of order understood as a more theoretical category that can be identified by comparative studies.

Democracy – the first factor of the European social order

In Ancient Greek *demos* meant the people and *kratia* was power, rule. Thus, democracy was exactly the rule of the people. The people are *citizens*, that is those equal among equals, who have equal rights and are equally treated by the state. However, every democracy excluded some groups from this equality. In Ancient Greece, the public life focused on the *poleis*, that is communities of *city-states*. A *polis* is the social 'space' of the Greeks. However, not all of them. The majority of their inhabitants were excluded from civil rights. The deprived groups were slaves, women, freedmen (to the second generation) and *metics*, that is people from other *poleis*. In the times of Pericles, there were approximately 150 thousand citizens, 125 thousand slaves and 40 thousand resident aliens in Athens. Presumably, approximately one third of the said 150 thousand were actual citizens, the rest being their families. We can therefore estimate that approximately 10–20 per cent of the city-state's inhabitants enjoyed the status of 'the people'. Before the Peloponnesian War, there were already approximately 42 thousand inhabitants in Athens and an average Greek *polis* of that time had 2–10 thousand adult men.

One peculiarity of Ancient Greece was its full 'participatory democracy'. It should be noted that its noble principles quite often led to absurdities and the notion of Greek democracy seems to be – in their context – to a large degree

mythologized. In sociology, it is rather used in accordance with the sociologists' idea of it that in accordance with reality. Let us recall the rule of Draco in the 7th century BC, after whom the draconian laws were named. The period of the famous Athenian democracy falls on the 5th century BC. However, even this democracy was incredibly diverse and leaves many doubts. This is why it was opposed by both Plato and Aristotle, while Socrates, as it would seem, was sentenced to drinking hemlock not as much for demoralising the youth, as for supporting the *conspiracy of forty* that was set up against democracy.

The Greek democracy saw some events, which nowadays would be deemed, mildly speaking, highly extravagant. A good example of this is the practice of capturing citizens who evaded participation in the assembly (called *ecclesia*), who were then, in order to ensure a quorum (6000 persons), dragged to the amphitheatre on lines dipped in red paint.

Offices were held for a year. Then the most eminent citizens entered the Areopagus, that is the council of the elders of the city, located on a hill in Athens with the same name. It consisted of 500 citizens randomly selected from among elected candidates and was the representation of 10 territorial districts (*phyles*), which contributed 50 representatives each. 50 councillors from of the *phyles* presided over the council for 1/10 of the year. In the times of Pericles, judicial power was held by jurors elected by the people. The tribunal could sometimes consist of 501 judges. If someone ever had doubts whether the European Union directly followed the Ancient Greek tradition, the bureaucracy in Brussels is enough to convince them that this is so indeed. Democracy had to be protected from politicians who were too eager for popularity. They posed the threat of tyranny. The Areopagus could use ostracism (banishment) against them. In the contemporary democracy of medialised and personalised politics, this solution would ravage the ruling elites.

One of the most intransigent critics of Greek democracy was Plato. He believed that its evil originated with the earlier oligarchy, in which the rich lacked the imagination and conscience to understand the notion of the common interest. An opposition to these oligarchies, which emerged as a result, was an anarchy which got rid of the rule of law and gave power to the degenerate mob susceptible to the influence of cunning demagogues. Aristotle, in turn, believed that the weakness of democracy came down to the poor people's self-interest and desire to become rich. In his opinion, the remedy for this was not the rule of the rich people's egoism, but the balance which could be provided by a strong middle class. We should point out that their ideal would be rather full direct and participatory democracy, which would allow all citizens to represent their opinions and interest, in which everyone participates actively and no one speaks on behalf of other people. They both noticed the ineffectiveness and fictitiousness of direct democracy, particularly the Athenian one. Under the pretence of full equality, coteries and factions were established. The most significant families and the richest citizens *de facto* dominated politics, using their money and influence to

create the reality of holding power. Different people held the important offices than those who held the less important ones. The voices of individual persons, formally equal, had different weight and were heard and effective in this political system in different ways. Thousands of human vices were manifested, especially where the issues required a small group of competent decision-makers. The two philosophers opposed the rule of people of bad principles and weak minds, even if they held citizen rights.

As previously mentioned, one peculiarity of Ancient Greece was full direct democracy. A *polis* was ruled by an assembly comprising all its citizens. Every citizen had to hold a public office (in turns, as there were simply too many citizens). In Athens, a thousand such offices were created, but people still had to wait for them in a rather long line. The Greeks believed that any democracy other than the direct one was barbarism. Many Greeks perceived Athens with disgust as being too large for a true democracy. In fact, the Romans shared this belief. However, as they created a huge empire, they limited the *demos* to those citizens of Rome who were only a short distance from the capital.

Therefore, as it would seem, one of the most significant deficiencies of Ancient Greek democracy were too large city-states. The number of inhabitants prevented them from truly participating in governance and true representation regarding the actual interests and opinions of all citizens.[2] The essence of democracy was to be, as we might assume, real influence on the matters related to the *polis*, which was to put into practice the ideal of self-governance of free people. The state was to be a common dimension, a dimension of co-responsibility, directly involving every citizen.

If Greek cities were too large to practice such democracy, how would it be possible in modern states, often with many millions of citizens, or even the European Union, with approximately half a billion citizens?

The remedy for this is supposed to be indirect, representative democracy. It avoids the aforementioned flaws of its Greek predecessor. In principle, all inhabitants of a given state (with a few exceptions, such as minors, the legally incapacitated, migrants from other countries) are its citizens and choose the best from among themselves so that these individuals govern – in the name of the whole population, under their supervision and on their behalf. Nowadays, the rule of the people basically comes down to the rule of the majority. All the more so, as the most important decisions are anyway made by a majority of votes – either directly in a referendum and elections, or later in the parliament, by the MPs, representatives of the citizens.

Unfortunately, indirect democracy has many flaws as well. They result from, among others, the ineffectiveness of the system of appointing and supervising the ruling elites, as well as from the citizens' belief that the choice at the elections is limited or even unimportant. More on the shortcomings of modern democracy will

[2] See: Ch. Freeman, *Egypt, Greece and Rome*, Oxford 1996.

be described later. At this point, it is enough to state that there are no perfect things in social life. Winston Churchill was probably quite right to say that democracy is very flawed, but nothing better has been invented so far.

The historical development of the practice of democracy owes a lot to theory.[3] It developed only in the Enlightenment. John Locke created the rules of a constitutional state, based on the division of power and the right of the majority to govern. He also propagated the need for tolerance in the social life. Regarding the division of power, the same view was shared by Machiavelli, also a proponent of balance in the state. In order for such balance to be possible, institutions need to have constitutional powers and control each other. Similarly to Hobbes, Locke tied authority to the 'social contract'. By accepting it, people surrender some of their freedoms to the government.

The rule that no one can be the judge in their own cause required, according to Locke, a separation of judicial and executive power. The executive power of the king should also be separated from the legislative power of the parliament, appointed by and answering to the society. The citizens can use force against the authorities if the rightness of such action is obvious.

When speaking about theoreticians supporting democracy, we have to mention Voltaire and Jean-Jacques Rousseau. In his work entitled *On the Social Contract*, Rousseau heralded the ideas of a new doctrine – liberalism, with its sensitivity to individual well-being. His views were mainly aimed against the monarchy, but the opinion that the people are losing freedom when surrendering their rights to the community speaks against direct democracy. The French philosopher introduced the notions of general will and social contract to the scientific discourse, but as a true romanticist, he explained them rather vaguely and not caring about the social consequences if anyone tried to put his ideas into practice.

The ideas of modern democracy draw extensively on its tradition. Nowadays, democracy involves not only the lack of censorship and the multitude of political parties; though these are certainly its necessary components, they are not sufficient. Democracy does also not imply that everyone can say and do whatever and wherever they please.

Essentially, democracy is a social compromise, guarded by laws, which specifies what is regulated by the social contract, leaving the remaining spheres of life to the citizens. The agreement which remains outside everyday discussion since the moment it is concluded ensures social stability and balance, necessary for the people to lead peaceful lives and for the state to perform its functions. This balance is only possible owing to the fact that the majority of the society shares the principles underlying it. They are codified in the legal act fundamental to the state and its citizens – the constitution.

The democratic agreement covers the three powers:[4] the legislative, the executive and the judiciary. To the extent specified in the constitution, the governing

[3] K. Wielecki, *Kryzys*..., op.cit.

bodies are not limited in their functions. But it is not possible for them to exceed their competences. This protects the whole political system and the state from autocracy and infringing on the social contract. The balance is renewed through elections which result in power being transferred to the party which receives the support of most voters. This way, every citizen can express their will. Another particularly important element of the democratic system is the 'fourth power', that is the mass media, which significantly influence its quality.

The basis of democracy is the equality of citizens. All people are equal before the law. After meeting the constitutional requirements, everyone has also the right to express their political views and to participate in the political life (passively or actively).

Several basic principles are fundamental to the democratic compromise, starting with respect for individuals. Under the existing law, any individual enjoys full freedom; while the law regulates the extent of citizens' freedom only as much as it is necessary to keep up the co-operation of the whole society and protect the rights and freedoms of some people from the designs of others. This is also true for social minorities.

However, it should be clearly stated that in democracy every human being is priceless. Everyone is also entitled to freedom, as long as this does not infringe on the freedom of others. People belonging to minorities must be particularly well protected and supported, as their freedoms are especially prone to infringement in the relations with the majority. But it is always the individual, not the society, who is the subject of particular rights. If a minority has special privileges, they are not granted to the minority as such, but to the individuals in order to protect them, as, in accordance with the law, they belong to the majority and if, consequently, their freedom is especially threatened by the majority. For instance, a follower of a religion other than the dominant one, or someone of morals other than the common ones, is entitled to special protection as a human being and citizen.

On the other hand, the law, which requires the citizens to fulfil a necessary minimum, is observed strictly and consequently. The law can be and is changed, but only exceptionally and by special procedures. The observance of law is guarded by independent courts.

The maintaining of the necessary degree of integration of citizens and the functionality of the society force the creation of necessary institutions (first of all, the state), which requires allocation of personnel, competences and funds. This is the problem of government. Once there are people and groups holding power, they usually display tendencies to cumulate influence, assets and the instruments to exercise power. The ruling elites strive to expand their rule. One of the fundamental principles of democracy is, therefore, the defence against these inevitable designs of the rulers. But the freedom of individuals and the society can also be

[4] K. Wielecki, *The State, Subjectivity and Civil Society in Integrating Europe,* "Yearbook of Polish European Studies" vol. 1/1997, pp. 35–53.

threatened by the citizens themselves. The pressure of local or neighbourhood communities, as well as other formal and informal citizen associations which constitute the 'civil society' can be equally dangerous. As it seems, it can be both an instrument of democracy and the source of threat to it.

The social order developed in the West in the modern times is exactly of such a liberal-democratic nature. If nowadays democracy is the will of the majority, then every government which has the support of the majority would be able to do as it pleased. The fact that in fascist Germany the majority did not oppose genocide does not imply that it was a democratic country. The post-war democratic social order is protected from similar pathologies by liberal values. Nowadays, this is first of all the respect for an individual's freedom. Human rights are of highest concern in the Member States of the EU and in the Union itself. The Union even creates possibilities of appealing against the decisions of its bodies as well of national institutions in the case of infringement on human rights and when the aggrieved party has exhausted all the means of defence available in their country.

In the tradition originating with Max Weber[5], the state is treated as a political union. The basic function of the state would be the independent distribution of ruling rights, that is the access of people and groups to the decisions considered strategic in a given society. Under Weber's theory, it would be rather a redistribution of legal violence. In the sociological sense, however, the functions of the state consist in ensuring a minimum of social integration, mainly through the co-ordination of the activities of citizens, their groups and institutions acting in the territory which is under the state's jurisdiction, as well as through arbitration between them, which increases the chances for lasting existence and development. Consequently, we can perceive the democratic state as a form of organisation of a society inhabiting a given territory, with a common cultural tradition, striving to achieve higher goals (lasting, development), increasing the opportunities in life available to the citizens. This self-organisation is based on management, the representatives of which are elected and controlled by the society and have competences delegated by the society and the means to perform their function, necessary to achieve the goals benefiting local societies.

The less the state is a form of social self-organisation – that is the more means and competences above the minimum necessary for the existence and development of the society the ruling elite has, and the more it has against the will of the citizens – the less it is a democratic state and more an autocratic one. On the other hand, the lesser the range of means and competences is than this minimum – that is the more the state is losing the ability to steer itself and achieve the fundamental goals and strategies (or even choosing them) – the less democratic and more anarchic the state is. Consequently, democracy is a certain form of equilibrium between autocracy and anarchy.

[5] K. Wielecki, *Kryzys*..., op.cit.

A concept closely related to such perception of the democratic state is civil society. It is an idea which can be described as the vision of a society producing a very flexible and non-formalised structure, not hierarchised, polycentric (pluralist), in the state of constant forming, as it is always adjusting to the people's needs. The civil society creates institutions, but in the functional sense rather than the bureaucratic one. They exist when the people need them. Decision processes are highly socialised there, meaning that forms of participation democracy are dominant.

A high degree of decentralisation of the democratic society results in the fact that social roles and the positions connected with them originate with the network of local interests. A large part of these interests is changeable and thus there is no need to overly institutionalise the structures emerging – usually spontaneously – in order to perform particular tasks. The organisation of the society much rather resembles a federation of loosely interconnected local communities, environmental movements, etc.

A democratic society is characterised by the fact that it provides an institutionalised basis for the existence of the civil society. The state is supposed to regulate and stabilise the compromise, negotiated and shared by the society, between the claims of citizens and social groups. However, the state should also perform one more function towards the democratic society: protect, under democratically established law, the citizens and social groups from the civil society, should the latter – illegally – limit their subjectivity to an extent greater than the limit defined by social interest.

Pro-social market economy – the second factor

Economic order is one of five dimensions of the social order. However it is the people that are the focus, and not markets, economic freedoms, or neo-liberal values. People manage finances in order to eat, dress themselves, have homes and be able to satisfy various material needs. Economic stability and success depend on whether anyone is interfering too much with the sphere of economy. At the same time, the economy cannot destroy the society, wreck the social order, act against the citizens. In a liberal democratic social order, balance should be maintained between the market's tendency to dominate and the tendencies to limit the chances for economic success. Negotiating, renegotiating compromise in this regard, that is arbitration, as well as guaranteeing the observance of this compromise, is a very important role of the modern state.

Economic stability depends, among others, on whether the economy has the necessary minimum of freedom of action, as well as on predictability of rationality and profitability of production and exchange. Therefore, it is the state's responsibility to protect the market in this regard. Another responsibility is the creation of favourable conditions for the economic development and success. Consequently, the state needs the means allowing it to perform these and the previously

mentioned functions. Yet the only source of these means is the economy. So, the state can and should obtain funds for its budget from the market. It also should make sure that business activity does not infringe on certain general moral and systemic principles. Entrepreneurs must observe the law, including the social rights of employees, consumers, etc.

So, the essence of the liberal democratic order consists in maintaining a certain balance. The economy should have as many limitations as needed so that the society can use the obtained economic effects, the citizens have a chance to live in accordance with the civilisational standard – so that the social compromise can last. But it also needs as much freedom as needed for it to dynamically develop. In capitalism though, usually there is no balance between the beneficiaries of the market. Significant disproportions in this regard are, however, dysfunctional and inevitably lead to very serious disturbances. The order of the European Union is essentially oriented towards maintaining these inequalities within civilised limits. Capitalism and its market economy passed through many crises which have cost the nations of the world dearly. The economic collapses of the 1920s and 1930s were one of the major reasons for the outbreak of World War II; the economic order of the world (especially Europe) at that time, and particularly the said inequalities and tensions, led to such aberrations as fascism or communism and the historic cataclysms which they caused.

That is why the beginnings of European integration after World War II consisted chiefly in joint economic activities. The economy became a subject of utmost care, with market economy being the apple of the eye. Already in the 1951 Treaty of Paris and the 1957 Treaties of Rome, we can see attempts to create a united Europe on the basis of a common market economy. The Single European Act of 1986 directly announced the establishment of the single European market, which was to be based on four freedoms, that is the free movement of: goods, services, capital and people.

The key to the economic development of particular states is the society's ability to increase global production. This depends mainly on such factors of production as land, work, capital and the skills to use them effectively. Economic growth leads to prosperity only when the national income indexes are visibly rising. The way in which this income is divided in the society is also important. The manner of redistribution of income can also be a factor of growth. Another factor of growth is entrepreneurship. In economics, this is understood as the ability to organise the three other factors of growth. It has to be discussed from the angle of the state of the population, resources, technology and social institutions. Many scholars believe that changes in technology are of fundamental importance to the economy, including, first of all, changes in the field of tools, methods and management. With the same level of resources and other factors, they make it possible to significantly increase the total production and sometimes to achieve particularly high economic growth.

Other factors of fundamental and ever growing significance for the economy are cultural factors. Social institutions, the system of values and cultural models are decisive for the use and successful combination of all the factors of growth. It is not by accident that cultural capital is nowadays often considered even more important than financial capital.

Of great importance for the economic development is also the social capital, that is, among others, such phenomena as social structure (i.e. social divisions) and changes within it (social mobility), type of state and social order, political orientations of the population (e.g. totalitarian, pro-democratic), the education system (modern or not), the state of development of trade unions, the degree of political freedoms (if insufficient, it often causes barriers to entrepreneurship).

The state of a country's economic structure plays an important role in its economic development. It is made up of three sectors of the economy. The first sector is business activity directly using nature: agriculture, forestry, fishing. The second sector includes the spheres of business activity on which natural resources are processed: the processing industry, construction, etc. The third sector is the sector of services, which does not deal with manufacturing, but instead includes the work of artisans, physicians, teachers, salesmen, bankers, etc. We need to mention the four eras in the development of mankind: pre-agrarian, agrarian, industrial and information. The first one was the era of pre-production, the second involved dominance of the first sector, the third – of the second sector of economy, and the present one involves the domination of the sector of services in the GNP. In accordance with the fundamental economic law, there is a need for compliance between supply and demand. This means that a product is expensive because the supply is low. High demand attracts producers and increases the supply, thus resulting in the fall in its price. In other words, the factors of production move where they are most profitable, that is where the prices are highest. This is one of the main reasons for which technological inventions and new organisational solutions change the demand, facilitate production and attract capital.

The characteristic features of market economy are: the domination of private property, a well-developed legal, institutional and financial system, as well as the priority of capital accumulation. The contemporary tendencies recommended to the European developed market economy are a measured monetary policy and attention to budgetary balance, which allows to control inflation, that is the excessive supply of money in the market which is not supported by produced goods. There is a permanent tendency of opening to international markets, stabilisation of the prices of energy and resources, as well as lowering the share of labour costs in the total production costs. Such an economy is to intensively absorb technological progress, as well as strive towards effective usage of resources. The third sector is dominant, with lowered importance of the second and a minimal significance of the first one. However, due to high effectiveness,

there is usually an overproduction of food despite decreasing employment in this sphere. An ever greater share of the GNP comes from the sphere of information processing.

Crisis of the European social order

The typical composition of the political scene in Western European states after World War II was rather simple and thus guaranteed the stability of democracy. The essential social divisions no longer followed the traditional social classes, as Marx wanted it. The society fell apart into two new general classes: the employers and the employees. Both had political parties representing their point of view, which governed depending on the results of parliamentary elections. When, for instance, the social democrats were too radical at redirecting policy towards employees and hampering the economy or when they reached a compromise with the employers acting against the interests of employees – they lost power to, e.g., the conservatives. When they, in turn, were too eager to please their political clientele, they caused intense social conflicts and hampered the economy, suppressing the employers' purchasing power, thus loosing favour even with the employers, and, consequently, losing power.

Both parties quickly learned not to cross rational limits, as, in the end, this would not last longer than one term of office anyway – after the next elections those out of touch with reality would surely lose their positions. The amplitude of political change was often all the more minimised as the winning party had to form a coalition with a centrist party, mostly of the liberal type, usually representing the more and more prominent middle class.

In a mechanism like this one, the state is the guardian of balance in the social order, performing the duty of representing all its citizens. It is no longer a class or nation state, but a civil state. It fulfils its main function through looking after the grand social compromise, which is basically a compromise between employers and employees. The is the fundamental purpose of the welfare state, which – contrary to what its opponents tend to claim – does not necessarily ruin the economy. Essentially, it consists in a social and political balance maintained on the basis of mutual benefits: the employees have a certain socially accepted range of ensured social minimum, while the employers have a guarantee of property and personal inviolability, of the stability of the capitalist system base, and that any conflicts of interests will be settled by law.

It is to this liberal democratic social order – in which the state is based on a democratic parliamentary system, with political parties representing the main social powers and the law regulating the obligations of the state, the citizens and the acceptable mode of political struggle (in accordance with the principles of the aforementioned social compromise) – that the West owes its unprecedented (although not free from incidents) long period of social peace, lasting for several decades, as well as economic development, personal and social wealth, observance

of human rights and international peace. This is truly something, compared with the couple thousand years of our history filled with conflicts, revolutions, civil wars, famines, economic crises, etc.

In the present times, the order described above is subject to erosion, chiefly due to the unprecedented civilisational progress, mainly scientific and technological changes and the technological revolution. We are entering an era of information societies, in which the major share of the national product comes from information processing. It is also an age of computerisation, automation and miniaturisation – which results in the fact that ever less workers are needed and, consequently, the social power of employees, their unions and political parties is dwindling. This has disturbed the foundation of the post-war liberal democratic social order, based on a pro-social market economy. This is the context of the success of the neo-liberal ideology, dating from the mid-1970s.

One of the consequences of civilisational changes is the economic crisis, which is said to have lasted since 2008.[6] It is of utmost importance to the economy and the whole social order of the European Union. Actually, crisis tendencies in the economy have been mentioned in professional literature for several years before the actual crisis. Economic data was also clearly pointing to this, at the same time revealing the very serious, fundamental collapse, going far beyond the financial aspect. For instance, let us recall that in 2002 the market of derivatives in United States amounted to USD 100 trillion, but in 2008 already to USD 600 trillion (ca. 10 times the annual GDP of the whole world); the hedge funds, which allow to make profit on price drops as well, and which played an important role in the deepening of the financial crisis, operated USD 100 billion in the late 1990s, and in 2008 already USD 2–3 trillion. Some financial corporations (banks and financial institutions) had 60 times more assets than they had capital ('leveraging').[7]

It is worth noting that two distinct orientations are emerging in contemporary economy. The first one is ruthless capital, focusing only on the accumulation of capital, using new technologies without scruple in order to evade any obligations towards human beings, culture, the environment, etc. It is mainly based on anonymous shareholding, impersonal movement of virtual money, the owners of which often where, what for and on what conditions their financial assets are being invested and, all the more so, have no intention to identify themselves or sympathize with anyone or anything. Such capitalism unceremoniously destroys people, the environment and culture. Using the ideology of neo-liberal freedom, its proponents destroy their competition and monopolise the market. The second orientation is capitalism with a more co-operative orientation (possibly most advanced

[6] Ibidem.

[7] More about it and sources of date: K. Wielecki, *Kryzys cywilizacyjny, kapitalizmu czy finansów?* (*Crisis of Civilisation, Capitalism or Finance?*) in: *Globalny kryzys a jednocząca się Europa* (*Global Crisis and United Europe*), W. Siwiński, D. Wojtowicz (eds.), Warszawa 2010, pp. 17–38. See also: G. Tchorek's and B. Góralczyk's papers in present volume.

in Sweden), occurring, among others, as social movements or communities. Although very important, profit is here not the only value; the process of making decisions and redistribution of profit often has social or even ecological aims. However, it would seem that the processes of globalisation favour the first type of capitalism. But in the EU, we rather observe tendencies towards the second model. Will it stay like this in the wake of the global economic crisis? So far, we do not know that.

In the present times, capital has received an opportunity to free the market, or rather to achieve full freedom in the market – freedom from the state, from all institutions and organisations protecting the social compromise on state level (such as trade unions). Until some mechanisms enforcing the compromise on global level are created, there will be the threat of a conflict between desperate excluded people, some employees and global employers enjoying a vast advantage over the others. The disproportionately weaker marginalised ones and employees will therefore resort to terrorist methods of fighting. This will not be easy, as modern technologies have also found their way to supervisory institutions. However, as we already know, there are no such police forces and no such prisons which could guarantee protection from terrorist attacks. Additionally, marginalisation invokes a whole series of commonly known consequences, such as corruption and moral decay, nervous and mental diseases, pathologies in the family, etc. Transformations of this type are accompanied by a metamorphosis of culture, including science, and unprecedented secularisation, which has deprived these processes of the metaphysical and moral foundation – moral and spiritual safeguard.

It would also seem that today, already in the third millennium, this new crisis is clearly visible. In connection with globalisation, tumourous proliferation of mass culture, radical secularisation, development of biology and the electronic means of communication, it results in a collapse in all the spheres of human life. What is more, there are the poor statistical data concerning marriage and family, the disturbing decomposition of morality, decency and simple manners, the racing consumerism and virtualisation of people's lives, etc.

However, this crisis could also open up better prospects. Some are already predicting that new jobs will appear, along with modern global civil society, a serious partner of global capital. Or it will be different altogether. It is not hard to notice that the new times offer new possibilities of a more comfortable, safer life, more suiting people's individual needs, giving more freedom to individuals. However, one might be concerned that might result in an even greater development of consumerism and materialism, which is already robbing life of sense and purpose, of bonds and responsibility. We cannot fail to notice that a new axis is emerging which distinctly differentiates societies internally and in the international arena – namely the access to consumption. The freedom of consumption is strictly limited by social and cultural factors and the inequalities in this respect are dramatically increasing. Today, approximately 10 per cent of the richest people in the world control 90 per cent of its riches.

Conclusions

These are very important contexts of the creation of the European social order. European integration is a chance to save the particular interest, values, cultures, small and medium states and the institutional models of Europe in the conditions of a great civilisational crisis. An uneasy chance. It depends to a large degree on the model of integration. Three models are being discussed: the concept of the 'Europe of homelands', allowing for only such integration which does not infringe on the sovereignty of nation states; the federalist concept, acknowledging the need for a common government and a union of states on federalist principles (as, for instance, states in the USA), as well as for regionalisation (some competences of the states are passed on to the federation and some to regions); the third, functionalist concept is something in between the previous two – integration processes are to create the global society gradually, gently in a positivist way.

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European Culture – A Homeopathic Solution

Introduction

To start with, we need to emphasize that the richness of European culture is boundless and its significance for us, Europeans, and for other people around the world cannot be overestimated. In geographical terms, it is seriously questionable whether Europe, a rather moderately sized peninsula attached to Asia, is in fact a separate continent. It is sure, however, that Europe is a community of history and culture. Here is what really defines its unique identity – for better or worse.

In the sciences dealing with culture there is little agreement regarding the understanding of the notion of culture, or even the other notion closely related to it, that is civilization. The latter is usually defined as the entirety of material, principally technical objects facilitating human life.[1] However, civilization not always facilitates life and it definitely should not be narrowed down to material goods. Jan Woleński mentions several traditions of defining civilization. First, we can distinguish civilization *'in terms of the way in which it was created (industry), type of its products (technology) or a particularly important kind, not known in the past, for instance computers'*.[2] Hence, it is justified to distinguish technological, industrial or information civilisation. We can also interpret it as something relatively common for many cultures, which *'plays down the national differences between peoples; it emphasizes what is common to all human beings or – in the view of its bearers – should be'*.[3] This is the second tradition. And the third one relates the notion of civilization to history and various epochs in which it is divided.

[1] See: S. Blackburn, *Oksfordzki słownik filozoficzny (Oxford Dictionary of Philosophy)*, Warszawa 2004, p. 70.

[2] Ibidem – only in the Polish edition.

[3] N. Elias, *Przemiany obyczajów w cywilizacji Zachodu (The Civilizing Process: The History of Manners)*, Warszawa 1980, p. 9. Translation from German by Edmund Jephcott of *Über den Prozeß der Zivilisation. Soziogenetische und psychogenetische Untersuchungen*, vol. 1, Oxford–New York 1978.

Readers interested in further definitions are encouraged to browse some literature on the subject.[4] For the purpose of this paper, it is enough to assume that civilization is a certain state of culture (not necessarily material), resulting from historical *longue durée* processes, created by the society, exceeding the lifespan of a single generation. Civilization creates the framework in which, largely under its influence, people construct the social order, create groups and social institutions, culture and their identities. Thus, civilization structures the life of many societies in the long term, but it is also a product of these societies and the individuals that constitute them. In the end, by civilization we shall mean the entirety of social creations produced in answer to the civilization crisis, while we may speak of a civilization crisis when the civilizational challenges make it impossible for a society to exist without introducing considerable changes. The determinants of such a crisis can include events of historic importance (wars, revolutions, etc.), natural disasters (floods, earthquakes, etc.), as well as groundbreaking scientific discoveries and inventions, new religions and ideas, or great rationalisations, conceptions, myths. Such factors are often not only a challenge for an isolated society, but also have a more universal impacte. Thus, tradition connects the notion of civilization with a broader space. Moreover, civilizations develop slowly and for a long time. As mentioned above, it is usually a *longue durée* process,[5] which takes place during the lifetime of more than one generation.[6]

Civilization and culture – meaning what, exactly?!

Culture, in the meaning proposed in this paper, is the entirety of human creations produced within the said civilizational framework. These creations are answers to human desires and needs – spiritual, mental and material – in particular geographical, civilizational, cultural, social and economic conditions. Tradition has it that the notion of culture is derived from a negation of nature (culture is everything that is not nature). Nowadays, particular attention is paid to creations only characteristic of humans, that is symbols. In the opinion of many scholars, they constitute a certain symbolic culture. There is often focus on the 'axionormative' aspect of symbolic culture, that is its content such as values, norms and meanings.[7] Undoubtedly, culture is what manifests itself in social interactions, what is produced and reproduced in them, and what influences

[4] D. Strinati, *Wprowadzenie do kultury masowej (An Introduction to Theories of Popular Culture)*, Poznań 1998, London 2004; *Encyklopedia Socjologii (Encyclopaedia Sociology)*, W. Kwaśniewicz et al. (ed.), vol. 2, Warszawa 1999.

[5] F. Braudel, *History and the Social Sciences. The 'Longue Durée'* in: *Economy and Society in Early Modern Europe*, P. Burke (ed.), London 1972.

[6] K. Wielecki, *Kryzys i socjologia* (*Crisis and Sociology*), Warszawa 2012.

[7] Cf. e.g. A. Giddens, *Socjologia* (*Sociology)*, Warszawa 2004; M. Sahlins, *Culture and Practical Reason*, Chicago 1976.

them.[8] It is also a function and condition of interactions and existence of the society. They do not exist without culture, and culture does not exist without them. However, we should bear in mind that the sense of such notions as needs, desires, functions and creations should be understood more deeply. Quoting Daniel Bell, for instance, culture is also the result of striving after *'a coherent set of answers to the existential predicaments'*,[9] what we would further elaborate on by adding that one of the most important functions of culture is the one which it fulfils in the process of producing individual and collective 'horizons of reference'.[10]

As a result of understanding, experiencing and interpreting we gather a more or less conscious, coherent, full and realistic set of beliefs which refer to the theoretical (or actual) category of world order creating an image which is a horizon of sorts, a distant line allowing us to determine our individual and collective position in the world, among other people, societies and cultures. It also allows us to navigate in the social life, in culture. This imagined (or imaginary) line, a mental representation of the world order and sense is called a 'horizon of reference'. A horizon is a virtual, distant perspective which enables the creation of the intellectual space in which we position ourselves and other people, values and opinions, in which identity crystallizes, which orients our life. The process of construing individual and collective horizons of reference is, at the same time, a process of producing senses, meanings, symbols, values, ideas. Thus, they are products of culture. These processes take place in a specific cultural environment and, therefore, under the influence of culture and by using its resources.

We can see that the functions performed by culture are very important, or even fundamental, for the existence of humanity and societies. But that is obviously not all. Culture is also essential for meeting the majority of our needs: the lofty and the mundane, the everyday and the occasional, it fills the sacred and the profane of the human world. Scholars differentiate many various types of culture: high and low, folk, artistic, worker, personal, technical, etc. Small wonder, as a matter of fact, as the entities producing them and the practices and means of producing them are different. If any systematisation of this diversity is difficult to achieve,

[8] A. Giddens, *Socjologia*, op.cit.; M. Douglas, *Risk and Blame*, London 1992; P. Bourdieu, L. Wacquant, *Zaproszenie do socjologii refleksyjnej (An Invitation to Reflexive Sociology)*, Warszawa 2001.

[9] D. Bell, *Kulturowe sprzeczności kapitalizmu* (*The Cultural Contradictions of Capitalism)*, Warszawa 1994.

[10] K. Wielecki, *Kryzys*..., op.cit.; K. Wielecki, *European Social Order Transformation, Mass Culture and Social Marginalisation Processes*, "Yearbook of Polish European Studies" vol. 9/2005, K. Wielecki, *Podmiotowość w dobie kryzysu postindustrializmu. Między indywidualizmem a kolektywizmem* (*Subjectivity in the Time of Postindustrial Crisis. Between Individualism and Collectivism*), Warszawa 2003; K. Wielecki, *Społeczne aspekty kultury masowej. Studia europeistyczne* (*Social Aspects of Mass-culture. European Studies*), "Studia Europejskie" no. 6/2006.

this is because the richness, spontaneity and chaos of many spheres of human life do not lend itself to precise defining and ordering.

We should also mention the delimitation of 'mass culture' and 'popular culture', which is very important nowadays. The former is most often understood as culture transmitted by the means of mass communication. This is a banal concept and, as the same time, an obvious consequence of civilizational progress in the development of means of mass communication. It is rather the content, not the medium, that is more important. For no one would object to precious values of culture being universally available. We will call it popular culture. However, there might be some concerns as to whether the universality and cheapness (in retail reception) and 'marketization' do not imply the risk of inevitable lowering of quality. Should this happen, we would be rather speaking of mass culture. One could also be worried that it could result in cultural degradation of some recipients and reproduction of cultural exclusion from areas of more valuable culture in the classes which had initially been excluded from it. This way, apart from the commonly known flaws and threats, mass culture would carry a function of deepening and consolidating social divisions together with the privileged position of educated elites and homogenisation of the rest of the society at the lowest possible level of culture. Thus, it would contribute to the creation of the 'mass society' and to degradation of ever larger parts of the society to the status of 'social mass'. This would also result in future social structure composed of a narrow educated elite, small intermediate classes and a social majority at the level of the mass society. In such an event, it would be better to redefine the notion of mass culture as a quasi culture of social masses and, at the same time, the culture which is an essential factor of the process of societies becoming mass societies.

However, in this paper we are interested in the culture which allowed Europe to maintain its identity, which determines its richness and the character of European societies, which was the catalyst for the processes of European integration, is the basis of the opportunities and threats to European economies and which gives rise to the European values and the European lifestyle. The origins of this cultural tradition lie with Christian roots (or, more broadly: Jewish-Christian) and the traditions of Ancient Greece and Rome. It is often claimed that it is the culture of European values and rationalism. It is expressed, passed on and protected chiefly in the works of artistic and scientific culture, as well as the technical civilization.

Beginnings of the European culture

The oldest traces of man on European soil date from two million years ago. One hundred million years before our time, Europe was inhabited by the Neanderthals and then by the Cro-Magnons. Later, many various peoples swept through our continent, migrating in the search for new hunting grounds, fleeing from natural cataclysms and wars. Approximately two thousand years BC the Indo-European peoples came, most likely from the area of present-day Iran and

Kurdistan, taking several different routes. This is also the origin of the majority of languages of modern Europe. As a result, our continent is a real melting pot, where countless diverse peoples and cultures intermixed, which enabled the development of modern European culture – this unique amalgam of the common, distinctive, internally diverse, shimmering with a multitude of colours.

The oldest evidence of European culture are approximately 700 000 years old. They are artefacts of the Abbevillian, Acheulean and Clactonian cultures, such as bifaces and simple flake tools. The discoveries in the Escale Cave (grotte de l'Escale) prove that fire was used in Europe already 400 thousand years BC. A fireplace found in Vértesszállás, Hungary, is 200 thousand years younger. Dated to approximately the same time are the finds from the Arago Cave (Caune de l'Arago) in eastern Pyrenees, where there was an inhabited grotto with a separate space dedicated to processing flint. Habitations with fireplaces were built as early as 380 thousand years BC, as proven by the remains found at the Terra Amata site, in present-day Nice. 200 thousand years BC the Levallois technique appeared and people were able to manufacture pretty precise tools.

100 thousand years BC the dead in Europe were buried in graves. New materials were systematically introduced to the production of tools. Figural ornaments on bone tools, which depicted women and often were related to the fertility cult, were a truly revolutionary development of that time were; they were later followed by figures representing people and animals. It was around the third millennium BC, when people perfected their habitations. In the Mesolithic, until early Neolithic, i.e. approx. between 7 and 4 thousand years BC, gathering developed, followed by animal husbandry and agriculture. People continued improving their habitations, using mammoth tusks and then wood. In the period of the later Trypillian culture (near present-day Kiev) houses were built with a frame of wood and walls of brick. The inhabitants of Europe continued perfecting tools and pottery, develop communication, as proven by the finds in Scandinavia from approx. 2640 BC, where there was an agricultural community.

Ancient Europe

Already in the Middle Bronze Age, i.e. around 2200 BC, magnificent buildings, primarily palaces, were constructed in Crete. At that time, people in the region of the Aegean See already used linear script, scribbled on clay tablets. The most important identified objects of architectural culture of that time include the palaces in Phaistos, Agia Triada, Malia, and the largest one in Knossos. An organised civilization existed there, with a relatively well developed and centralised governance system. The preserved walls in Knossos are decorated with beautiful paintings depicting people and animals and presenting the main occupations of the population of Crete. In this first period of civilization, called the Minoan civilization, there already was a religious cult, in which the bull and the double axe were important symbols. The artefacts and monuments left by this culture were

destroyed several times. It is assumed that it happened in connection with earthquakes and a huge volcanic eruption, which buried all the buildings on the entire island of Thera Santorini. Sometimes this event is considered equivalent with the legendary disappearance of Plato's Atlantis.

Around 1450 BC, the Mycenaean culture rose to prominence. It covered many fortified cities, including Mycenae, Thebes and Athens. Characteristic circular burial chambers were found there, at the city walls, filled with precious objects. In Minoan art sailing was the predominant motif, which could prove the high significance of trade, while in Mycenaean culture the most prominent motifs were those related to herding, farming and craft, chiefly related to working metal. Mycenaean culture erected magnificent, richly ornamented palaces and temples. The reasons for the collapse of this culture remain unclear even now. There are, however, theories of Dorian invasions from the north and of internal wars. Anyhow, the Greek civilizations went quiet for a long time – up to 800 BC.

Dated to roughly the same time, we find artefacts of peoples whom the Greeks and the Romans called Celts or Gauls. They were uncovered in modern Austria and southern Germany. The graves found in Hallstatt originate in Late Bronze Age. At that time, the area boasted salt mines and Hallstatt salt was exported to present day Central Europe and Italy. It is probably this highly valued commodity that provided the foundation to the economic and cultural boom. The finds from the graves of that time are very rich, but the peak of Celtic development coincides with Early Iron Age. Other artefacts proving great richness and interesting culture were discovered in eastern France. The Celts maintained numerous and frequent contacts with southern and northern Europe. They did not develop their own writing system and their culture was passed on orally. They were warlike peoples, later waging numerous wars with the Romans, in which they achieved many great victories. In 387 BC they sacked Rome. In the end, however, they survived for a longer time only in Scotland and Ireland.

In the 8th century BC the Scythians came to Europe. The Scythians were a nomadic people from Asia, from the region between the Aral Sea and Caspian Sea and from Armenia, and they took control of the area north of the Black Sea. Their invasions became a real plague in Eastern, South-Eastern and Central Europe in the 6th century BC. This warlike people developed a rich culture. They were Indo-Europeans and spoke a language of the Iranian subfamily. They crafted beautifully decorated objects, with animal motifs dominant in ornaments. They led a nomadic life, always looking for new pastures. They lived in tents decorated with beautiful carpets and kilims. In Ukraine we can still find traces of settled Scythians, who lived off agriculture. Most of the time, however, they waged war, sometimes even as mercenaries is Persian and Greek armies. They fought using quick surprise attacks and immediately retreating after that. They scalped their enemies and burned everything that could be burned down.

In the 800s BC the magnificent culture of Archaic and Classical Greeks starts to flourish. Their greatest achievements include democracy and the specific

organisation of city-states, the *poleis*. They created a complex mythology which explained how the world emerged from chaos and how the gods ruled from Mount Olympus. Craft was developing splendidly, medicine was at a high level and the most eminent physician of that time, Hippocrates, remains the symbol of healing even until today. Thales of Miletus was a mathematician, engineer (he constructed sophisticated and effective siege weapons), physician and financier. Just as many other Greeks, he wanted to know why and how the world came into existence, what it was composed of, what was its 'first principle'. Thales, however, went beyond mythological knowledge and started philosophy.

Initially, philosophers wanted to understand the world of nature, what was crucial for a people of sailors and farmers. They knew many laws of nature and physics, but they also wanted to grasp their sense and principles. Mythology was no longer enough. After a galaxy of natural philosophers – such as Anaximenes of Miletus, Heraclitus of Ephesus, Democritus of Abdera – the Greeks became interested in the human. This humanist orientation was started by Socrates, who, as no one before him, believed in the human intellect and the human's vocation to lead an honest life. He was convinced that reason and knowledge must surely lead to virtue. Socrates died, sentenced by his enemies under false charges to drinking hemlock. He proudly rejected the possibility of escaping and leaving Athens. He wanted his life to affirm his teachings. His student, Plato, created the foundations of modern philosophy, as well as the first university – the Academy. His works, as well as the works of Aristotle, are among the most frequently read philosophical works of all time.

Initially, theatre was a form of paying homage to the wine god Dionysus. However, in time, it became a truly creative art, which was to set the course of European and world culture for many centuries to come. Even today, modern theatres stage plays by Aeschylus (e.g. *Seven against Thebes*, *Agamemnon*, *Oresteia*, *Prometheus Bound*), Sophocles (e.g. *Antigone*, *Oedipus the King*, *Electra*) and Euripides (e.g. *Andromache*, *Electra*, *Phoenician Women*, *Helen, Medea, Orestes*, *Trojan Women*). Next to tragedies, there were also comedies, Aristophanes being a true master of the latter. It was a time of great literature. The works of Homer – *Iliad* and *Odyssey* – are read even today and form the foundation of European and world culture, as do the poems by Anacreon and Sappho.

Architecture in Ancient Greece flourished as well. Three styles in architecture emerged: the 'solemn' Doric, the ornate Ionic and its Corinthian variant. Unfortunately, not much has been preserved until our times, but the ruins of the Parthenon, a massive temple on the Athenian Acropolis erected in the times of Pericles, provide ample proof of the Greek genius. Ancient Greeks decorated their buildings with monumental sculptures crafted by skilled artists, of whom perhaps the most famous was Phidias. The conquests of Alexander the Great brought the Greek tradition even to faraway lands and thus, enriched by the cultures of subjugated nations, it gave rise to the Hellenistic culture.

The Romans were also heavily influenced by the Greeks, although the Etruscans were also very important for the development of Ancient Roman culture. The Etruscan civilization reached its apogee between 800 and 300 BC. They lived in present-day Tuscany and created a unique system of religious beliefs, to a large extent taken over by the Romans. It included the cults of Jupiter, Minerva and Juno, the custom of divining the future from the flight of birds and from the intestines of sacrificed animals. They had a distinct language and culture. They were a loose organization of city-states ruled by kings. They cultivated land, and later also mined and processed iron and copper. Between the 5th and 3rd centuries BC, they were conquered by the Romans. There are extant Etruscan written records, although they remain mostly untranslated. There are also Etruscan burial grounds with tombs and wall paintings, as well as ruins of cities inhabited by a reach people, cultivating art and sport, crafting beautiful everyday objects. The Etruscan Culture owed much to the Greeks as well. Therefore, Greek tradition influenced the Roman civilization in many ways and from many angles. This includes the aforementioned religious inspirations, as well as architectural borrowings. However, the Romans devised and introduced many solutions of their own as well. For instance, arches and domes were not known in Greece. The Romans left magnificent, original and elaborate palaces, public edifices, temples, often boasting large quantities of beautifully polished marble, fora and aqueducts.

The splendid capital of the Imperium Romanum flourished particularly during the reign of Emperor Augustus. The peak achievements of the Roman culture include such grand monuments as the Forum Romanum, a large market square in the centre of the Eternal City, where great public and social events took place, the Temple of Venus and Roma and Pantheon , magnificent amphitheatres, including the possibly most famous one – the Flavian Amphitheatre, now known as the Colosseum. The Romans also built imposing roads and bridges. Water was brought to cities from springs by means of aqueducts, which sometimes exceeded one or even two hundred kilometres in length. They also constructed bathhouses, which were also used as venues for social meetings. To commemorate important events or people they erected triumphal arches, columns and monuments, usually modelled after Greek sculptures.

The Roman legacy includes momentous literature. Horace, for instance, the author of philosophical odes and satires, had an immense influence on the entire European culture (e.g. the eminent Polish poet Jan Kochanowski), as had Vergil and Ovid. It is also unheard of for an educated person not to be familiar with Cicero, unfortunately nowadays rarely read in Latin.

Another grand and lasting achievement of the Romans was their law. Ancient Rome had a complex but lucid judicial system. Its civil, criminal and inheritance laws became the foundation for all legislation in Europe and have ever since been taught at universities.

We have already said a few words on Roman religion, but we should also note their immense religious tolerance and even eagerness to absorb other beliefs.

Apart from the Etruscan cults of Jupiter, Minerva and Juno, they adopted the Greek mythology and made it their own, with Zeus becoming Jupiter, the goddess of love, Aphrodite, becoming the Roman Venus, etc. Great generals and statesmen, and particularly the rulers, enjoyed reverence similar to the one in which the Greek demigods were held. Emperor Augustus was even proclaimed a god and temples were dedicated to him, which set a precedent for the subsequent rulers. In turn, the quite significant cult of Isis was taken over from the Egyptians. However, the Romans found it rather difficult to accept Christianity, as it was a monotheistic religion. In time, Christianity managed to become the state religion of Rome – but not without some dramatic shake-ups – and much later, in the fourteenth century, the Vatican became the seat of the popes.

After Rome fell to the Visigoths, Byzantium became one of the major political and cultural centres in Europe. Its input into European culture includes, among others, the Code of Justinian of 529, which was a broad collection of laws and a thorough manual covering the entirety of public life. It provided for drastic punishments, upholding the feudal order and sanctioning the emperor's church power. Byzantium's culture was pervaded by Greek and Eastern influences. We can discern them in the most magnificent buildings, such as the Hagia Sophia, and in the exceptionally beautiful inspired Christian paintings – the icons. With the political and religious expansion of the Byzantine Empire, the influences of its culture spread to the entire Southern and Eastern Europe (the so called 'Europe's second lung') and are still vivid in Russia, Greece and in all the regions influenced by the Eastern Orthodox Church.

The Germanic peoples, whom Romans called barbarians, mastered perfectly the technique of smelting iron, which provided them with a significant advantage in weaponry and contributed to their military successes and the rise to power. The various Germanic peoples gave rise to many European kingdoms of the Early Middle Ages.

Mediaeval Europe

The common opinion that the Middle Ages were Dark Ages, i.e. a period of cultural deterioration and backwardness, has no grounds in the facts. European culture owes a lot to the Christian Church. In a time when even kings were rarely literate, priests and monks were virtually the only educated class. It is in abbeys and monasteries that writing developed, that books were collected and copied, paintings were crated, architectural thought was perfected, as well as the methods and techniques of crafts, agriculture and production. The most eminent scholars of the period include, first of all, Augustine of Hippo (354–430). He was canonized and proclaimed a Doctor of the Church. His achievements include the development of the view in theology that in man there is the Image of God, or *imago Dei* (tripartite, like the Holy Trinity, and that everything is good as it comes from God. Evil, in this context, is the lack of good. And moral evil, in turn, is the result

of man's free will. The state of Charlemagne placed great emphasis on the development of education and culture. Centres training learned theologians were established in Aachen and Paris, where the works of ancient philosophers were studied attentively. An important factor shaping culture at that time and influencing its dissemination was the veneration of saints.

The Church's rise in power and wealth gave rise to concerns regarding the preservation of the spirit of the Gospels. From its very beginnings, Christianity witnessed the emergence of various heresies and apostasies within its ranks. This phenomenon became even more pronounced in the Early Middle Ages (e.g. the Cathar and the Waldensian movements), especially since the 12th century. In order to combat the heresies, new religious orders were established, such as the Franciscans, who were to practise evangelical poverty, and the Dominicans, who were to study the mysteries of faith in poverty and combat apostasies by, chiefly, preaching. The peak of this struggle was marked by the establishment in 1231 of the Inquisition, which with time became rather infamous, although newest research indicates that the stories about the atrocities which it was supposed to commit are much exaggerated.

In the subsequent centuries, Mediaeval culture was enriched with the motive of chivalry. Since he was dubbed a knight, a man would be subject to many complex rituals connected with the system of knightly virtues. These included religiousness, courage, valour, gallantry, loyalty to his seigneur, honour, courtly manners, honesty, and deference for his lady. Musicians and singers performing at courts (skalds, minstrels, troubadours) composed songs praising great knights and their virtues.

At the same time, rapidly developing towns and cities witnessed the emergence of bourgeois culture. It is there that collegiate and cathedral schools were established and trained future clergy in Latin, public speaking and clerk's duties. Some schools taught a more ambitious course in sciences providing the basis for future studies, the so called *quadrivium*. In time, secular schools, which taught mathematics, medicine and law, appeared as well. Since the 12th century many new universities were established. The oldest and most eminent ones, on which the others were modelled, existed in Bologna and in Paris. The development of universities and science was heavily influenced by ancient scholars, e.g. Hippocrates. In the 13th century a new philosophical method appeared, namely scholasticism, the representatives of which tried to combine the achievements of ancient philosophers, especially Aristotle, with the Holy Bible. Abelard, better known as the tragic figure involved in an affair with Heloise, set out on this new path already in the previous century. However, the most eminent representative of this movement was Thomas Aquinas, canonized half a century after his death. The claim of no contradiction between revealed and rational truth, as well as the Five Ways, or the five rational reasons for the existence of God became the basis of a school of philosophical thought called Thomism after its founder. Next to St. Augustine, this scholar and Doctor of the Church established a foundation for

the European and world theology and philosophy, as well as for the European thought in its broadest sense.

The Middle Ages brought a magnificent development of agriculture. Abbeys and churches, castles and keeps, town halls and bourgeois houses were build on a large scale. One of the most beautiful and unique styles, called the Romanesque, emerged in France and bore wondrous fruit in architecture as well as in the fine arts. The style is characterised by a squat, massive mass with small windows and contrastingly gentle arches and lines. The finest examples of this style in France include the abbey church in Saint-Gilles-du-Gard, the cathedral Notre-Dame des Doms in Avignon, the basilica Notre-Dame du Port in Clermont-Ferrand, the abbey church of Saint-Étienne in Caen, as well as numerous secular constructions, e.g. the Cité de Carcassonne, the Château d'Arques or the Pont Saint-Bénezet in Avignon. In Poland, preserved Romanesque edifices include the collegiate church in Tum, the Holy Trinity Church and the St. Prokop Rotund, as well as the beautiful Church of St. Andrew in Kraków.

Sometime later, the Middle Ages gave birth to the monumental and lofty Gothic style, whose soaring spires aimed at the heavens manifesting God's greatness, at the same time proving man's skill and agility of mind. The Gothic style also originated in France and was characterised by slender, soaring shapes with pointed arches. The designs now included elaborate systems of flying buttresses instead of ordinary massive buttresses, which partially relieved pressure of the walls and transferred it to pillars. This allowed the construction of really high buildings with large, soaring windows catching a lot of sunlight illuminating elaborate and colourful stained glass. Gothic ornamentation was very rich, with huge but fine and intricate sculptures of saints and other adornments, carved in massive stone. One of the most striking Gothic churches, the Cathédrale Notre-Dame in Chartres, which was a major centre of thought of Mediaeval France, is an unforgettable sight. The cathedral's highest tower is 115 m high, and the entire edifice is adorned with 10 thousand sculptures of stone and glass. Not less moving is the Notre-Dame de Paris, build for 168 years and finished in 1345, or the beautifully proportional three-nave Notre-Dame d'Amiens. Gothic monuments in Poland include the Wawel Cathedral and the St. Mary's Basilica in Kraków, but also the castle and other fortifications in Malbork. The artistic skill of mediaeval craftsmen was also manifested in beautiful everyday objects, and particularly in chalices and other works of religious art, but also in masterfully illuminated handwritten books, sometimes decorated with marvellous miniatures.

The Middle Ages brought also tremendous development in the field of music. Since the 11th century, owing to Guido of Arezzo, musicians used staff notation. Chorale music developed rapidly as well, codified, as tradition would have it, in the times of Pope Gregory the Great (6th century). Gregorian chant, which itself was monophonic, was the foundation for the development of heterophony and polyphony (organum, bordone singing), which in turn led to counterpoint music. The period of 1160–1320 saw the rise and bloom of the Notre Dame School of

Polyphony, connected with the Notre Dame Cathedral in Paris, and the so called *ars antiqua* musical style, followed by *ars nova*. The Middle Ages were also a period development of secular music, especially courtly and bourgeoisie music. The most eminent composers of that time include St. Hildegard of Bingen, Léonin and Guillaume de Machaut.

The Renaissance, or a return to classical ideas

Upon the twilight of the Middle Ages, a new current in though and art emerged – the Renaissance. Initially it appeared in Italy, but soon engulfed whole Europe. Owing to its Roman tradition, the knowledge of the Greek tradition acquired from the refugees from Byzantium, the trade relations maintained by the independent republics, as well as the wealth, independence and high level of education of its burghers, Italy was the cradle of the chief orientation of the Renaissance, humanism. Although still deeply religious, artists and scholars preferred to believe in the idea that 'Man is the measure of all things', ascribed to Protagoras, an eminent Ancient Greek philosopher.

Even near the end of the Middle Ages, many scholars attempted to combine the new tendencies with the teachings of the Church. Some, as e.g. Marsilio Ficino, found the basis for the idea of humanism in Christianity. Others, as e.g. William of Ockham, believed that theology can be reasonably separated from science, which in the Renaissance thrived like never before. Nicolaus Copernicus, a graduate of the Cracow Academy, substantiated the thesis put forward some time earlier by Jean Buridan that it is not the universe that is revolving around the Earth, but the Earth is revolving around the Sun. The new age saw a rapid development of astronomy, the natural sciences and mathematics, with the last one flourishing particularly well in Oxford and Kraków.

Writers started to use national languages in their works, now focusing also on human issues, which had been rather passed over before. In his *Divine Comedy*, Dante Alighieri discussed the issues of life and death and his protagonist looked for God and the truth about Him. Francesco Petrarca wrote extraordinarily beautiful sonnets for his beloved Laura, whom he had seen only once (although some scholars argue that she never existed at all), while Giovanni Boccaccio and François Villon, who, however, lived in 15th-century France, were utterly frivolous in writing about issues which in the earlier times many would be afraid to even think about.

This age was also a time when the Gothic construction was perfected, which allowed for the erection of even larger and more spacious temples, with magnificent ornamentation and multiple naves. What followed were grand secular edifices, such as town halls and cloth halls. Sculptures developed beautifully as well, particularly those using Marian motifs, of which a good example is the magnificent altarpiece in St. Mary's Basilica in Kraków, the work of the German artist Veit Stoss. Painters started using oil paints, as well as perspective.

Humanism became the main idea of the entire age of renaissance in Europe and survived until the 17th century. It was a time of further development of science. Copernicus's research was continued by Giordano Bruno, who was burned at the stake by the Inquisition. It was also the time of the brilliant astronomer and physicist, Galileo Galilei. Around 1450, Johannes Gutenberg invented the modern movable type and printing press, which facilitated the dissemination of books, promoted reading and contributed to the intellectual revolution of the Renaissance. In the circumstances of lax morals in the Church, the German monk Martin Luther formulated and published his Ninety-Five Theses, which owing to Gutenberg's inventions echoed all around Europe and started the Reformation, which resulted in a schism in the Church and Protestantism eventually becoming one of the major Christian denominations. The evolution of the worldview of that time was also heavily influenced by the great discoveries of the Age of Exploration, for instance Christopher Columbus's discovery of the New World in 1492 and Vasco da Gama's discovery of a sea route to India in 1498. The Renaissance thought, with its anthropocentric orientation, was developed by the brightest minds of the age, such as Erasmus of Rotterdam, whose *In Praise of Folly* of 1509 is one of the most important works of that time. It is also the period when the brilliant but morally controversial Niccolò Machiavelli educated entire generations of politicians in the art of effectiveness and tough them how not to pay history a more bloody tribute than it requires itself; the time when Thomas More, an English statesman and saint of the Catholic Church, beheaded for remaining true to his religious beliefs and the Church, wrote his marvellous works, including the eminent *Utopia*.

In England, the great William Shakespeare wrote his all-famous plays, such as *Hamlet*, *King Lear*, *Othello*, *Romeo and Juliet*, *Richard III*, *The Taming of the Shrew*, or *Macbeth*, which are counted among the greatest masterpieces ever produced by mankind. In France, Pierre de Ronsard wrote beautiful odes and sonnets, François Rabelais wrote the unseemly and bawdy *Life of Gargantua and of Pantagruel*, and Michel de Montaigne, an influential and elegant intellectualist, wrote his *Essays*.

The Renaissance was also the age of the great and versatile – a true Renaissance man –Michelangelo Bounarroti, who not only painted, sculpted and designed outstanding architecture, but also wrote beautiful poems. His most famous sculptures include the *Pietà*, *David* and *Moses*. Commissioned by Pope Julius II, he painted stunning frescoes on the ceiling of the Sistine Chapel in Rome, and later designed the dome of the St. Peter's Basilica. The greatest of them all, Leonardo da Vinci, was a brilliant anatomist, engineer, inventor, artist, and the epitome of the humanist ideal. The *Lady with an Ermine*, displayed in Kraków, *The Last Supper*, the *Mona Lisa* and his other paintings are considered priceless.

The aforementioned St. Peter's Basilica, as well as the *Tempietto* in Rome, the Louvre Palace in Paris, the Wawel Castle and the *Sukiennice* in Kraków are

among the best examples of Renaissance architecture, characterised by great harmony, gentle and smooth lines and a sense of balance.

Old religious and secular musical forms flourished as well, such as the mass, *Magnificat*, hymn, antiphon, and motet, or the madrigal and chanson. The Renaissance boldly introduced new instruments to music, e.g. the lute, spinet, clavichord, or organs. The most eminent composers of the period include Jean Mouton, Pierre de Manchicourt, Giovanni Pierluigi da Palestrina, and Orlando di Lasso.

The dark age of the Baroque?

The early 17th century was a time of the Counter-Reformation, bloody wars, the plague and natural disasters. Man and their existence seemed insignificant, nothing more than the vagaries of fortune. A new movement emerged in European culture – the Baroque, which was a manifestation of the troubled state of mind and spirit of the people of that time. Just as the Middle Ages, the Baroque is sometimes dubbed a dark age, although rather wrongly as well. It was a time of intellectual giants such as the Italian philosopher and astronomer Galileo Galilei, or Blaise Pascal, the French philosopher and mathematician who contributed to the development of mechanical calculators, provided the foundation for projective geometry and the probability calculus. In consequence of deep mystical experiences, around the mid-17th century Pascal focused on philosophy and theology, creating such eminent works as the *Lettres provinciales* and *Pensées*. The English physicist, mathematician and astronomer Isaac Newton created the foundation for classical mechanics, differential calculus, integral calculus, the corpuscular theory, variational calculus, the law of conservation of momentum. René Descartes provided the basis for analytic geometry, contributed to the theory of differential and integral calculus, the notion of imaginary numbers, and the development of astronomy. His philosophical treatise *Discourse on the Method* is a brilliant work held in high esteem by all later humanities, and particularly the rationalist branches. Now, that's a strange idea of darkness.

The Baroque style probably owed its characteristic highly ornate nature to the Church's striving to create attractive and intriguing places which would draw the attention of viewers. The examples of this style include the Jesuit Church of the Gesù, the portico of the St. Peter's Basilica and the St. Peter's Square in Rome, the Basilica di Santa Maria della Salute in Venice, the Karlskirche in Vienna, the Palace of Versailles, the Schönbrunn Palace in Vienna, and the Trevi Fountain in Rome.

The models copied in the entire Europe originated once again in Italy. The most notable poets include Giambattista Marino, whose name was used to coin the term marinism, an ornate and witty style of poetry and verse. In Spain there were Luis de Góngora, a more refined and subtle poet than Marini, as well the brilliant playwright and poet Lope de Vega, his successor Pedro Calderón de la

Barca (*Life is a Dream*, *The Great Theatre of the World*, *The Surgeon of his Honour*), and Miguel de Cervantes Saavedra (*The Ingenious Gentleman Don Quixote of La Mancha*). In France theatre was flourishing magnificently, to a large extent owing to Jean-Baptiste Racine, who wrote plays using Ancient Greek models, Pierre Corneille (*Le Cid*) and Moliére (Jean-Baptiste Poquelin), the author of such masterpieces as *Tartuffe*, *The Miser, The Imaginary Invalid*, *The Misanthrope*, *Dom Juan*, *The Bourgeois Gentleman*.

In music, the Baroque was a mostly fortunate period as well. It is commonly assumed that in this field, the new age starts with the opera *Dafne* by Jacopo Peri. The period was dominated by two main styles: the *antico*, related to the Renaissance polyphony, and the *nuovo*. The crowning achievement of Baroque music is the *galante* style, represented by the exquisite Alessandro Scarlatti. It is then that such forms of polyphonic and counterpoint music as the *opera*, *suite*, *sonata*, *concerto grosso*, or *fugue* emerged or, at least, were significantly developed. It was a time of such brilliant composers as Johann Sebastian Bach and his sons, as well as Antonio Vivaldi, George Frideric Handel, Jean-Philippe Rameau, Domenico Scarlatti, and many others.

The Enlightenment of Europe

The 18th century brought about yet another great change in European culture. A long and very fortunate streak of scientific and technical discoveries resulted in significant modernisation of production equipment and techniques. Waving machines, steam engines, steam pumps, gas lighting and many, many others contributed to a huge boom in manufacture and soon in the entire industry. Great Britain was the leader in this revolution. Its industrial power increased rapidly, huge urbanized areas developed and population numbers were rocketing sky-high. The modern economic and political thought also originated in Great Britain (e.g. Adam Smith), where a new, liberal orientation arose – the basis for later liberal democracy. It was also the time when the French Revolution caused a stir of freedom all over Europe and a strong wind of democracy blew from America with its *Declaration of Independence*. This caused a great intellectual revival, which the European culture calls the Enlightenment. The ideal man was now educated, open-minded, tolerant, critical towards the Church, religion, institutions and power, recognised only the dictates of reason, which was manifested in the magnificent achievement of the age – the grand *Encyclopédie* – created by a group of French scholars including Voltaire, Diderot and Montesquieu. The two intellectual foundation of the Enlightenment were rationalism – trusting in reason as the means of searching for the truth, the sense of the world and life, developed in the philosophy of René Descartes – and empiricism, founded by John Locke and further developed by David Hume, who believed that only sensory experience leads to full knowledge. Rationalism and empiricism were also synthesised by Immanuel Kant, a German philosopher from Königsberg and the author of such

famous works as *Critique of Pure Reason*, *Critique of Practical Reason*, *Metaphysic of Morals* and of such concepts as the 'categorical imperative'.

These philosophical orientations were also reflected in the literature and art of the period, with their three main currents: classicism, represented chiefly by Voltaire, the author of *Candide* and the *Treatise on Tolerance*, Jean de La Fontaine, the author of *Fables*, and Nicolas Boileau-Despréaux, the great reformer of French poetry; sentimentalism, which was where feelings were preserved in the Enlightenment, mainly owing to Jean-Jacques Rousseau, the author of *Julie, or the New Heloise* and *Confessions*; and the rococo, the third current of the Enlightenment, characterised by an excess of form in comparison to content, an abundance of embellishments, sophisticated ornamentation, a subtlety of detail, and attention to surprise and eccentrics. Although the rococo is sometimes considered a late Baroque movement, the issue is not worth crossing swords over it.

Ideologists of the Enlightenment no longer needed God and tradition, they trusted in themselves and in progress. They believed that progress is inevitable in every field, as long as the light of the intellect is not extinguished. Science flourished in the 18th century. Isaac Newton's *Principia* revolutionised the understanding of the laws of motion and gravitation, and the differential calculus. It was the time of such eminent scholars as Gottfried Leibniz, Carl Linnaeus, Joseph Priestley, Henry Cavendish, Antoine-Laurent de Lavoisier, Carl Friedrich Gauss, Leonhard Euler, and many others.

The 18th century was also a time of great artistic stir. In painting, the English school of psychological portrait flourished, represented by Joshua Reynolds and Thomas Gainsborough, and the Canalettos achieved mastery in urban panoramas. Artistic ornamentation also prospered. Refined and beautiful objects, particularly furniture, were created by such masters as André Charles Boulle, Grinling Gibbons, Thomas Chippendale. Great literature was created by Richard Brinsley Sheridan, Pierre Beaumarchais, Alexander Pope, Robert Burns, Jonathan Swift, Henry Fielding, as well as Voltaire and Rousseau, while great musical pieces were composed by geniuses such as Johann Sebastian Bach, Wolfgang Amadeus Mozart, Georg Philipp Telemann, George Frideric Handel, Joseph Haydn, Tomaso Albinoni, and many others (although some of them can be qualified to the previous age as well).

Romantic Europe

The French Revolution marked the dawn of a new epoch in European culture: the Romanticism. It lasted until the Springtime of Nations, and in Poland until the January Uprising. The young generations no longer considered the light of the bygone age as attractive, as it had been to their parents. The old trusted in the intellect, while their children preferred to trust in the heart.

However, the epoch was not devoid of great minds. It was the time of Friedrich Schelling, Heinrich Heine, as well as the versatile scholar and artist

Johann Wolfgang von Goethe, whose works exhibit motifs of both the Enlightenment and the Romanticism. With his novel *The Sorrows of Young Werther*, pure in its genre, he is in fact a precursor of the age. Its protagonist is driven by emotions stronger than reason and propriety. Nevertheless, Goethe's most eminent work is *Faust*. It has all the ingredients characteristic of Romanticism: the search for the sense of life, a dramatic choice of emotion versus reason and knowledge, in the end made in favour of emotions, there is glorification of youth, as well as an atmosphere of mystery and miracles, which are, however, performed by the devil. Apart from that, the flagship works of Romanticism include *The Giaour* by Lord Byron. In fact, the period saw an entire galaxy of excellent artists, such as Alexander Pushkin, Sir Walter Scott, Victor Hugo, Alexandre Dumas, Friedrich Schiller, and in Poland – Adam Mickiewicz, Juliusz Słowacki and Cyprian Kamil Norwid.

Young Europeans turn away from Romanticism

As time passed, Romanticism lost the charm of freshness and became an insufferable manner, which gave rise to opposite movements in many fields – such as realism in literature and art, Post-Romanticism in music, positivism in philosophy. The doctrine of positivism was formulated by the eminent French philosopher Auguste Comte, the author of *A General View of Positivism* and the father of sociology. Positivists had no confidence in romantic emotions, on the contrary – they trusted the intellect, knowledge based on sound experience and reason. They believed in systematic and hard work and were interested in social issues, technology, hygiene and health.

The period in question covers several decades between 1850 and 1880 and roughly coincides with the first half of the Victorian Era in Great Britain. The dates are obviously conventional, as most artists and writers lived in two ages. Auguste Comte created the foundation of the positivist philosophy, according to which the liberal arts were to employ the same method as the natural sciences, and usefulness would be their aim. It is also then that Herbert Spencer, the chief representative of evolutionism, wrote his famous works. He believed that everything is subject to constant changes, including the society, just as a living organism (the concept of organicism), in which every part has a function towards other parts and exists exactly because it is an element of a functional whole. In a manner characteristic of the age, Spencer believed that progress is the essence of life; progress is also the objective of social life. In biology, evolutionism was represented by Charles Darwin, who put forward the theory that new species are created in the course of evolution, in a process of adapting to environmental conditions. Other great minds of the age include John Stuart Mill, an eminent philosopher and the creator of the concept of the *golden rule of democracy*; Alexis de Tocqueville, the precursor of modern sociology, a philosopher, theoretician of democracy, the author of *Democracy in America* and *The Old Regime*

and the Revolution; as well as Karl Marx, a philosopher, theoretician of revolution and communism, a great critic of capitalism. It was also the age when various social and political doctrines such as anarchism, syndicalism and terrorism developed.

Among the many eminent writers who were active in the period, most are extremely difficult to clearly assign to either the Romantic or the post-Romantic period. In Russia, there was the great Fyodor Dostoyevsky, the author of gloomy and philosophical novels: *The Brothers Karamazov*, *Crime and Punishment*, *The Idiot*, as well as the highly respected Lev Tolstoy, whose *War and* Peace has been filmed several times. In Great Britain, there was the highly talented Charles Dickens and his *The Pickwick Papers*, *David Copperfield*, *A Christmas Carol* and *Oliver Twist* are popular even today. In France, there was Honoré de Balzac, the author of works such as the series of novels *The Human Comedy*, and Stendhal, who wrote, among others, *The Red and the Black* and *The Charterhouse of Parma*. These two authors were the fathers of French realist novels. Other representatives of this movement include Gustave Flaubert and his *Madame Bovary* and *Sentimental Education*, while the famous Émile Zola, the author of such works as *Nana* and *Germinal*, is considered already a naturalist.

European culture in the 20th century

The end of the 19th century and the early 20th century brought a multitude of intellectual and cultural movements in Europe, influenced by the works of grand philosophers: Arthur Schopenhauer, Friedrich Nietzsche and Henri-Louis Bergson. Schopenhauer saw human life in rather gloomy colours. He believed that it is filled with misery and suffering, that there is no choice and the human is condemned to the torment of existence. However, he also believed that there are certain palliatives, i.e. means which do not heal the reasons, but still provide a certain relief from the pain. This was, above all, the attitude and compassion with the suffering of others, as well as contemplation and admiration of beauty. Friedrich Nietzsche also believed that things with the world and mankind are not good. Overwhelming numbers of weak people force through 'slave' values, such as mercy, charity, patience, solidarity, etc. In consequence, they are replacing the morality of the 'masters': strength, vitality, ruthlessness. The most important works of this philosopher include *Also sprach Zarathustra* and *Beyond Good and Evil*. European culture of the period was also heavily influenced by the French philosopher Henri-Louis Bergson, the author of *Creative Evolution*. In his opinion, the world in general, and man in particular, have an internal *élan vital* – a vital impetus or force – which makes them constantly develop. Bergson was the father of intuitionism, an intellectual movement ascribing cognitive abilities to deep feeling, uncontaminated by the intellect.

Other great philosophical currents of the 20th century were created by such thinkers as Edmund Husserl and his phenomenology, Bertrand Russell and the

British school of analytic philosophy, Martin Heidegger, Karl Jaspers, Albert Camus, Jean-Paul Sartre, who created existentialism, as well as Theodor Adorno, Max Horkheimer, Erich Fromm, Herbert Marcuse and Hans-Georg Gadamer, who created the so called Frankfurt Schools.

The works of the aforementioned philosophers shaped the currents in art of that period, one of the most noteworthy being the great discovery of the 1970s, namely impressionism. The founders of this movement had more confidence in subjective impressions and feelings – by definition, subjective – in rational and realistic perception. In their opinion, art should not aspire to photographic reproduction of the world. On the contrary, it should be sensual, ephemeral, draw on fleeting glimpses, reflect the individual, subjective view of the author. The list of artists painting sensual landscapes and genre scenes, who used mainly pastel hues and a technique of small dots, includes such names as Paul Cézanne, Claude Monet, Édouard Manet and Pierre-Auguste Renoir, and in Poland Olga Boznańska, Józef Fałat and Leon Wyczółkowski.

Symbolism was yet another answer to the spirit of the age and its dominant philosophy. Its proponents used symbols, which more or less indirectly suggested the deeper meaning of the message. At the same time, through an aura of vagueness and allusiveness, they created a pervasive sense of dread and ambiguity. The chief representatives of this movement include the painter Edvard Munch and his obsessive *The Scream*, Paul Sérusier and Jacek Malczewski (*Thanatos*, *Melancholia*), as well as the poets Maurice Maeterlinck and Rainer Maria Rilke.

The period brought about many great works in all the areas of art. Its most eminent artists include the Catalan Antoni Gaudí, associated with the Catalan *Modernisme* movement and an individual variation of Art Nouveau. The buildings designed by Gaudí, many of which can be found in his home town Barcelona, are startling and enchanting, while the monumental Sagrada Família, although still unfinished, is proof of his ultimate genius. Yet another great architect of the 20th century exhibiting an impressive imagination and disregard for the needs of people was, of course, Le Corbusier (Charles-Édouard Jeanneret).

This period in European culture was violently interrupted by World War I, which had a significant impact on the Europeans' worldviews, imagination, interests and styles of artistic expression.

The intellectual and artistic climate of the interwar period was pervaded by pessimism and fear. The age owes intellectual dimension of these feelings to the Spanish philosopher José Ortega y Gasset and his works, including in particular *The Revolt of the Masses*, where he wrote on the fatal consequences of the tremendous increase in world population numbers for European culture, as a result of which common crowds were starting to dictate the direction of this culture, leading to its primitivisation. As Ortega y Gasset prophetically foresaw, the disintegration, or at best, vulgarization of culture would constitute an important factor contributing to the development of totalitarianisms.

The interwar period saw many great milestone achievements in European science. One of them was Albert Einstein's theory of relativity. Two new important currents in psychology emerged and had a significant influence on artistic movements: behaviourism and psychoanalysis. Particularly the latter, the work of the Vienna scholar Sigmund Freud, who discovered the dark and mysterious area of the subconscious in the human psyche, as well as many mechanisms of driving out the culturally inacceptable desires and urges, had a revolutionary impact on literature, painting and music.

The artistic movement that emerged in the first decade of the century, but which reached its apogee in the interwar period, was the so called *avant-garde*. It was a rather exuberant movement, colourful and multifaceted, but it exhibited certain fundamental traits as a whole: negation of past artistic forms and the search for new ones, moral and often political radicalism, the belief in the mission of creating new art, expressing the new man in a new age. The representatives of this movement boldly searched for new means of expression, approaching tradition with a resolute lack of trust. The main currents within the avant-garde include: expressionism, futurism, cubism, Dadaism, surrealism and neoclassicism.

Expressionists, linked to the aforementioned philosophy of Henri-Louis Bergson, looked in art for possibilities of exuberant expression of extreme feelings and intuitions, for emotional and exciting means of expression, revealing the dark subconscious. The representatives of this current include the poets Georg Heym and Franz Werfel, the playwrights Ernst Toller and Bertolt Brecht, the canonical painter Edvard Munch (*The Scream*), and the painters Willem de Kooning and Karel Appel, associated with the abstract expressionism of the second half of the century.

Futurists were related to the famous *Futurist Manifesto* by Filippo Marinetti, who called for abandoning academic art and opening up the future and the modern technological civilization. They were also anti-aesthetics and they were looking for intellectual, moral and artistic provocation. The followers of this movement include the great Russian poet and painter Vladimir Mayakovsky or the Polish poet Bruno Jasieński.

Cubism, on the other hand, is a movement which first appeared in plastic arts. Cubists, and especially Pablo Picasso and Georges Braque, questioned the principle of perspective to arrange space creatively. The object depicted in a painting or sculpture was divided into distorted geometrical forms so that the artist was able to create surprising combinations of these elements. A group of poets connected with this movement included the famous Guillaume Apollinaire. They abandoned the traditional syntax, used far-reaching poetic shortcuts and planned the graphic layout of their poems

One of the more colourful artistic reaction to the stresses and despairs of the interwar period was Dadaism. In the opinion of Dadaists, creating was first of all a play, free from all sense, rules and logic.

Surrealism, in turn, opened up new creative prospects and has been inspiring artists in all generations ever since. The main means of surrealist expression is grotesque and parody. The sense of the works, dealing with the principles of logic and moral and artistic norms rather freely, is to be found in the subconscious. The representatives of surrealism include Joan Miró, Salvador Dalí and Marcel Duchamp.

Yet another very important movement in art was neoclassicism, represented by, among others, Paul Valéry, William Butler Yeats, Thomas Stearns Eliot, Osip Mandelstam, Anna Akhmatova. The source of the name is that the artists following this movement, tired of the avant-garde, revived the traditions of ancient Europe and the 19th-century classicism. On the other hand, there was also abstractionism, which radicalised the ideas of the avant-garde, boldly going beyond even the surrealist of cubist deformation and its function of representing the world, renouncing all extra-artistic content and using only colour and shape. The representatives of its geometric variation include Piet Mondrian, Wassily Kandinsky, Paul Klee, and its non-geometric: Jackson Pollock in the USA and Alfred Otto Wolfgang Schulze, Georges Mathieu, Tadeusz Kantor in Europe. The influences of psychology, and particularly psychoanalysis, bore fruit in the form of such great works as Marcel Proust's *In Search of Lost Time*, James Joyce's *Ulysses*, Franz Kafka's *The Trial* and *The Castle*, Antoine de Saint-Exupéry's *Wind, Sand and Stars*, *Night Flight* and *The Little Prince*.

An important movement in the period of the turn of the 19th and 20th century was Art Nouveau, also known as Jugendstil, Secession or Stile Liberty. It represented a secession, indeed, from the artistic mainstream, performed by, among others, a group of painters from Berlin, Vienna and Munich. The style is characterised by a romantic aura, lyricism, lush ornamentation using floral motives, slender female shapes, delicate, pastel hues, reverence for decoration of functional objects and romantic reminiscence (in architecture and painting there are, for instance, many allusions to the neo-Gothic). The essential idea was to combine artistic genres and the universal presence of art, even in small and everyday objects (spoons, furniture, street lights, etc.). The most eminent representatives of Art Nouveau include Alphonse Mucha, Gustav Klimt (*Salomé*), Stanisław Wyspiański, the sculptor August Rodin and the aforementioned architect Antoni Gaudí.

Although music has not been mentioned to any greater extent, it was also a period of significant transformations in this field and a time of magnificent composers, including Claude Debussy, Béla Bartók, Maurice Ravel, Igor Stravinsky, Karol Szymanowski. The interwar period was a time of increasingly decisive departure from the major–minor system. The phenomenon was initiated by Anton Webern, the creator of the new twelve-tone technique, or dodecaphony, and further continued by Arnold Schoenberg. In the later aleatoric music, the composer leaves much freedom to the performers, allowing them to interpret, improvise and co-create during the performance of the work (Pierre Boulez,

Kazimierz Serocki, Witold Lutosławski – controlled aleatoric). Another composer was Olivier Messiaen, a true individual writing highly original music, although he can also be considered a serialist to a certain extent. The Polish contribution to modern music is sonorism, which consisted in using sounds evoked from traditional instruments by means of new techniques (Krzysztof Penderecki, Henryk, Górecki, Wojciech Kilar, Kazimierz Serocki, Witold Szalonek). It is also worth mentioning Iannis Xenakis and Karlheinz Stockhausen, who used electronic effects in modern classical music.

Conclusions

The 20th century was a time of considerable transformations in the theatre: from realism, through the revolutions of Konstantin Stanislavski, Vsevolod Meyerhold and Edward Gordon Craig, to the theatre of Bertolt Brecht (*The Threepenny Opera*; *The Resistible Rise of Arturo Ui*; *Mother Courage and Her Children*), who consciously reached for mass culture, even though he was very critical of it, as well as of the realities of capitalism. After World War II, the diversity of theatre concepts was stunning – it was a true boom of great talents and marvellous plays. Some of these are Jean Genet (*The Maids*), Samuel Beckett (*Waiting for Godot*; *Endgame*), Eugène Ionesco (*The Lesson*), Sławomir Mrożek (*Tango*; *The Émigrés*), as well as the theatre directors Peter Brook (famous for his Shakespeare plays), Tadeusz Kantor (*Dead Class*; *Wielopole, Wielopole*), Jerzy Grotowski (*The Constant Prince*; *Appocalypsis cum figuris*), Konrad Swinarski (Mickiewicz's *Dziady*; Wyspiański's *Liberation*).

However, the 20th century was also a time of the emergence and bloom of cinematography, which played an important role in European culture right from the very first film by the brothers Lumière (*Workers Leaving The Lumière Factory in Lyon*). The history of art films includes such artists, as Georges Méliès (*A Trip to the Moon*), Sergei Eisenstein (*Battleship Potemkin*; *Alexander Nevsky*), Luis Buñuel (*Un Chien Andalou*), the neorealists Roberto Rossellini (*Rome, Open City*) and Vittorio de Sica (*Bicycle Thieves*). We should also mention geniuses of the silver screen such as Frederico Fellini (*8½*; *La Strada*), Michelangelo Antonioni (*Blowup*), and the New Wave directors (François Truffaut, Jean-Luc Godard, Claude Lelouch, Pier Paolo Pasolini).

The 20th century, and even more the early 21st century, saw the emergence of new fields of art and many revolutions, shocks and perturbations in the well established arts. Approximately since the 1970s, the liberal arts have remained under considerable influence of postmodernist philosophy. However, a more detailed description of the culture of the late 20th century and the early 21st century would require a separate chapter, for there is insufficient space for it here. In this text, we have not been able to completely or even sufficiently describe the culture of the ages intended. We would also like to encourage the readers to study the topic individually. These studies do not need to be systematic or comprehensive. Perhaps

they should start with focusing on some particularly interesting movement, style, a particular philosopher or artist. European culture provides infinite possibilities for cultivating one's interests, or even great passions.

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Rethinking Europe through Culture

Introduction

'United in diversity' is the official motto of the EU, equally valued for its aptness and criticised for the lack of any concrete content. Transposed into the European cultural space, it is becoming increasingly important, as it describes the role of culture in the process of European integration. It refers to the richness and diversity of cultures in Europe against the background of the common cultural heritage which has functioned in Europe for centuries, long before the key EU legal acts recognised its importance. In fact, the positive integration potential of culture, symbolically confirmed by the EU motto, had long remained beyond the sphere of interest of the Communities. They reached for culture as an important element of the integration process relatively recently. Due to the mainly economic dimension of the integration process, as well as the substantial differences in the approach to culture in the Member States, culture was not present in the actions of the European Economic Community until the 1970s. At that time, the cultural aspects of integration, if taken into account at all, were treated as an intrinsic side effect of the whole project. The public slowly started to identify the European integration process with red-tape procedures and alienated technocratic structures, detached from the every-day experience of the citizens. Already at the beginning of the 1970s, there was a growing conviction that the legitimacy of political elites for taking further action aimed at deepening the European integration was becoming weaker.

Therefore, after the creation of the common Europe, finally came the time to create the Europeans, who would consciously give their consent to further stages of integration. In order for that to happen, the way of speaking and thinking about the future of the project had to be fundamentally changed.[1] It had to include objectives

[1] See: Z. Sokolewicz, *Kultura w procesie integracji europejskiej (Culture in the Process of European Integratio*n) in: *Europeistyka w zarysie (An Outline of European Studies)* A.Z. Nowak, D. Milczarek (eds.), Warszawa 2006, pp. 319–337.

and values which had not been present in the political discourse before. To satisfy the need, or even the necessity for the integration to become rooted in subjective experience, the European Economic Community started to refer to those areas in which its citizens could stronger experience the 'People's Europe'. In the long-term perspective, the aim was to instil the sense of new, strong European identity into the European societies. From the 1970s until the 1990s, the concept of European identity was the key issue stimulating the academic and political debates on the sense and directions of the integration processes in Europe.[2] With culture being one of the inherent elements of the multi-level European identity, it was inevitable that politicians would reach for its positive potential expressed in the 'unity in diversity' paradigm.

At the same time, we should stress that due to the highly varied models of cultural policy conducted by the Member States, as well as the strong conviction of many of them that culture should remain their exclusive national competence, the decision to involve the Community in supporting culture at the European level was not an obvious one. Towards the end of the 1980s, it has become clear that actions for culture at the Community level required separate legislation which would combine the paradigm of the exclusive competence of the Member States in the field of culture with the Community's growing involvement in this area. And so it happened. In 1992, the European Community regulated its position on culture in the treaties. In 2013, the European Union is celebrating the twentieth anniversary of the entry into force of the Treaty of Maastricht, while culture celebrates the twentieth anniversary of the EU cultural policy. Its special character and the instruments used in it were determined by the provisions of the EU treaties concerning culture. This article is an attempt to make a synthesis of the legal foundations of the EU cultural policy and the directions of its development between 1992 and 2013, with particular focus on the European Agenda for Culture and the shift in the cultural policy paradigm after 2007. The text is also an introduction to the next chapter *Cultural Policy of the EU – How It Works in Practice*, which provides a critical analysis of selected actions, programmes and measures used by the Union to conduct the cultural policy based on the legal instruments described below.

Culture in the Community before 1992. On the origins of the EU cultural policy

The first official document referring to culture and its importance for the future of the European integration was the *Declaration on European Identity* adopted at the Copenhagen Summit on 14 December 1973 by the Heads of State

[2] For an overview of the academic opinions on the concept of European identity see: M. Sassatelli, *Imagined Europe: The Shaping of a European Cultural Identity Through EU Cultural Policy*, "European Journal of Social Theory" no. 5(4)/2002, pp. 435–451. For a critical of the European Community's policy towards constructing the European cultural identity see: C. Shore, *Inventing the People's Europe: Critical Approaches to European Community 'Cultural Policy', „Man"*, New Series, vol. 28/4, December 1993, pp. 779–800.

or Government of the nine EC Member States.[3] It was the first document to recognise the importance of cultural diversity and the common heritage of the European civilisation for strengthening the identity of the united Europe. The document was a political declaration of support for actions aimed at building European identity through referring to the idea of 'unity in diversity', with a strong emphasis on unity and consolidation of the European project.

After the Copenhagen Summit, there was a good political climate for actions aimed at remodelling the European structure so that the Community would be closer to its citizens and so that the integration project itself would gain a new, not solely economic face. In 1975, the Belgian Prime Minister Leo Tindemans published a report on the future shape of the European Union,[4] in which he explicitly pointed out the need for a more tangible involvement of the Community in the areas close to its citizens, better correlated with the every-day experience of the Europeans. Why? Because *'no one wants to see a technocratic Europe. European Union must be experienced by the citizen in his daily life. It must make itself felt in education and culture, news and communication, it must be manifested in the youth of our countries and in leisure time activities'*.[5]

A reference to culture as an important element of European identity was also made in the *Solemn Declaration on European Union*, signed by the Heads of State or Government in Stuttgart on 19 June 1983,[6] in which they confirmed their readiness to develop the cooperation in the field of culture and education within the existing legislative framework. In point 3.3. of the Declaration they enumerated the specific measures and fields of culture which the Community should more strongly support in comparison to the past activities of the Council of Europe in this respect. These included: exchanges of academic teachers and students, promoting foreign language learning, deepening the knowledge of the history and culture of the Member States and of Europe as a whole, supporting audio-visual methods of disseminating culture, protecting and promoting the cultural heritage and engaging in joint activities to achieve this goal, as well as taking joint actions for disseminating culture, art and literary works.[7] The Community has slowly started to see these actions as something more than a necessity. It also started to sense the benefits of referring to culture as a positive instrument of integration.

The response to the question how to bring the Community closer to its citizens and help them identify with this idea were two reports compiled on the initiative of the European Council in 1985 by the Italian MEP Pietro Adonnino and

[3] *Declaration on European Identity*, "Bulletin of the European Communities", no. 12/1973, at point 2501.

[4] *European Union Report by Mr. Leo Tindemans, Prime Minister of Belgium to the European Council,* "Bulletin of the European Communities", Supplement 1/76.

[5] Ibidem, p. 12.

[6] *Solemn Declaration on European Union. European Council, Stuttgart 19 June 1983*, "Bulletin of the European Communities" no. 6/1983, pp. 24–29.

[7] Ibidem, p. 28.

the ad hoc Committee on People's Europe which he chaired.[8] The reports proposed concrete solutions in the field of culture, science, education, sports, and others. It also suggested strengthening the identity of the Community by introducing symbols of the united Europe, such as the European flag or anthem. These elements were later promoted through a series of actions and initiatives in the EEC Member States, including the 'People's Europe' campaign of 1985.

The first concrete actions in the field of culture at the Community level were initiated by the European Parliament. As early as in 1974, in a resolution on the protection of the European cultural heritage, the Parliament appealed to the Commission, asking it to take actions for the protection and dissemination of the European cultural heritage, to channel financial resources to restoring historical buildings and to take measures to fight illicit trafficking of works of art to the extent allowed by the treaties. The resolution of 1974 also called for removing the legal and social barriers existing for cultural workers and adopting new laws concerning taxes and intellectual property rights.[9] Further resolutions of the European Parliament concerning the protection of the architectural and archaeological heritage were adopted in 1982 and 1988 and were the basis for several actions aimed at restoring historical complexes of special importance to Europe.[10] On the Parliament's initiative, the Commission assigned special funds to the conservation of the Acropolis and the Parthenon, for the renovation of the monastery complex on Mount Athos in Greece, for the restoration of the Chiado District in Lisbon and the University of Coimbra in Portugal.[11]

In this period, the Community also tested other types of measures in the field of culture on the European level which had a chance to be accepted by the EEC Member States, which were rather reluctant to embrace the idea of including culture in Community action and protected their exclusive competence in this sensitive sector as a matter of principle.[12] In 1985, the need for symbolic actions strengthening the Europeans' sense of belonging to a common cultural area brought the Ministers of Culture to the decision to set up the European Capital of

[8] P. Adonino, *A People's Europe. Reports from the ad hoc Committee,* "Bulletin of the European Communities", Supplement 7/85.

[9] Resolution of the European Parliament of 13 May 1974 on measures to protect the European cultural heritage, OJ C 62, 30.5.1974.

[10] Resolution of the European Parliament on the protection of the architectural and archeological heritage, OJ C 267, 11.10.1982; Resolution of the European Parliament on the protection of the architectural and archeological heritage, OJ C 309, 5.12.1988.

[11] For more on the history of the involvement of Community institutions in actions in the area of culture, including the projects aimed at preserving heritage, see: Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, "New Prospects for Community Cultural Action", Brussels, 29.04.1992, COM(92) 149 final.

[12] For more on the Community actions and measures in the field of culture on the European level in the 1980's see: G. Michałowska, *Miejsce kultury w polityce Unii Europejskiej (The Role of Culture in European Union Policy)* in: *Integracja Europejska. Instytucje. Polityka. Prawo. Księga pamiątkowa dla uczczenia 65-lecia Profesora Stanisława Parzymiesa (European integration. Institutions. Politics Law. A commemorative book on the occassion of the 65th anniversary of Professor Stanisław Parzymies)*, G. Michałowska (ed.), Warszawa 2003, pp. 307–324.

Culture, an annual event which was meant to celebrate the unity and diversity of European cultures. Today, the European Capital of Culture, an EU action in operation since 1999, is the most recognisable EU action in the field of culture. On the initiative of the European Parliament, the Community established the European Youth Orchestra (1976), the European Youth Opera (1988), the European Festival of Poetry (1984), and the European Community Baroque Orchestra (1985), which were to highlight the transnational, European dimension of the Communities involvement in the field of culture.

Starting from 1974, by means of several resolutions, the European Parliament sought to ensure that the need for financial, technical and organisational commitment of the Community in the field of culture was recognised as vital. This in turn required collecting, analysing and interpreting the existing European law in search of possible actions in the areas of culture indicated by the Parliament. The Parliament gave this task to the European Commission. In a series of three communications, the Commission slowly developed a pragmatic position justifying the actions in the cultural sector and pointed out the areas of culture in which such actions could be taken in accordance with the Treaties.

In the first of these communications, published in 1977 and titled "Community Action in the cultural sector",[13] the Commission referred to Community competence in the field of culture, stating that: *'Most Community action in the cultural sector is nothing more than the application of the ECC Treaty to this sector. This involves freedom of trade, freedom of movement and establishment, harmonization of taxation system and legislation. The legal basis is the Treaty itself'*.[14] The document also generally defined the term 'cultural sector' and clearly stated the aim and extent of Community involvement in the field of culture. '*The cultural sector may be defined as the socio-economic whole formed by persons and undertakings dedicated to the production and distribution of cultural goods and services*'.[15] Having considered the fears of the Member States concerning the potential undermining of their exclusive competence in the field of cultural policy, the Commission firmly stated that *'just as the cultural sector is not itself culture, Community action in the cultural sector does not constitute a cultural policy'*,[16] and stressed the practical character of Community actions which should be taken in the areas indicated by the Parliament in 1974.

The second communication, published in 1982 and titled "Stronger Community action in cultural sector", shows a very similar approach.[17] The Commission defined four concrete aims of Community action in the cultural sector: freedom

[13] *Community action in the cultural sector*, Commission Communication to the Council sent on 22 November 1977, "Bulletin of the European Commission", Supplement 6/77.

[14] Ibidem, p. 7.

[15] Ibidem, p. 5.

[16] Ibidem, p. 5.

[17] Communication of the European Communities to the Parliament and the Council, "Stronger Community action in the cultural sector", Brussels, 16.10.1982, COM (82) 590 final.

of trade in cultural goods, improving the living and working conditions of cultural workers, enlarging the audience, and conservation of the architectural heritage.[18] Searching for legal grounds for Community action in the said areas, the Commission highlighted the importance of the cultural sector as a socio-economic factor and its influence on, for instance, the development of tourism or academic research, leaving aside the question of building the European identity. The communication also confirmed that any coordination of the Member States' cultural policies was out of the question and presented a very narrow set of competences in actions for culture at the European level, thus showing that it would not be a threat for the Member State competence in this area.

The third communication, published in 1987 and titled "A fresh boost for culture in the European Community",[19] which contained an outline of a work plan for 1988–1992, brought a new perspective and set the main directions of work towards regulating Community competence in the field of culture in the treaties. The Commission identified and named the reasons why the Community should start supporting culture at the European level. *'The Commission is convinced that increased Community activity in the cultural sector is a political and economic necessity given the twin goals of completing the internal market by 1992 and progressing from a People's Europe to European Union'*.[20] In addition to referring to concrete issues, such as the free movement of cultural goods and services, competitiveness of the audio-visual sector and the legal solutions concerning the working conditions of artists and other people working in the cultural sector, the Commission strongly highlighted the idea of the integrating potential of European culture, which consisted in the combination of the idea of the common cultural heritage with the idea of the diversity of cultures which had contributed to this heritage. Several years later, the same idea, under the motto 'unity in diversity', became one of the pillars of the EU cultural policy. At the same time, in the communication of 1987, the Community announced five areas covered by Community action and cooperation between the Member States and pointed to the need to allocate funds for projects in these areas.[21] Due to the constantly growing involvement of the European institutions in the field of culture, in the same document the Commission proposed the establishment of the Permanent Committee on Culture, which was finally established in 1988 as the Committee on Cultural Affairs, composed of representatives of the Member States and of the European Commission.[22]

[18] Ibidem, p. 4.

[19] Communication of the European Communities to the Parliament and the Council, "A fresh boost for culture in the European Community", Brussels, 14.12.1987, COM (87) 603 final.

[20] Ibidem, p. 6.

[21] These were: creation of the European cultural area, promotion of the European audiovisual industry, access to cultural resources, training for the cultural sector and dialogue with the rest of the world, ibidem, p. 9.

[22] For more on the history of actions for culture at the European level before 1992 see e.g.: E. Psychogiopoulou, *The Integration of Cultural Considerations in the EU Law and Policies*, Leiden–Boston 2008, pp. 7–16.

EU cultural policy after 1992. Culture in EU Treaties

The legal foundations of the cultural policy of the European Union were set out by the Treaty on European Union – the Treaty of Maastricht, which entered into force on 1 November 1993.[23] In its Article 128, the Member States defined the aim, competence and scope of action of the Community in the field of culture. The aim, set out in Article 128(1), was to contribute to the flowering of the cultures of the Member States, while bringing the common cultural heritage to the fore. Thus the role and importance of cultural diversity of the EC Member States to European integration was legally sanctioned and, at the same time, the Community was granted the power to take action for promoting common heritage. However, the scope of the Community's action in the field of culture was strictly defined and limited to stimulating and supplementing cultural initiatives of the Member States and European cultural entities, which meant that Community action in this sphere was subject to the principles of complementarity and subsidiarity.

Article 128(2) enumerated the areas in which the Community would be allowed, if necessary, to take action to support and supplement the actions of the Member States: improvement of the knowledge and dissemination of the culture and history of the European peoples, conservation and safeguarding of cultural heritage of European significance, non-commercial cultural exchanges and artistic and literary creation, including in the audiovisual sector.

Article 128(3) concerned international cooperation in the field of culture and established a general legal framework for cooperation between the Community and third countries and international organisations operating in the field of culture, in particular the Council of Europe, which is explicitly mentioned in the said Article. This reference to the Council of Europe as an important partner of the European Union resulted from the reflection that constructive cooperation in the field of European culture should be based on synergy of actions and programmes, avoiding unnecessary overlapping of measures or even adopting competitive measures in the area in which the Council of Europe has already had incomparably more experience and achievements.

A very important provision for the future of the EU cultural policy and for the development of culture in the EC Member States was Paragraph 4 of Article 128, which held: '*The Community shall take cultural aspects into account in its action under other provisions of this Treaty*'. This provision has opened the possibility of integrating cultural actions into other Community actions and initiatives, e.g. the cohesion policy, and has remained the legal basis for EU support for modernisation and development of cultural infrastructure in Europe under the Structural Funds, as well as for cultural actions within the framework of employment, environment or economic competitiveness and innovation policies.

[23] See: Treaty on European Union, OJ C 191, 29.07.1992.

At the same time, in Paragraph 5 of Article 128, the Member States expressed a great deal of reserve towards the potential Communitisation of culture and towards the actions which could lead to an excessive development of the EU cultural policy. The provisions concerning culture were covered by the co-decision procedure, while the Council's legal instruments were limited to incentive measures and recommendations. Furthermore, Paragraph 5 explicitly excluded culture from any harmonisation of laws and regulations in the field of culture in the Member States. This provision was a direct result of the Member States' attempts to ensure the highest possible protection of national competence in this field. In addition, the same paragraph introduced the principle of unanimity in adopting Commission proposals by the Council, which was to protect the autonomy of the Member States in shaping their internal national laws and regulations on culture even further.

In the Treaty of Amsterdam, EU competence in the field of culture was enshrined in Article 151. It did not introduce any essential changes to Article 128 of the Treaty of Maastricht,[24] only added some content to paragraph 4 of the former Article 128: *'The Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures'*. This was done not only to stylistically improve the 'dry' text of the provision, but also, it seems, to further specify the nature of Community's involvement in culture.

Currently, the competence of the European Union in the field of culture is regulated by the Treaty of Lisbon, which entered into force on 1 December 2009[25] and where reference to culture appears in several places. The Preamble to the Treaty on European Union mentions culture, and more precisely the cultural inheritance, next to the religious and humanist inheritance of Europe as the foundation for the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality, and the rule of law.[26] Another paragraph of the Preamble to the Treaty on European Union concerns the Member States' readiness to '*deepen the solidarity between their peoples, while respecting their history, their culture and their traditions'*, and therefore indirectly refers to the paradigm of 'unity in diversity' and its importance for the integration process in the EU.[27]

Furthermore, Article 3(3) of the Treaty on European Union of 2009 also refers directly to culture. It imposes an obligation on the EU to '*respect its cultural and linguistic diversity, and shall ensure that the Europe's cultural heritage is safeguarded and enhanced*'.[28] The scope of the EU's competence in the field of culture is defined in Article 6 of the Treaty on the Functioning of the European Union,

[24] See: Treaty of Amsterdam amending the Treaty on European Union, OJ C 340, 10.10.1997.

[25] See: Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, OJ C 326/01, 26.10.2012.

[26] Ibidem, p. 15.

[27] Ibidem, p. 16.

[28] Ibidem, p. 17.

under which culture is one of the seven areas in which the Union has the competence to support, coordinate or supplement the actions of the Member States.[29]

The EU competence in the field of culture is defined in Article 167 of the Treaty on the Functioning of the European Union (ex Article 151 TEC).[30] It generally repeats the provisions of the previous Treaty, with one important modification concerning the decision-making process at the EU level. Article 167(5) of the Treaty holds that European measures in the field of culture are subject to an ordinary legislative procedure, i.e. qualified majority voting (QMV). The QMV replaced unanimity which had been required in the Council since 1992 for all matters covered by Article 128 of the Treaty of Maastricht, later Article 151 of the Treaty of Amsterdam. Keeping in mind that there have been substantial differences of opinion between the Member States as regards the development and deepening of the Union's involvement in the culture sector; hence the change introduced by the Treaty of Lisbon might have an impact on the direction of development of the EU's cultural policy, and might also affect the budgets of cultural programmes after 2013. Article 167(5) has maintained in force the provisions of Article 151 of the Treaty of Amsterdam, which exclude culture from all harmonisation and regulation actions of Member States.

Article 167 of the Treaty on the Functioning of the European Union

1. The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.
2. Action by the Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:
   – improvement of the knowledge and dissemination of the culture and history of the European peoples,
   – conservation and safeguarding of cultural heritage of European significance,
   – non-commercial cultural exchanges,
   – artistic and literary creation, including in the audiovisual sector.
3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.

[29] See: Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326/01, 26.10.2012, p. 52.

[30] See: Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326/1, 26.10.2012. p. 121.

4. The Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures.
5. In order to contribute to the achievement of the objectives referred to in this Article:
   – the European Parliament and the Council acting in accordance with the ordinary legislative procedure and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States.
   – the Council, on a proposal from the Commission, shall adopt recommendations.

Who implements the provisions of Article 167 and how? The EU action in the field of culture involves all EU bodies in accordance with the powers vested in them. We should remember that as a result of the entry into force of the Treaty of Lisbon along with Article 167 TFEU, lawmaking in the field of culture by the European Parliament and the Council of the European Union is subject to the ordinary legislative procedure. The European Commission initiates legislative action in the field of culture at the EU level, it is also responsible for promoting the integration of the cultural component into other EU policies and programmes, with particular emphasis on the Structural Funds. Directorate-General Education and Culture of the European Commission and The Education, Audiovisual and Culture Executive Agency (EACEA) are responsible for the implementation and execution of cultural programmes and activities.

The legally binding acts by means of which the European Union has been conducting its cultural policy are decisions establishing programmes or actions in the field of culture.[31] The non-binding acts used for this purpose are recommendations and opinions. As culture has been excluded from harmonisation by the treaty, the 'soft' instruments such as reports, green papers, policy handbooks, and good practice manuals have become more important. These instruments facilitate cultural policy at the European level in accordance with and in the spirit of Article 167 TFEU.

Since 2002, the Council of the European Union and the representatives of governments of the Member States have been adopting in their Conclusions oriented three-year Work Plans for Culture,[32] in which they accept the priority

[31] See: *Polityki Unii Europejskiej: Społeczne aspekty prawne* (*European Union Policies: Social Legal Aspects*), J. Barcz (ed.), Warszawa 2010.

[32] The first Work Plan for Culture in the field of culture was adopted by the Council of the European Union and the representatives of the Member States for the period 2002–2004, the second one for 2005–2006, and prolonged until 2007. The two next Work Plans for 2008–2010 and 2011–2014 were strictly related with the aims and priorities of the European Agenda for Culture.

areas of action in the field of culture and encourage the Member States, the Council Presidencies and the Commission to implement them.

Why should we consider the period after the entry into force of the Treaty of Maastricht the first stage of the EU cultural policy[33] and not only of separate cultural actions like it was before the Treaty of Maastricht?

First, because it was then that the construction of the rules of the European Union involvement in the cultural sector was initiated. These rules, translated into the language of European programmes, would determine the specificity of the EU involvement in the promotion of culture from European funds for years to come.

Second, because the action of the European Union in the field of culture was not limited only to the implementation of new generations of cultural programmes and to including culture in other EU programmes, but resulted mainly in the funding of concrete cultural projects from the Structural Funds, which has permanently changed the landscape of cultural infrastructure in Europe.

Third, building the foundations of the EU cultural policy after 1993 required an institutionalised dialogue with the cultural sector and led to the establishment of consultation bodies at the European level, as well as platforms of cooperation, with the task of presenting the positions and opinions of representatives of cultural circles in the Member States and issuing recommendations for EU policy in the field of culture.

European Agenda for Culture and EU cultural policy after 2007 – a new paradigm

The concept of the 'EU cultural policy' permanently entered the official European discourse in the mid-2000s, when the European Union initiated the process of redefining the directions of involvement in culture. As shown by analyses, the main promoter of change was the Directorate-General for Education and Culture,[34] which took action for introducing culture to mainstream EU policies and for increasing the possibilities for development by launching larger funds and

[33] The situation is further complicated by the fact that from the very beginning of involving culture in the integration process and until the mid-2000s, the EU consistently avoided using the term 'cultural policy' and instead used the words 'actions' or 'measures' in the field of culture. This was the case in the official discourse created for short-term Community actions in the field of culture and for multiannual framework culture programmes, in the statements of European politicians responsible for culture and in reports concerning culture.

[34] There are two units dealing with culture in the Directorate-General for Education and Culture: the Culture Programme and Actions Unit, which coordinates and manages target programmes and Community actions in the field of culture, and the Culture Policy and Intercultural Dialogue Unit, the aim of which is to develop strategies and prepare actions regarding EU cultural policy. Managing part of the Culture Programme is within the competence of the Education, Audiovisual and Culture Executive Agency (EACEA), which also implements other EU programmes in such areas as citizenship, youth and audiovisual. Further in this text I will refer to this Directorate-General using the abbreviation DG Culture.

support methods used by other areas.[35] This action was encouraged by the experience related to the process of effective integration of environment protection in mainstream EU policies.

In order to shift the interest in culture from the margins to the main field of EU policies, it was necessary to draw the attention of the most important decision-making bodies, both within the Commission – on the level of various Directorates-General and at the intergovernmental level. It was possible only on the basis of facts and hard data on culture, using the arguments and language that would appeal to these bodies with more force than ever before. Therefore, the economic dimension of culture was highlighted at that time, although previously it had been overlooked for a long time – overlooked, but not completely absent in EU cultural policy before 2007.

Already in the 1980s, in the documents on the development of cultural policy at the European level, the Community identified two main aims of its involvement: identity politics and the economic aspects of the cultural sector. However, as shown by the history of the EU cultural policy after the entry into force of the Treaty of Maastricht (in particular Article 128), the Community focused mainly on the implementation of the first of these two aims, leaving economic issues aside. The conception dominant at that time was that culture was primarily an autonomous sphere of goods and values which, as a key element of European identity, played an important role in deepening the integration process. Culture had a very specific place in EU legislation, as a result of which the Community directly subsidised cultural projects within a small dedicated budget. The economic and social importance of the cultural sector in Europe was obscured. Another area which long remained in the shadow of identity politics was the policy of subsidising infrastructural projects in the field of culture through EU Structural Funds.

Over time, with the dynamic changes taking place in European culture and societies, the European Union was faced with new challenges related to the development of digital technology, as well as the development of the production and distribution market of cultural goods and services, the spreading of new forms of art and new forms of participation in culture. According to the author of one of the first compendia devoted to culture economics, Yudhishthir Raj Isar, today *'an ever-increasing range of symbolic goods and services is being produced and distributed. In the process, the aesthetic has been commodified while the commodity has been aestheticized and the industrial and digital mediate practically every cultural process'*.[36] The present situation of culture, its creators and recipients, producers and consumers, also affected the European Union and the way in which it perceived the role and place of culture in the European integration process. Changes

[35] A. Littoz-Monnet, *Agenda-Setting Dynamics at the EU Level: The Case of the EU Cultural Policy*, "Journal of European Integration" vol. 35/5, July 2012, pp. 505–512.

[36] Y. Raj Isar, *The Cultural Industries and the Economy of Culture*, http://www.cultureactioneurope.org (last visited 12.02.2013).

were inevitable and occurred in the years 2005–2007. The EU rhetoric increasingly involved the use of new concepts and language, by means of which academic researchers attempted to describe the processes taking place at the border of culture and economics. In the new official EU discourse, when talking about culture, the EU began to refer to the priorities of the revised Lisbon Strategy of 2005 for the growth of competitiveness and employment in Europe, which led to a serious re-evaluation of the concepts. The value of culture for the integration process was no longer solely in itself, since culture was now perceived primarily through socio-economic indicators and as a vehicle for innovation and creativity.

A turning point in this process was the communication from the Commission of 10 May 2007 entitled "European agenda for culture in a globalizing world",[37] a document that has set new directions of the EU cultural policy. The Council of the EU reaffirmed the strategic importance of the European Agenda for Culture with the resolution of 16 November 2007, in which it approved the proposed objectives and instruments.[38] Thus, after more than a year and a half of negotiations, the EU finally opened a new chapter in the history of its involvement in the field of culture. The adoption of the Agenda meant that from then on, the EU wanted – this time openly, in cooperation with the Member States and in a structured process of consultation with the cultural sector – to conduct a cultural policy based on long-term strategies and not just implement individual actions in the field of culture. Although the legal framework remained the same (Article 151 of the Treaty of Amsterdam), the last six years have seen such deep and radical shifts in cultural policy priorities that we should speak of a paradigmatic shift in EU cultural policy, the consequences of which European culture may feel for many years or even decades to come.

What did this change actually involve? In the years 1993–2007, the overriding objective of the EU involvement in the promotion of culture at the European level was to strengthen and develop the European cultural area under the 'unity in diversity' paradigm. Therefore, the most important among the activities of the EU were those for protecting and promoting the common cultural heritage, promoting cultural diversity, as well as actions for the democratisation of the access to culture. Since 2007, when the Agenda was adopted, the European Union has been putting three other priorities to the fore. In addition to promoting cultural diversity and intercultural dialogue, the new official strategic objectives of the EU cultural policy are: the promotion of culture as a catalyst for creativity in the framework of the Lisbon Strategy for growth, employment, innovation and competitiveness, and promotion of culture as a vital element in the Union's

[37] See: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European agenda for culture in a globalizing world, Brussels, 10.05.2007, COM (2007) 242 final.

[38] The European Council has also referred to the European Agenda for Culture at its summit of 14 December 2007; see: Council of the European Union, Presidency Conclusions, Brussels, 14.02.2008, 16616/1/07 REV 1, p. 11, point 44.

international relations.[39] The European Agenda for Culture provided a separate introduction to each of the priorities, followed by a detailed description of specific actions that should be taken at the national and European levels so that the objectives of the Agenda could be realised.

A general analysis of the European Agenda for Culture indicates that this document has determined the directions of development of the EU cultural policy. The change introduced by it is substantial, as it is not limited to a shift in the EU rhetoric regarding the place and role of culture in the process of integration, but also promises actions and proposes decision-making mechanisms which may have a considerable, if not decisive influence on the development of the culture sector in Europe in the short and long term.

So what are the causes and contexts which led to the adoption of the new objectives and priorities within the framework of the European Agenda for Culture, with such potentially serious consequences for European culture?

First, it is the social and cultural transformations of European societies. Prioritising actions for cultural diversity and intercultural dialogue resulted from the awareness that the multicultural societies of Europe and the complex network of interweaving identities of their members were a major challenge for the Community.[40] Therefore, these phenomena had to affect the Community's approach to the role of culture in the process of European integration. They have also contributed to the shift in the 'unity in diversity' paradigm of European culture. Shifting the focal point from the 'unity of culture' to its 'diversity' is a consequence of the belief that without stronger support for diversity and without promoting it as a great value of the European project, the 'unity' based on it would be more and more often called into question.

The key concepts symbolising this change in the EU cultural policy are 'cultural diversity' and 'intercultural dialogue', which have had an increasingly prominent place in the documents and activities of the Community.[41] The legal basis for the actions for promoting cultural diversity under the Agenda is Article 167 of the Treaty on the Functioning of the European Union (ex Article 151 of the Treaty of Amsterdam), with particular emphasis on Paragraph 4 of this Article, which holds, in the form adopted in 1997, that the aim of including cultural aspects into EU policies and actions is to respect and promote the diversity of its cultures.

[39] See: Resolution of the Council of the 16 November 2007 on a European Agenda for Culture, OJ C 287, 29.11.2007.

[40] G. Michałowska, *Uniwersalizm, tożsamość i relatywizm kulturowy a globalizacja (Universalism, Identity and Cultural Relativism in Globalisation)* in: *Globalizacja a stosunki międzynarodowe (Globalisation and International Relations)*, E. Haliżak, R. Kużniar, J. Symonides (eds), Bydgoszcz – Warszawa 2004, pp. 255–256.

[41] In the Decision of the Parliament and the Council of December 2006, intercultural dialogue was pointed out as one of the three priorities under the Community framework cultural programme for 2007–2013 – the Culture programme – and a few months later it was mentioned next to the promotion of cultural diversity as the first one among three interrelated strategic objectives of the

The special role attributed in the European Agenda for Culture to actions for promoting cultural diversity is also the result of the active involvement of the European Union in the adoption of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.[42] It is the first UNESCO Convention to which the European Union is a party. The Community ratified the Convention on 18 December 2006, thus assuming the obligations imposed by the Convention on the Contracting Parties. The Convention established the role of culture, recognised it as an important element of international cooperation for sustainable development and created a legal framework to support developing countries in their efforts to promote their own forms of cultural expression. The Convention combined the protection and promotion of cultural diversity with the full respect for human rights and fundamental freedoms, including the right to choose the form of cultural expression. The document also highlights the economic dimension of cultural activities, goods and services, in particular in the context of the development of the cultural sector in developing countries, and the support for their access to the global market and the international distribution network. The Convention reaffirmed the sovereign right of states to pursue appropriate policies aimed at protecting and promoting cultural diversity within their territories.

After the entry into force of the Convention in 2007, the European Union included it in its actions for third countries as an instrument of international cooperation and neighbourhood policy, thus making it one of the most important reference points for action for the implementation of the third objective of the European Agenda for Culture.[43]

The second reason for the change in the EU cultural policy in the context of the Agenda is the ongoing process of economisation of culture and moving the needs of cultural and creative industries to the forefront. The catalyst for this change resulting in new priorities and directions of Community action was the

European agenda for culture in a globalising world. In the Resolution of 16 November 2007 concerning the European Agenda for Culture, the Council of the European Union divided the implementation of this priority into detailed actions, for instance: *'encouraging the mobility of artists and other professionals in the culture field, promoting cultural heritage, namely by facilitating the mobility of collections and fostering the process of digitisation, with a view to improving public access to different forms of cultural and linguistic expressions, promoting intercultural dialogue as a sustainable process contributing to European identity, citizenship and social cohesion, including by the development of the intercultural competences of citizens'*; see: Resolution of the Council of the 16 November 2007 on a European Agenda for Culture, OJ C 287, 29.11.2007. p. 2.

[42] Convention on the Protection and Promotion of the Diversity of Cultural Expressions, UNESCO Paris, 20.10.2005, http://www.portal.unesco.org/culture/en (last visited 10.02.2013).

[43] Community action for the implementation of the UNESCO Convention, including the cooperation with third countries, were described in detail in: Commission Staff Working Document, Quadrennial Periodic Report on behalf of the European Union on measures to protect and promote the diversity of cultural expressions in the framework of the 2005 UNESCO Convention, Brussels, 23.5.2012, SWD(2012) 129 final.

report *The Economy of Culture in Europe*, published in 2006.[44] The report, prepared by the KEA European Affairs, the research and consultancy company specialised in cultural sector, was a landmark reference document for all subsequent analyses and documents relating to the economisation of culture in Europe.

Why has the report *The Economy of Culture in Europe* played such an important role in changing the paradigm of the EU cultural policy?

Firstly, the report requested by the European Commission, permanently introduced to the EU cultural policy two concepts that describe culture as a catalyst for creativity and innovation of the European economy. These concepts are: the 'cultural sector' and the 'creative sector', as defined originally in the mid-1990s in the UK, and later modified and extended. Currently, transformed into the 'cultural industry' and the 'creative industry', those concepts have been merged into a single acronym CCI – 'cultural and creative industries'. The definition is as follows:

- 'Cultural industries' are those industries producing and distributing goods or services which at the time they are developed are considered to have a specific attribute, use or purpose which embodies or conveys cultural expressions, irrespective of the commercial value they may have. Beside the traditional arts sectors (performing arts, visual arts, cultural heritage – including the public sector) they include film, DVD and video, television and radio, video games, new media, music, books and press.
- 'Creative industries' are those industries which use culture as input and have a cultural dimension, although their outputs are mainly functional. They include architecture and design, which integrate creative elements into wider processes, as well as subsectors such graphic design, fashion design or advertising. [45]

Today, the CCI are certainly the area of culture which is most closely observed and analysed by the European Union and the published data indicate a steady growth of the sector and its economic and employment potential in the EU. Since 2006, we have been observing a proliferation of EU documents, as well as analyses and studies published by European research institutes and consulting companies, the subject of which are the cultural and creative sectors.

Secondly, the KEA report has played a crucial role in changing the direction of the EU cultural policy, since it has expanded the traditional scope of interest of the EU in the field of culture to include the sectors that have an impact on the GDP of the European Union. Based on the statistical data from 2003, the contribution of the cultural sector to the overall the EU GPD was calculated at 2.6 per cent. 5.8 million citizens found employment in the cultural industries and creative

[44] *The Economy of Culture in Europe*, KEA European Affairs, October 2006, http://www.keanet.eu/ecoculture/studynew.pdf (last visited 10.02.2013).

[45] See: Green Paper, "Unlocking the potential of cultural and creative industries", European Commission, Brussels, 27.04.2010, COM(2010) 183, p. 5.

industries in 2004.[46] This data could no longer be ignored at the national and European level. The reaction of the EU decision-making bodies was quite predictable.

The data and conclusions of the report announced by DG Culture caught the attention of other Directorates and European decision-making bodies. Culture was finally recognised as important and perceived as a sector with a hitherto unused economic and innovation potential and which should be included in the objectives of the revised 2005 Lisbon Strategy for competitiveness and employment in Europe. Thus, the right atmosphere for deeper involvement of EU institutions in cross-sector support for culture, so much awaited by DG Culture, has finally arrived – in particular for those of its areas where there is economic potential, so important in the context of the Lisbon priorities.

It was, therefore, necessary to merge all the three elements – culture, creativity, innovation – into one logical and convincing whole, and integrate them into the concept of knowledge-based economy. As aptly noted by Anne Littoz-Monnet, who examined the agenda-setting dynamics at the EU level in the context of the European Agenda for Culture, DG Culture has developed the concept of interrelation of these elements in the triadic relationship, which first describes culture as a source of creativity, then creativity as a necessary factor for technological innovation, and technological innovation as conductive to growth and competitiveness.[47] In fact, DG Culture has managed to bring about a reformulation of EU cultural policy also because it constructed, based on the collected data, a coherent discourse in which, as shown by Littoz-Monnet, it linked the EU's economic problems with culture, presenting the latter as a potential solution.[48]

The course towards economisation of the cultural policy chosen by the European Union was additionally supported by the new data on the contribution of the CCI to the overall EU GDP – e.g. a 4.5 per cent contribution to the total European GDP and 8.5 million employed people in 2008.[49] Also, the indicators of employment dynamics in this sector seemed extremely convincing in this context: between 2000 and 2007 employment in the creative industries grew by an average of 3.5 per cent per annum, compared to 1 per cent in the overall EU-27 economy.[50]

The economic and pragmatic perception of the cultural sector and its role in modern Europe has therefore hit the momentum and quickly dominated the

[46] Source: *The Economy of Culture*..., op.cit., p. 6.

[47] A. Littoz-Monnet, *Agenda-Setting Dynamics at the EU Level: The Case of the EU Cultural Policy*, "Journal of European Integration" vol. 35/5/2012, p. 510.

[48] A. Littoz-Monnet, op.cit., p. 508.

[49] Source: *Building a Digital Economy: The Importance of Saving Jobs in the EU's Creative Industries,* TERA Consultants*,* Paris, March 2010, p. 4, http://www.teraconsultants.fr/assets/publications/PDF/2010-Mars-Etude_Piratage_TERA_full_report-En.pdf (last visited 10.02.2013). According to the European Competitiveness Report 2010, creative industries accounted for 3.3 per cent GDP in 2006 and employed 6.7 million people in 2008; see: Commission Staff Working Document, European Competitiveness Report 2010, SEC(2010)1276, p. 167.

[50] Ibidem, p. 167.

thinking on culture all around Europe, even despite the concerns of the cultural circles about the excessive economisation of culture in Europe, which may become a threat to the development of culture as a sphere of non-commercial values and activities.[51] The economisation of the discourse on culture and placing the concept of creativity at the centre of the EU cultural policy as the most important phenomenon for the development of the European cultural sector is now a fact. The EU's involvement in promoting the CCI is expressed in the Green Paper published by the European Commission in 2010, titled "Unlocking the potential of cultural and creative industries",[52] in which the Commission presented the strategy for supporting the CCI at the EU level, as well as in a series of recommendations and conclusions gathered in the process of consultation with the representatives of the sector. In addition, the Green Paper included the definition of the CCI presented above, which the European Union started to use as a reference in a number of subsequent studies and documents.

The impact of the promotion of the 'creativity' concept on EU action after 2007 can be directly observed in the draft of the new EU target cultural programme for 2014–2020. Even the name of the new programme – 'Creative Europe' – where the word 'culture' does not appear, symbolically seals the changes discussed here.[53] Creative Europe is the first programme in the field of culture, in which the Community has agreed to combine two previously disjoint fields: on the one hand, the traditionally understood EU cultural policy, aimed at supporting non-commercial activities in the field of culture, and on the other hand, commercial activities related to the production and distribution of cultural goods and services, including audio-visual productions. It is a paradigmatic shift, as in fact, the concept of Creative Europe departs from the philosophy of EU programmes in the field of culture and has its source in the European Agenda for Culture, the objectives of which it is designed to directly pursue.

The adoption of the European Agenda for Culture and the new priorities of cultural policy are reflected in two special actions in the years 2008 and 2009. The EU announced 2008 the European Year for Intercultural Dialogue, and 2009 the European Year of Creativity and Innovation. Both these interdisciplinary actions with an inherent cultural component were a form of a 'soft' introduction of the Agenda topics to the European cultural circles and the European public, and at the same time a kind of litmus paper used to check the level of acceptance for the chosen direction of EU action in the field of culture and cooperation between various decision-making bodies of the EU .

[51] See: R.Minichbauer, *Chanting the Creative Mantra. The Accelerating Economisation of EU Cultural Policy*, text dated on 11.2006, http://www.eipcp.net/policies/cci/minichbauer/en (last visited 12.02.2013).

[52] Green Paper. "Unlocking...", op.cit.

[53] Proposal for a Regulation of the European Parliament and of the Council on establishing the Creative Europe Programme, Brussels, 23.11.2011, COM (2011) 785 final.

New instruments of cooperation under the European Agenda for Culture

Open Method of Coordination in the field of culture

The role of 'soft instruments' in shaping the EU cultural policy increased in 2007, with the adoption of the European Agenda for Culture by the Community. The Agenda introduced a new instrument of cooperation between the Member States – the Open Method of Coordination (OMC).[54] It is a flexible form of conducting cultural policy at the European level, based on voluntary intergovernmental cooperation. The role of the OMC is to facilitate the tasks defined in the Work Plans for Culture, since 2007 strictly related to the priorities of the European Agenda for Culture.

The Open Method of Coordination is based on the work of working groups composed of experts delegated by the Member States, as well as, when necessary, independent experts from other regions and representatives of the civil society structured dialogue platforms. They produce analyses, reports and recommendations which should be taken into consideration both by the Member States and by the Commission and the Council. In practice, the Open Method of Coordination is meant to support the implementation and promotion of good practice in very specific issues concerning the cultural sector in Europe under the priorities of the European Agenda for Culture. It is based on an analysis of the data and indicators delivered by the Member States, as well as on developing instruments of cooperation in these fields by the working groups.

In 2011–2014, the EU adopted a Work Plan containing six priority areas in the field of culture, four of which use the OMC procedure. The four areas are: cultural diversity, intercultural dialogue and accessible and inclusive culture; cultural and creative industries; skills and mobility; cultural heritage, including mobility of collections. The other two are: culture in external relations and culture statistic.[55]

On its website, the European Commission, whose role is to monitor and support the organisation of work under the OMC, publishes the results of the work of the working groups. The latest, from 2012, are among others: the *Report on policies and good practices in the public arts and in cultural institutions to promote better access to and wider participation in culture*; the *Policy Handbook on How to strategically use the EU support programmes, including Structural Funds, to foster the potential of culture for local, regional and national development and the spill-over effects on the wider economy?*; as well as the *Report on*

[54] Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions on an Agenda for culture in a globalizing world, Brussels, 10.5.2007, COM (2007) 242 final, pp. 12–13.

[55] See: Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within within the Council, on the Work Plan for Culture 2011–2014, OJ C 325, 2.12.2010, p. 1.

practical ways to reduce the cost of lending and borrowing of the cultural objects among Member States of the European Union.[56]

All materials compiled by the working groups under the OMC are brought together by the strategic framework of the European Agenda for Culture. In this context, they identify the problems of the cultural sector, and then present a set of recommendations and suggest measures which public institutions responsible for culture should take. Let us underline the word 'should', as the weakness of the OMC is the lack of mechanisms committing the parties to actual implementation of the solutions developed in the documents.

The OMC in the field of culture is a new tool for the EU cultural policy in the process of reinterpreting the provisions of Article 167 in the spirit of the European Agenda for Culture. Although the harmonisation of law in the field of culture is still obviously out of the question, the OMC constitutes a method of 'soft Communitisation' of actions in this field. Another problem concerning the OMC in the field of culture are the analytic measurements which are the starting point for comparing the effects of the implementation of the European Agenda for Culture in the Member States. We should note that the philosophy of describing culture by means of various indicators, expressed explicitly in the Agenda,[57] supports the development of effective instruments for strengthening the cooperation and development of the cultural sector in Europe, as perceived in the light of the Lisbon Strategy. On the other hand, this approach to culture creates the high risk of losing sight of the subtlety and exceptionality of various artistic and cultural phenomena which do not lend themselves to strict national and European statistical analyses.

Structured Dialogue with the cultural sector

In the European Agenda for Culture, the European Commission has proposed a new form of dialogue with European cultural circles.[58] Forms of cooperation supported by the European Union so far had been based on sectoral consultations with cultural networks, which represented the interests of the certain professional and creative circles at the European level. The European Agenda for Culture has moved the existing channels of communication to yet another level.

The idea of a structured dialogue with the cultural civil society organised in thematic Dialogue Platforms consists in trans-sectoral cooperation among various partners, which are not used to communicating with each other, as well as, which seems especially important in the context of the Agenda, in developing a common

[56] See: http://ec.europa.eu/culture/our-policy-development/policy-documents/omc-working-groups_en.htm (last visited 20.02.2013).

[57] See: *Supporting evidence-based policy-making* in: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on European agenda for culture in a globalizing world, Brussels, 10.05.2007, COM (2007) 242 final, p. 14.

[58] See: ibidem, pp. 11–12.

position of the traditional cultural sectors and the creative sectors,[59] with often disjoint or even opposite postulates. The common front of these separate sectors is expected to bring solutions which are beneficial to both sectors, i.e. strengthening the position of creative industries and introducing facilitations for the mobility of artists and their functioning in the crisis reality.

The entities invited to the three Platforms established under the Agenda are first of all 'cultural organisations (e.g. networks, foundations, professional organisations) with a trans-national or Europe-wide dimension and willing to commit themselves to trans-sectoral exchanges of views'.[60] The representatives of the Platforms also participate in meetings of working groups under the OMC and are strong supporters of establishing a closer connection between the work of these groups and the Platforms.

Since 2008, there have been three thematic Dialogue Platforms:

- Platform for intercultural Europe,
- Platform on access to culture,
- Platform on cultural and creative industries.

The effect of these Platforms are official positions, reports, recommendations, and proposals, which should have an impact on the final shape of the cultural policy at the EU level and should stimulate the actions of the European Commission and the Council in the field of culture in long and short-term perspective.[61]

The supporters of the new EU strategy in the field of culture contained in the European Agenda for Culture see the Platforms as a chance for the voice of the cultural and creative sectors to be heard and to be more effective in the main European debates on innovation, development and employment growth.

Critics, on the other hand, stress that through a very deliberate shaping of the profile and topics of the Platforms, DG Culture has channelled the possibilities for the cultural circles to express their opinion at the European level and it seems that it has managed to convince part of the sceptical representatives of the culture world that supporting the priorities of the European Agenda for Culture is the only strategy which 'can succeed in giving culture a higher profile in the EU institutional and political context',[62] even if the price for this is instrumentalisation of the dialogue with the cultural circles, which the DG Culture uses *'as legitimizing categorisation for labelling its interactions with the interest groups that represent a strong support constituency for its new agenda'*.[63]

[59] See: *Call for expressions of interest – Culture sector Platforms,* European Commission, undated (probably February 2008).

[60] Ibidem, p. 4.

[61] The texts of recommendations and reports compiled by the Platforms can be found at: http://www.ec.europa.eu/culture/our-policy-development/policy-documents/civil-society-platforms_en.htm (last visited 2.03.2013).

[62] A. Littoz-Monnet, op.cit, p. 518.

[63] Ibidem, p. 516.

The future of the EU cultural policy in light of the Europe 2020 Strategy

Recent years in the activities of the Community in the field of culture were the time of developing new concepts in Community cultural policy and of radical shifts in its priorities, which in fact have broadened the understanding and implementation of Article 167. Therefore, it is even more surprising that culture has not been taken into account in the latest European Union strategic document "Europe 2020. A strategy for smart, sustainable and inclusive growth" published on 3 March 2010,[64] which sets out the EU's most important development goals (listed in its title) and seven flagship Community initiatives to implement these priorities. The fact that there is no mention of culture and cultural sectors among the major areas of future development of the Union in the main part of the Europe 2020 strategy has been raised by many European cultural circles.

Since the analysis of the reasons for omitting culture in this document is beyond the scope of this paper, we should only note that it indicates the real position of culture in the political hierarchy of the European Union. It may also be a deliberate attempt to slow down the process of 'Communitisation' of culture as contrary to Article 167 of the Treaty, and initiated in a 'soft' manner by the Agenda for Culture in 2007.

On the other hand, the European Union's commitment to the cultural sector, as well as the strong critical voices from the cultural industries and other entities involved in the implementation of the European Agenda for Culture were so serious that they led to a rapid response from the Council of the European Union and to issuing conclusions pointing to the place and tasks of the sector in the development of the EU until 2020. In a document of 15 June 2011 entitled "The Council Conclusions on the contribution of culture to the implementation of the Europe 2020 Strategy",[65] the EU Council highlighted those priorities of the Europe 2020 Strategy which should include cultural activities. The Council also referred to the flagship initiatives of the Strategy, i.e. Innovation Europe and Digital Agenda for Europe and the measures for the development of the cultural sectors, digitisation of cultural resources and European heritage set out therein. In its conclusions, the Council has also set out a number of recommendations for the Member States and the Commission, encouraging them to incorporate culture in all measures and policies related to the implementation of the Strategy.

It seems that the absence of culture in the main document of the Strategy has already had some effects – unsettling, in the opinion of many cultural circles. For example, it translates into an unfavourable position of culture in the proposal for

[64] Communication from the Commission "Europe 2020. A strategy for smart, sustainable and inclusive growth", Brussels, 3.03.2010, COM (2010) 2020 final.

[65] Council Conclusions on the contribution of culture to the implementation of the Europe 2020 strategy, OJ C 175/1, 15.06.2011.

a new financial framework for EU Structural Funds for 2014–2020, which will be discussed in more detail in the next chapter *Cultural Policy of the EU – How it Works in Practice*.

Conclusions

The EU competence in the field of culture, limited exclusively to complementary and subsidiary actions, has contributed to the development of very special tools and forms of the EU's involvement in this field. The separateness of the EU cultural policy, resulting to a large extent from the nature of culture itself, was also a direct result of the reluctant attitude of many Member States towards building a broad legal framework for EU action in the field of culture. As Evangelia Psychogiopoulou aptly stated, we could even say that the aim of many Member States was *'not to establish a common cultural policy, but to foreground European Union efforts rooted in the protection and promotion of individual Member States diverse cultural systems'*.[66] Even if this was indeed the intention of some states, in the end the Union, operating in the restricted legal framework, has still been able to develop financial support for cultural projects, programmes and actions. Although the support has quickly become inadequate for the growing needs of the cultural sector in Europe, it has affected the European cultural landscape, its infrastructure and supranational organisation of cooperation in the field of culture.

The social and cultural changes which have been observed in Europe since the end of the 1990s, the IT revolution and the emergence of new forms of participation in culture, as well as the intensive development of the creative industries, brought about a substantial shift in the language of the EU cultural policy and a pressing need to change its priorities to better adapt it to how culture actually functions in Europe. Are the European Agenda for Culture of 2007 and the new strategic aims of the EU cultural policy the right answer to the challenges faced by culture in Europe? Future will show, for presently the EU cultural policy, dominated by the Agenda, is at a strategic crossroads.

The question whether culture and the people involved with culture will find the support they expect to receive from the European Union is still open, for the economisation of culture, as the leading theme of actions taken under the EU cultural policy, is a very sensitive issue. It also gives rise to anxiety about whether it will obscure too many phenomena and values of culture which do not fit well into its framework, and thus will not be taken into account by Brussels at all.

The same fear is related to the introduction of new keywords to the language of the EU cultural policy, which have started dominating in the language of the debate on cultural policy on the European, national and local levels. The

[66] E. Psychogiopoulou, *The Integration of Cultural Considerations in EU Law and Policies*, Leiden–Boston 2008, p. 26.

well-known triad repeated over and over again in various contexts – innovation, creativity, growth – when applied in practice, might have far reaching consequences for culture through granting a privileged position to a certain type of projects and actions supported from EU funds. In the times of economic crisis, when public spending on culture is lowered, this peculiar cultural engineering might have significant influence on the development of the cultural sector in Europe.

What we are witnessing today is an attempt to negotiate partial 'soft' Communitisation of the EU cultural policy under the restrictions defined in Article 167 TFEU. Paradoxically, these provisions, so much criticised over the years, might in future become the basis for demanding the autonomy of culture and letting it develop under its own rules, not subject to any limitations of the market. For it is possible that the price culture will have to pay for being moved from the margins to the centre of the Union's interest will prove too high. If so, will law stand on culture's side, defending its autonomous sphere of values? Let us hope it will.

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Cultural Policy of the EU – How It Works in Practice

Introduction

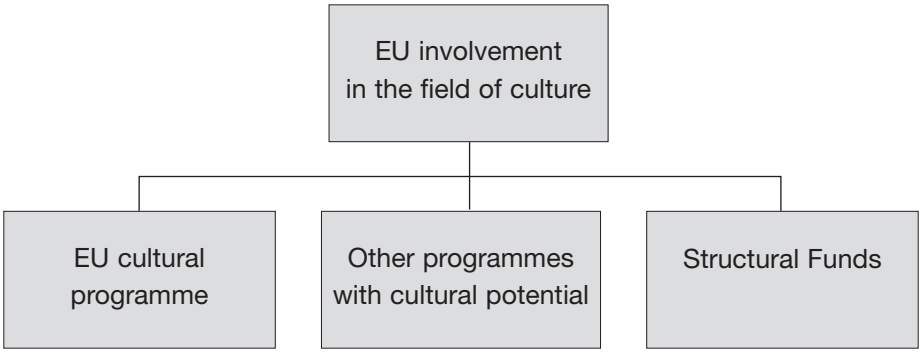
The legal basis for the European Union's involvement in the field of culture presented in the previous paper resulted in successive generations of programmes, measures and actions in this area adopted in the years 1996–2013. Their character was determined by the provisions of Article 128 of the Treaty of Maastricht – the present Article 167 of the Treaty on the Functioning of the European Union (TFEU),[1] which very clearly defined the powers of the Union in this field. For subsidiarity and complementarity – the two most important principles of Community cultural policy under the Treaties – not only determined the specific forms of action in this area, but also had an impact on the level of EU funding for culture. At the same time, already in the pre-Maastricht period, seeking justification for its actions in the field of culture, the Community began to use the strongest ideological arguments. In the preambles to EU documents, culture was seen as one of the most important instruments of European integration which should serve as a foundation for the construction of European identity and of a common cultural area. The EU discourse started to intensively exploit the 'unity in diversity' paradigm, emphasising different aspects in accordance with what was needed at a given time.

Consequently, from the very beginning, EU cultural policy has been facing the paradox of aims incommensurable with the actual capabilities under the applicable law. This paper is a review and critical analysis of a few selected programmes and measures, with particular emphasis on cultural programmes and the Structural Funds (SFs). The measures described herein show the specificity of EU cultural policy, now stretched between flagship cooperation projects, celebrating

[1] See: Consolidated Version of the Treaty on the Functioning of the European Union, OJ C 236, 26.10.2012, pp. 121–122.

the idea of a common cultural area, and new measures to strengthen the cultural and creative industries. The involvement of the EU in the area of culture is illustrated by the chart below.

Chart 1. EU involvement in the field of culture



Source: own compilation.

Within the framework defined by the Treaties, the Community has created instruments of financial support directly or indirectly addressed to the cultural sector or open to it. The so-called 'soft', non-investment projects, related e.g. to the dissemination of cultural heritage, promotion of cultural cooperation, mobility of cultural circles, and broad access to culture, are co-financed from the EU cultural programmes or other EU programmes with cultural potential. The management of these programmes, including the selection process and the evaluation of projects, remains within the competence of the Commission and the relevant Directorates-General. The 'hard', investment projects, in turn, related primarily to cultural infrastructure, are implemented under the EU Structural Funds and integrate culture in other areas of EU activity, such as education, regional development, environmental protection and employment. The management and division of funds from the SFs (with the exception of a few programmes at the European Union level) remains the responsibility of the Member States.

EU cultural programmes as an example of the European Union action in the field of culture

EC pilot programmes in 1996–1999

Since 1993, the direct form of Community involvement in actions in the field of culture have been EU cultural programmes. In 1996–1997 three pilot programmes were established:

- Kaleidoscope*,* supporting artistic and cultural activities having a European dimension,[2]
- Raphael, supporting action in the field of cultural heritage,[3]
- Ariane*,* supporting books and reading.[4]

Each programme consisted of actions, under which the Community could allocate funds to projects. The programmes were aimed at cultural institutions in the EU Member States, European Free Trade Association (EFTA) members and associated countries. The conditions for participation in each of the actions were also specified, as well as the maximum percentage level of Community involvement, usually 50 or 60 per cent of the project costs, depending on the type of action; an exception to this was the Ariane[5] programme, where the rules of granting EU funds were different. The Kaleidoscope[6] and Raphael[7] programmes were of supranational, Community nature; they specified the minimum required number of participants in the projects (3 cultural institutions) and required that these institutions must originate from 3 different countries of which one had to be an EU Member State. Another aspect which emphasised the Community nature of the three programmes, apart from the criteria, was the fact that the evaluation, qualification and settlement of the grants was performed directly by the European Commission.

Pilot programmes, also called first generation programmes, were a testing ground for both EU institutions and the institutions applying for European funds. Kaleidoscope, Ariane and Raphael received both positive opinions and a good deal

[2] Decision No 719/96/EC of the European Parliament and of the Council of 29 March 1996 establishing a programme to support artistic and cultural activities having a European dimension (Kaleidoscope), OJ L 99, 20.04.1996, p. 20.

[3] Decision No 2228/97/EC of the European Parliament and of the Council of 13 October 1997 establishing a Community action programme in the field of cultural heritage (the Raphael programme), OJ L 305, 8.11.1997, p. 31.

[4] Decision No 2085/97/EC of the European Parliament and of the Council of 6 October 1997 establishing a programme of support, including translation, in the field of books and reading (Ariane) OJ L 291, 24.10.1997, p. 26.

[5] In 1997–1999, 767 projects were funded under the Ariane programme for a total amount of EUR 11.1 million. This allowed for the translation of 1000 works of modern literature. See: Commission Report to the European Parliament, the Council and the Committee of the Regions, *Report on the implementation of the Community programmes Kaleidoscope, Ariane and Raphael*, Brussels, 23.01.2004, COM (2004) 33 final, p. 5. The Commission's report was based on a detailed ex-post evaluation of all three pilot programmes. See: *Evaluation ex-post des programmes Kaléidoscope, Ariane et Raphaël 1996/1999*, *Raport Final*, GMV Conseil, July 2003, http://www.ec.europa.eu/culture/ar chive/sources_info/pdf-word/rapportoctobre.pdf (last visited 1.12.2012).

[6] In 1996–1999, 518 projects were funded under the programme for a total amount of EUR 38.7 million. European aid was granted to, among others, ballet and music festivals, opera and theatre plays, circus shows, international contemporary art exhibitions and avant-garde artistic activities. See: ibidem, p. 4.

[7] In 1997–1999, 360 projects were funded under the Raphael programme for a total amount of EUR 30 million. The projects executed included promotion of the common cultural heritage, establishing European architectural trails, financing research on new conservation techniques. See: ibidem, p. 6.

of criticism.[8] The beneficiaries of the projects positively assessed the opportunity to work with many European partners and going beyond the traditional bilateral cooperation, as well as of the establishment of a network of contacts and cooperation which held promise of further cooperation. It was also stressed that partial Community funding was an opportunity to execute projects which otherwise would remain but ambitious plans. Most critical remarks, in turn, concerned the lack of flexibility within the evaluation system, which did not take into account the specificity of cultural activities. The most frequent complaints regarded the bureaucratisation and non-transparency of the qualification procedures, the very small budget, inadequate to the objectives set by the Community, as well as no promotion of the results.

All this experience was to be taken into account during the work on a new cultural programme of the European Union for 2000–2006. In the meantime, while waiting for the new multiannual cultural programme, in 1999 the EC established the bridge programme CONNECT which and allowed it to maintain the flow of funds for European cultural projects.

The Culture 2000 Programme

The Culture 2000 programme, established by the Decision of the European Parliament and of the European Council of 14 February 2000,[9] was the first integrated cultural programme of the European Community supporting supranational projects in the fields of culture and art, which replaced the aforementioned pilot programmes.[10] The participants of the programme were 25 EU Member States,[11] as well as the associated countries: Rumania and Bulgaria, and the EFTA members: Island, Norway and Liechtenstein. The programme's budget for 2000–2005 was EUR 167 million, and after it was extended for one more year, the budget eventually totalled EUR 236.5 million.

The main objective of the new programme, that is to contribute to the promotion of a cultural area common to the European peoples, was to be reached through 8 specific objectives listed in Article 1 of the Decision.[12] The programme

[8] See: ibidem.

[9] Decision No 508/2000/EC of the European Parliament and of the Council of 14 February 2000 establishing the Culture 2000 Programme, OJ L 63, 10.3.2000, p. 1.

[10] For detailed information on the principles, functioning and results of the implementation of the Culture 2000 programme see: D. Jurkiewicz-Eckert, *Program Kultura 2000 jako przykład ewolucji działań Unii Europejskiej w dziedzinie kultury (Culture 2000 Programme as an Example of Evolution of EU Action in the Field of Culture)* in: *Europeistyka w zarysie (An Outline of European Studies),* A.Z. Nowak, D. Milczarek (eds.), Warszawa 2006, pp. 338–351.

[11] Until 1 May 2004, candidate countries participated only as associated countries under specific protocols annexed to the Association Agreements.

[12] These were: promotion of cultural dialogue and of mutual knowledge of the culture and history of the European peoples; promotion of creativity and the transnational dissemination of culture and the movement of artists, creators and other cultural operators and professionals and their works, with a strong emphasis on young and socially disadvantaged people and on cultural

was aimed only at institutional entities and did not fund projets filed by individuals. All entities active in the culture sector could participate in the programme, provided that their activity was non-profit. The programme introduced an internal division into the so called strands, which differed in the minimum required number of participants of a single project, the duration of the project, the minimum and maximum amount of Community funding, where the lowest value was EUR 50,000 and the highest EUR 300,000 a year. The assistance provided in accordance with the said rules would not exceed a maximum of 50 per cent (in the case of one-year projects) or 60 per cent (in the case of multiannual projects) of the total cost of the project. Under the programme, entities such as public and private cultural institutions, associations, societies, foundations and other non-governmental organisations, as well as cultural networks representing various cultural sectors at the European level, applied for EU funding in such fields as visual arts, performing arts, cultural heritage, books, translations and reading. Furthermore, the programme financed the EU Special Actions, that is actions supporting historical anniversaries of particular importance for culture, such as, for instance, the Verdi Year in 2001, the 300th anniversary of Saint Petersburg in 2003, as well as cultural projects celebrating the EU enlargement in 2004.

The Culture 2000 programme continued the main principles of the pilot programmes, but as a second generation programme it also introduced new solutions and rules. The most important of them was that now a single programme covered all the actions in the field of culture, previously divided between the three pilot programmes. Another significant change was raising the minimum number of partners taking part in multiannual projects from three to five, which was meant to underline the European, supernational nature of the project financed by the Community. The quality of the programme's functioning was greatly improved by the establishment of the Cultural Contact Point, information and support centres which operated in the participating countries, provided comprehensive technical support in filling in the applications and promoted the programme in the Member States.

The decision to establish a single programme under which European funding would be provided to such diverse projects as, for instance, underwater archaeology and circus festival, or master courses in contemporary dance and reconstruction of Gothic defensive walls, should be discussed on three different levels.

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diversity; the highlighting of cultural diversity and the development of new forms of cultural expression; sharing and highlighting, at the European level, the common cultural heritage of European significance; disseminating know-how and promoting good practices concerning its conservation and safeguarding; taking into account the role of culture in socioeconomic development; the fostering of intercultural dialogue and mutual exchange between European and non-European cultures; explicit recognition of culture as an economic factor and as a factor in social integration and citizenship; improved access to and participation in culture in the European Union for as many citizens as possible. See: Decision No 508/2000/EC of the European Parliament and of the Council of 14 February 2000 establishing the Culture 2000 Programme, OJ L 63, 10.3.2000, p. 2–3.

The first is the general, ideological level, referring to the European Union imponderables in the sphere of culture. It is about the principle of 'unity in diversity' of European culture, about emphasising the common heritage while respecting and promoting cultural diversity of the Member States. Culture 2000, as an integrated Community instrument co-financing projects in all fields of culture, symbolically implements the aforementioned principle.

The second level also results from the evolution of the philosophy of the EU actions in the field of culture and its influence on the choice of projects which receive European funding. Since 2002, European added value[13] has been an important criterion in the evaluation of cultural projects. Thus, funds were granted to projects which promoted new forms of multilateral cooperation on the European level and democratisation of access to culture, as well as strengthened the sense of European identity. The requirement to represent European added value concerned all projects in all areas of culture.[14]

The third level concerns the organisation and management of the programme. The establishment of a single common programme resulted in a fusion of competences, structures and logistics aimed at streamlining and simplifying of all procedures, as well as lowering the administrative expenses related to the fact that the programme was managed by the European Commission.[15]

It should be noted that the decision to combine all the areas of culture into one huge programme was rather dubious and stirred up some controversy. The initial levelling of the chances of projects from all fields of culture, with particular emphasis on innovative and creative projects promoting new forms of cultural cooperation in Europe, seemed to be adequately reflecting the growing interdisciplinarity of modern cultural activities. However, the experience gathered in the first two years of the Culture 2000 programme resulted in the introduction of the controversial principle of sector priorities in 2002–2004. Under the new principle, EU funds were granted to more projects from the sector which was a priority in a given year. Thus the EU returned to the old 'sector' concept and the promotion of monodisciplinary (vertical) projects at the expense of interdisciplinary (horizontal) projects, which were originally supposed to be particularly pro-

[13] The definition of European added value in the cultural sector was provided in Council Resolution of 19 December 2002 implementing the work plan on European cooperation in the field of culture: European added value and mobility of persons and circulation of works in the cultural sector, OJ C 13, 18.01.2003, p. 5.

[14] More on the European added value of cultural projects supported by the EU in: G. Michałowska, *Miejsce kultury w polityce Unii Europejskiej (The Role of Culture in European Union Policy)* in: *Integracja Europejska. Instytucje. Polityka. Prawo. Księga pamiątkowa dla uczczenia 65-lecia Profesora Stanisława Parzymiesa (European integration. Institutions. Politics Law. A commemorative book on the occassion of the 65th anniversary of Professor Stanisław Parzymies)*, Michałowska G. (ed.), p. 315.

[15] Culture 2000 was supervised by the Directorate General for Education and Culture, which – in cooperation with the Management Committee and international expert groups – was responsible for all the procedures concerning the programme.

moted by the programme.[16] After a wave of criticism, the principle was abandoned in the last two editions of the Culture 2000 programme – in 2005 and 2006.

According to Culture 2000 principles, cultural institutions could participate in the projects as leaders, co-organisers or partners (participants). The leader and co-organiser (co-organisers) were responsible for the factual content and financial and administrative aspects of the project. They were also responsible for accumulating the required 40–50 per cent of the project's budget. In 2001, an additional rule, requiring the leader and co-organisers to contribute a minimum of 5 per cent of the total budget, was introduced. The rule was to guarantee that the institutions would remain properly involved in the execution of a project for its whole duration, i.e. from the filing of the application until the final settlement. However, the rule soon became one of the most strongly criticised elements of the programme, as it made it impossible for many culture operators to become project leaders and establish new networks of cooperation. It was also one of the main reasons of the limited participation of culture operators from the new Member States (previously associated countries) as leaders and co-organisers.

According to statistical analyses conducted by the Budapest Observatory, in the seven years of the implementation of the programme the Community subsidised 1078 cooperation projects[17] and 406 translation projects.[18] Italian, French and German institutions were the most active and led one grant in three (with Italy being particularly active and leading a total of 224 projects), which reflects the actual distribution of power in cultural cooperation in Europe. A noticeable fact was the relatively low share of institutions from the new Member States – they were leaders in only 116 projects. However, it should also be noted that the Czech Republic with 30 projects and Poland with 23 projects made it to average involvement, between the Netherlands, Greece and Portugal and clearly stood out among the new Member States.

Was the Culture 2000 programme a success of the European Union? Has it introduced a new quality in relation to the previous solutions? In contrast to the pilot programmes of 1996–1999, which had been undergoing only an ex-post

[16] The priority sectors were as follows: visual arts in 2002, performance arts in 2003, cultural heritage in 2004.

[17] Data quoted after: *Culture 2000 under Eastern Eyes. Cultural cooperation between old, new and future EU members – a statistical analysis 2000-2006*, The Budapest Observatory, Budapest 2007. According to the data provided in this report, 921 one-year projects and 157 multi-annual projects were executed under the Culture 2000 programme. A total of 9628 institutions and cultural entities participated in the projects, of which some participated in several different projects. The average amount of the EU grant for one-year projects was EUR 117 thousand, while for multiannual projects it was EUR 681 thousand. See: ibidem, pp. 3–5.

[18] In 2000–2006, a total of EUR 10.5 million was allocated to supporting translation projects under the Culture 2000 programme. The most active beneficiary was Norway, and Greece, Lithuania and Hungary made it to the top five as well. Translations into the languages of Central and Eastern Europe constituted the majority of the subsidised projects, particularly into English, German and French.

external evaluation[19], Culture 2000 was subject to detailed scrutiny by independent experts, as well as to parliamentary reports and academic studies.[20]

A thorough analysis of the results of the programme, as well as of the opinions expressed by its participants led to a series of critical remarks and recommendations, particularly important in the context of the work on a new multiannual (2007–2013) cultural programme of the EU. All reports and analyses positively evaluated the Community's support for supranational cooperation in the field of culture and the establishment of a programme in this respect, but criticised the programme's principles, construction and method of management.

First of all, it was established that the objectives that the Community set to the programme were too specific and too detailed. The element of the programme which was criticised most often was, of course, its low budget, which was inadequate to the programme's broad objectives and considerably limited the Community's possibilities of engaging in financing a greater number of cooperation projects. The proposal to increase the budget of the successor of Culture 2000'was voiced many times by both the European cultural sector, directly interested in EU grants, and the European Parliament, which highlighted this problem by issuing official recommendations. It should be firmly stressed that any decision to significantly increase the budget of the future Community programme would be a political one and would be considered by many as an unwelcome step towards further 'Communitisation' of culture. In the end, in the opinion of its beneficiaries the budget of the new programme for 2007–2014, set to EUR 400 million, was not sufficiently higher and became the subject of intense criticism, as well as the source of growing frustration and discontent among the European cultural community.

Effective use of the existing resources was also not at all facilitated by the administrative procedures, which were inflexible and did not take into account the specificity of artistic activity. Particularly in the one-year projects, the rigid system of settlement did not really comply with the real needs of the beneficiaries. Another widely criticised aspect of the programme were the criteria for granting the funds, which favoured large and costly projects at the expense of smaller projects which were equally good at combining innovation with European added value.

The Culture Programme 2007–2013

In 2007–2013, the new single EU cultural programme is the Culture Programme, established on 12 December 2006 under the Decision No. 1855/2006/EC.[21] Countries eligible to participate in the programme include all EU

[19] *Evaluation ex-post des programmes Kaleidoscope, Ariane, Raphael 1996-1999*, GMV Conseil, Paris 2003, http://www.ec.europa.eu/culture/archive/sources_info/pdf-word/rapportoctobre.pdf (last visited 1.12.2012).

[20] For details see: D. Jurkiewicz-Eckert, op.cit., p. 350.

[21] Decision No 1855/2006/EC of the European Parliament and of the Council of 12 December 2006 establishing the Culture Programme (2007 to 2013), OJ L 372, 27.12.2006, p. 1.

Member States, EU candidate countries, as well as members of the European Economic Area and countries of the Western Balkans. At present, this gives a total of 37 countries.[22] The programme's budget is EUR 400 million. The programme's principles, the method of implementation and the principle of complementarity of EU project funding make the 'Culture Programme' a continuation of Culture 2000 and the third generation of EU programmes in the field of culture.

The principal objective of the programme remained essentially unchanged and is worded as follows in Article 3 of the Decision: *'to enhance the cultural area shared by Europeans and based on a common cultural heritage through the development of cultural cooperation between the creators, cultural players and cultural institutions of the countries taking part in the Programme with the a view to encouraging the emergence of European citizenship'*.[23]

In contrast to the very detailed list of objectives of the Culture 2000 programme, the new programme has only three:

- to promote the transnational mobility of cultural players,
- to encourage the transnational circulation of works and cultural and artistic products,
- to encourage intercultural dialogue.[24]

Institutions applying for funding under the Culture Programme are required to show that the project will fulfil at least two of the three aforementioned objectives, and priority is given to the projects which fulfil all three. Eligible applicants include: museums, libraries, theatres, cultural centres, art galleries, public administration bodies, associations, societies, foundations, universities, publishing houses, and organisers of festivals. All the projects must represent European added value, which is one of the most important criteria of evaluation.

The budget has been divided between three strands under which the programme's objectives are to be implemented. These strands are:

Strand 1: Support for cultural actions (77 per cent of the total budget).

1.1. Multi-annual cooperation projects, where the duration of the project is 3–5 years, with at least 6 partners from 6 different eligible countries, and the grant amount is between EUR 200,000 and 500,000 per year (max. 50 per cent of the total eligible costs).

1.2. Cooperation measures (1.2.1), where the duration of the project is a maximum of 24 months, with at least 3 partners from 3 different eligible

[22] The countries participating in the Culture Programme are: Albania, Austria, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Island, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Malta, Montenegro, the Netherlands, Norway, Poland, Portugal, Rumania, Serbia, Slovakia, Slovenia, Spain, Sweden, Turkey, and the United Kingdom.

[23] See: Article 3(1) of Decision No 1855/2006/EC of the European Parliament and of the Council of 12 December 2006 establishing the Culture Programme (2007 to 2013), OJ L 372, 27.12.2006, p. 4.

[24] See: Article 3(2), ibidem, p. 4.

countries, and the grant amount is between EUR 50,000 and 200,000 (max. 50 per cent of the total eligible costs). This strand also funds translation projects (1.2.2.), where the grant amount is between EUR 2,000 and 60,000, taking into account per page translation fees which vary depending on the language. No partnership is required in translation projects.

1.3. Special actions, funding the European Union's flagship projects such as European Capitals of Culture (max. EUR 1.5 million), EU awards in the field of culture and European cultural festivals, and supporting cooperation with international organisations such as the Council of Europe and the UNESCO and with third countries, under the same principles as in 1.2.1. and in accordance with the priorities of EU international cooperation set for the given year.[25]

Strand 2: Support for bodies active in the field of culture at European level (10 per cent of the total budget).

This new competence and task of the Culture Programme previously belonged to the European Parliament. It is based on two financial instruments: annual grants and framework partnership agreements. The grant under this strand is EUR 100,000 and 600,000 and may constitute up to 80 per cent of the total operational costs. The programme singled out three categories of entities eligible for funding under this strand: European Cultural Ambassadors,[26] Advocacy networks and structured-dialogue platforms.

Strand 3: Support for analyses and the dissemination of information and for activities maximising the impact of projects in the field of European cultural cooperation and European cultural policy development (5 per cent of the total budget).

Under this strand, the European Union subsidises the functioning of 35 Cultural Contact Points, as a very important institution for disseminating information, promotion and stimulating the implementation of the programme in eligible countries. Furthermore, in this strand the programme also funds analytical and evaluation work concerning culture and

[25] In every edition of the Culture Programme, one or more third countries are picked as a target cooperation partner. In 2007 it were China and India, in 2008 – Brazil, in 2009 and in 2010 – members of the EU Neighbourhood Policy which had concluded association or cooperation agreements with the Community and ratified the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions: Armenia, Azerbaijan, Belarus, Egypt, Georgia, Jordan, Moldova, the occupied Palestinian Territory, Tunisia and Ukraine admitted in 2010 (subsidy in 2009 – EUR 2.12 million, in 2010 – EUR 2.6 million), in 2011 it was Mexico (a subsidy of EUR 2.2 million), in 2012 it was South Africa (a subsidy of approx. EUR 1.5 million), and in 2013 it is Australia and Canada.

[26] Funds in the category of European Cultural Ambassadors are available to orchestras, choirs, theatre groups and dance companies which operate in at least seven European countries. One of the organisations of this type enjoying longest Community support is the 140-person European Youth Orchestra, established in 1976, which recruits young musicians from all the EU Member States every year and which makes at least two European and world tours in every artistic season.

cultural policy in the Member States and on the European level. Such projects must be executed by at least 3 partners from three countries participating in the programme.

In what areas does the Culture Programme operate?

Under the Culture Programme, the European Union subsidises projects in the following disciplines: performing arts (dance, theatre, music), visual arts, national heritage, literature, books and reading, architecture, design, functional arts, multimedia and new technologies, as well as interdisciplinary projects. Within these fields, the beneficiaries of the programme undertake actions which can be broadly classified as: cultural activities and cultural support.[27] Under 'cultural activities', the beneficiaries act through artistic exchange, joint artistic projects, coproduction, tours and festivals, the exchange and circulation of works, while under 'cultural support', emphasis was placed on the exchange of experience, the establishment of a network of cooperation, as well as educational, research and training activities. Traditionally, performing arts has been the dominant area among the funded projects, although we should also point out the growing number of interdisciplinary grants. This phenomenon should be interpreted in the context of the transformations taking place in the European culture and the development of new interdisciplinary forms of expression, as highlighted by the ECORYS and the authors of the Interim Evaluation of the Culture Programme, a report of 2010.[28]

The description provided above clearly indicates that in its essential structural elements, the Culture Programme is a direct continuation of the earlier generations of EU programmes in this field and that it draws most from the experience of the Culture 2000 programme. At the same time, the European Union has introduced several changes related to the evolution of the objectives and instruments of the EU cultural policy.

What are these differences? It was no coincidence that two particularly important areas of the Unions' involvement in culture were emphasised even stronger than before. The first one is the intercultural dialogue and the promotion of cultural diversity as the foundation of the EU cultural policy, while the second one is direct linking of culture to the socioeconomic phenomena taking place in Europe and the inclusion of the cultural sector in the achievement of the goals of the EU's Lisbon Strategy for Growth and Jobs. The opening of the Culture Programme to non-commercial activities of the culture industries was one of the most important changes in the philosophy of the EU cultural programmes and heralded new directions of development of the EU cultural policy adopted by the Community in the European Agenda for Culture of 2007.

[27] See: *Interim Evaluation of the Culture Programme 2007-2013. Final Report*, ECORYS, Birmingham 2010, http://www.ec.europa.eu/dgs/education_culture/evalreports/culture/2010/progreport_en.pdf (last visited 1.12.2012).

[28] Ibidem, p. VII.

Another change was the establishment of a new area within the Culture Programme – Strand 2, ensuring EU support for bodies active at the European level in the field of culture. The transfer to the new programme of tasks which previously belonged to the competences of the European Parliament was yet another step in the process of institutional and organisational consolidation of the EU's activities in the field of culture.

Furthermore, the structure of the Culture Programme took into account the conclusions from critical analyses and evaluation reports produced after the previous programme, as well as some requests of the culture sector, for instance, those concerning the abolishing of the '5 per cent rule', which the Culture Programme abandoned entirely. The programme introduced changes in the duration of projects and in the minimum number of participants of long-term projects, as well as the maximum grant amount. The management structure of the programme changed as well and its tasks were divided between the Education, Audiovisual and Culture Executive Agency and the Directorate General for Education and Culture.

The results of the implementation of the Culture Programme invite some remarks, which essentially concern all the past and present programmes dedicated to culture in the EU. It is undoubtedly a success of the European Union that under programmes it subsidised a large number of non-profit projects with a high artistic value which would not be executed otherwise. Owing to EU assistance, the institutions participating in supranational programmes establish their own networks of contacts and relationships, learn good practice, acquire experience and a stronger position in international projects. The projects co-financed by the EU are often aimed at the general public in Europe, which surely contributes to the development of its cultural competence and, in many cases, familiarise the recipients with the new means of expression and communication. However, an analysis of the subsequent editions of the Culture Programme forces us to look critically at the target projects as an instrument of the EU cultural policy and to formulate several reservations and remarks.

The first and most obvious reservation concerns the inadequacy of the budget in relation to the objectives that the European Union has set and the expectations of the cultural institutions and the society. Critical opinions on the budget are not only voiced by the cultural and artistic communities interested in EU funds. It is the first conclusion suggesting itself after an analysis of the statistical data concerning the implementation of the subsequent editions of the Culture Programme. For example, under the first strand of the Culture Programme in 2007–2009, supporting cooperation projects, funds in strand 1.2. were granted to a total of 321 projects, that is to a quarter of the submitted applications.[29] In 2010, the situation was slightly better (funds granted to 37 per cent of applications), but in 2011 due to a considerable increase in the number of applications (1,509) and a limited budget, grants were given to only 328 projects, which translates into

[29] Ibidem, p. VII.

a decrease of effectiveness to 21 per cent.[30] All the quoted data point to a considerable disproportion between the sector's absorptive potential and the available funds granted under the Culture Programme, as well as to the fact that achieving a 'critical mass' of projects which would significantly contribute to the supranational development of the culture sector in Europe with a 7-year budget of EUR 400 million for a programme is a completely impossible task and an unrealistic expectation. The magnitude of the disproportion between the needs of cultural institutions and the allocated funds is shown by the juxtaposition of the annual budget of the Culture Programme – EUR 53 million in 2011 – with the total annual budget of the Berlin Philharmonic – EUR 34 million – or the annual budget of the La Scala opera house in Milan – EUR 110 million in 2012, which was only slightly less than in 2011.[31]

The second issue so far unresolved is the problem of equality of potential beneficiaries. The minimum grant amount of EUR 50,000 and subsidising 50 per cent of total costs are yet another element favouring supranational cooperation of large cultural institutions with high budgets of their own, which have the capability to cope with the programme's financial requirements. In accordance with the data for 2010, the Union subsidised, under strands 1.1. and 1.2.1. a total of 121 cooperation projects in which 1,479 cultural entities (art and cultural players) were involved as leaders and coordinators. Is this a high or a small number? In the context of the number of entities operating in the European cultural 'ecosystem' this data cannot be satisfactory for the Union, which wishes to act as a catalyst for supranational cooperation.[32] Small institutions remain outside the system, as the aforementioned requirements of minimum grant and minimum own contribution effectively prevent them from applying for EU funds under the Culture Programme.

The third problem consists in the paradox of supporting language diversity in the EU. In 2007–2009, the Union subsidised, under area 1.2.2 of the Culture Programme, a total of 1,046 literary translations. Unfortunately, this part of the Programme – as well as all the previous actions in the field of translation – exhibits a continuing imbalance between the source languages and the target languages, as English, French and German are invariably dominant as source languages, but scarcely become target languages. The scale of the problem is well shown by the data for 2010, where funds were granted for translation of 103 books

[30] See: *The Culture Programme 2007-2013. Activity Report 2010*, DG Education and Culture, http://www.ec.europa.eu/culture/documents/pdf/programme/activityreport2010.pdf (last visited 1.12.2012).

[31] Data concerning the budget of the Culture Programme after: ibidem; the annual budget of the Berlin Philharmonic after: http://www.orchestramanagement.wordpress.com/2011/11/04/berlin-philharmonic-a-most-successful-business-model/ (last visited 1.12.2012); the budget of La Scala after: http://www.businessweek.com/ap/financialnews/D9SFCSTG0.htm (last visited 1.12.2012).

[32] For instance, the organisation Culture Action Europe, a European network for cooperation between cultural institutions has more than 100 members that together represent over 80,000 art and cultural players across Europe and beyond.

written in English and only 4 books translated into English. The disproportion is even greater for French – in 2010 only, one book was translated into this language, while 78 French books were translated into other European languages.[33]

The fourth problem is the considerable limitation of the possibility of cooperation with third countries and the assignment of priority partners in given editions of the programme. The annual budgets allocated to this aim are insufficient to provide tangible support to long-term projects of cooperation with these countries – e.g. projects with countries of the ENP receive EUR 2.12 million, with Mexico EUR 2.2 million, with South Africa 1.5 million.

The fifth problem concerns the actual long-term effects of the projects, that is sustainability of activities and of the effects of the Programme. This problem has not been resolved so far and is essentially inherent in the logic of subsidising supranational cooperation projects under the EU programmes. Despite the fact that most beneficiaries declare the will to continue their supranational cooperation after the end of the project, the possibility to maintain it without another EU grant is usually less possible than assumed initially. In the face of the financial crisis and the dwindling budgets for culture in the Member States, both national and local, as well as of the dropping involvement of private sponsors and the low possibilities of acquiring additional sources of funding, it can be assumed that the continuation of projects executed under the Culture Programme in post-EU funding mode will be severely limited, and in some cases they will be completely discontinued.

Beyond 2013

Will the new programme in the field of culture for 2014–2020, adopted by the European Parliament on 19 November 2013 and on 5 December by the Council of the European Union, be the expected response of the European Union to the requests voiced by European cultural circles in the process of consultations and discussions? The opinions of the culture sector in response to the principles of the Creative Europe Programme are cautious and full of nuances and therefore leave this question without an explicit answer.[34]

In its initial proposal, the Commission has defined the areas of the European Union's involvement and the objectives of the new programme in a different way than previously. The concept of Creative Europe,[35] which is the name of the new

[33] *The Culture Programme 2007-2013*..., op.cit., p. 29.

[34] For instance: P. Inkei, *Comments about the proposed Creative Europe programme*, http://www.budobs.org/other-projects/eu-observer/bo-documents/385-comments-on-the-creative-europe-programme.html (last visited 1.12.2012); *Creative Europe. Response to consultations*, Museum Association, March 2012, http://www.museumsassociation.org/publications/responses (last visited 1.12.2012).

[35] See: Proposal for a Regulation of the European Parliament and of the Council on establishing the Creative Europe Programme, European Commission, Brussels, 23.11.2011, COM (2011) 785 final; Commission Staff Working Paper, "Impact assessment accompanying the document Regulation of the European Parliament and of the Council establishing a Creative Europe Framework Programme", Brussels, 23.11.2011, SEC(2011) 1399 final.

programme, fully reflects the change in the EU cultural policy, the priorities of which will be subjected to the Europe 2020 Strategy. The programme is based on the principles of the European Agenda for Culture and constitutes a further step bringing culture closer to the main stream of EU policies. Therefore, what comes to foreground of the new programme is the economic significance of the culture sector, its innovative potential and contribution to the European GDP, as well as the striving towards a reformulation of the objectives of Creative Europe in accordance with the actual needs of this sector. As a result, the new programme is free of the language formerly used to describe the objectives of the EU's involvement in actions for culture, as well as of the traditionally used hierarchies and classifications. Creative Europe Programme considerably reformulates the priorities of European Union programmes in the field of non-profit cultural activity and opens the programme to market-oriented cultural industries. The programme consistently promotes the notion of cultural and creative sectors (CCS),[36] which it supports and develops. A very important and considerable change has been introduced to the structure of the programme, that combines into one single framework instrument two – so far separate – fields of the EU's involvement, namely culture and the audiovisual sector. Thus, the programmes Culture, Media and Media Mundus are combined into one framework programme. Creative Europe Programme is divided into three strands: a Culture sub-programme addressed to the cultural and creative sectors (31% of the total budget), a Media sub-programme (56% of the total budget for cinematography and the audiovisual sector) and a Cross-cultural strand addressed to all cultural and creative sectors (13% of the total budget). The final budget of EUR 1.46 billion implies only the 9-per cent increase of Creative Europe's funds[37], in comparison to the earlier generations of programmes, as well as a radical expansion of the area in which the future programme would operate. This amount constitutes approx. 0.15 per cent of the general EU budget for 2014–2020, which once again caused discontent and criticism with the culture sector[38], a sector particularly sensitive to the effects of the economic crisis in Europe.

[36] The Commission's Proposal for Creative Europe Programme includes the definition of cultural and creative sectors in Article 2: *'all sectors whose activities are based on cultural values and/or artistic and creative expressions, whether these activities are market or non market oriented and whatever the type of structure that carries them out. These activities include the creation, the production, the dissemination and the preservation of goods and services which embody cultural, artistic or creative expressions, as well as related functions as education, management or regulation. The cultural and creative sectors include in particular architecture, archives and libraries, artistic crafts, audiovisual (including film, television, video games and multimedia), cultural heritage, design, festivals, music, performing arts, publishing, radio and visual arts'*. See: *Proposal*..., op.cit. p. 7.

[37] *"Creative Europe" Programme fully operational in 2014*, Press Release, Brussels, 5.12.2013, see: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/educ/139925.pdf (last visited 15.12.2013).

[38] One of the most significant in this respect is an open letter addressed to Jose Manuel Barosso, President of the European Commission, dated on 8.04.2010 and signed by more than

A step towards solving the financial problems of the cultural sector may be the financial guarantee facility,[39] which will allow small and medium enterprises operating within the culture industries and creative industries to take loans in banks for the execution of innovative projects with high financial risk. In the context of the present debate on the future of the European Union and its development priorities, this new type of support for the CCSs can be of great importance for their further development. As this solution is absolutely new for programmes in the field of culture, both the positive and the potential negative effects of its implementation so far remain only prognoses and initial assessments.

Flagship initiatives in the field of culture

European Capitals of Culture

The European Capital of Culture (the ECoC) is the most recognizable cultural project of the European Union, realised uninterruptedly since 1985, when it was established as the European City of Culture as an intergovernmental initiative proposed by the the Greek minister of culture Melina Mercouri. The objective was *'bring the peoples of the Member States closer together through cultural celebration'*.[40] After more than 25 years of functioning as an instrument of the EU cultural policy, the ECoC has evolved and is now consistent with the priorities of the European Agenda for Culture and the Europe 2020 Strategy. The first city to which the Council of Ministers of Culture gave this title was Athens, succeeded by Florence in 1986. So far, more than forty cities received the title. In the following years, there has been a visible and logical trend to refrain from promoting European capital cities – which have the best financial and organisational bases – and choose medium-sized cities. For these cities, the ECoC title was both a proof of their European character and a real opportunity to promote its own identity, originality and achievements – which often also involved a physical refurbishing of the city or a change of the image of the city and the entire region, often heavily involved in supporting this initiative. Among the many cities distinguished with this title, there were also cities from EU candidate countries in their pre-accession period, e.g. Krakow[41] in 2000 or Sibiu in 2007. Furthermore, in 2010 the title was given to Istanbul.

250 organizations and artists. The action is promoted by the Culture Action Europe. The letter is available on http://www.cultureactioneurope.org/images/stories/documents/Letter_to_President _Barro so_from_the_cultural_sector_2.pdf (last visited 2.12.2012).

[39] The European Union intends to allocate EURO 121 million to this aim. See: http://ec.eu ropa.eu/cul ture/creative-europe/index_en.htm (last visited 12.12.2013)

[40] See: *Case Study: European Capital of Culture*, not paginated, Documentation Centre on European Capitals of Europe, Transatlantic Cities Network, http://www.ecoc-doc-athens.eu/attach ments/976_Case%20Study%20-%20European%20Capital%20of%20Culture.pdf (last visited 10.12.2012).

[41] The European Union celebrated the year 2000 by giving the ECoC title to 9 cities, which executed both their own programmes and joint projects.

The name change from European City of Culture to European Capital of Culture, as well as new qualification and selection criteria were introduced in 1999, when the intergovernmental initiative was transformed by decision of the European Parliament and the Council into an EU action for 2005–2019.[42] At the same time, a rotation system and schedule for the coming years were developed under which the title would be granted every year to two European cities in two different Member States. This was to ensure even geographical distribution of the action and highlight the cultural diversity of the host cities. The final impulse for this change were the two coming enlargements of the EU. With the former system, the new Member States would have to wait for more than a decade for their turn, while the new one ensured a balance between the old and new EU members. Since then, the ECoC title has been awarded by the Council upon a proposal by the Commission and after consulting a panel of experts.

Further procedural changes were introduced in 2007 and concerned the jury selection procedure and supervising the 4-year period of preparation of from the moment of selection to the date of becoming the European Capital of Culture. An essential change was the monitoring of the preparations, so that the actual ECoC programme would be executed in accordance with the plan presented in the application, as in the past this had not always been the case.

The European Capital of Culture is one of only few EU projects with such a long time-frame, since already the Decision of 31 December 2006 set out the procedure of selecting the European Capitals of Culture and a schedule until 2019, and recently the European Commission presented a proposal for the years 2020–2033. This proves how important the initiative is to the European Union.[43]

In the years 2007–2013, the ECoC is implemented under the Culture programme and the European Commission subsidises it with a permanent grant of EUR 1.5 million. The sum is relatively low in comparison with the total expenses incurred by the organisers of the European Capital of Culture and used to be even lower – in 2000–2006 the EU subsidy was only EUR 0.5 million. The financing of the ECoC is mainly based on municipal and regional funds, as well as on the central budget and contributions of private donors. The available detailed analyses[44] indicate that in 1995–2004 the total operating expenditure for one edition of the ECoC was between EUR 7.9 million and EUR 73.4 million, with

[42] Decision 1419/1999/EC of the European Parliament and of the Council of 25 May 1999 establishing a Community action for the European Capital of Culture event for the years 2005 to 2019, OJ L 166, 1.07.1999, p. 1.

[43] Proposal for a Decision of the European Parliament and of the Council establishing a Union action for the European Capitals of Culture for years 2020–2030, Brussels, 20.07.2012, COM (2012) 407 final.

[44] One of the most comprehensive ones is: R. Palmer/RAE Associates, *European Cities and Capitals of Culture. Study prepared for the European Commission*, Part I and Part II, Brussels 2004.

an average value of EUR 37 million and the total value of approx. EUR 3 billion.[45] At the same time, the Union contribution was estimated at approx. 1.53 per cent of the total expenses, which means that it is disproportionately low or even minimal[46] compared to how the European Union's image benefits from that action. On average, there are approx. 500 projects executed during one edition of the ECoC in such diverse fields of culture as theatre, visual arts, festivals and large open-air events, all of them under the EU logo.

What is the source of the great popularity of the ECoC? *'The European Capitals of Culture are commonly seen as a celebration of urban Europe, a local and European mega-event'*,[47] which brings a positive potential of cultural added value to all the participants of the event. Furthermore, the experience of many host cities indicates that the ECoC '*have become a unique opportunity to regenerate cities, to boost their creativity and to improve their image*'.[48] Thus, the ECoC is very well received in the entire Europe and, as a result, has a unique position in the EU's promotion policy. The European Union has made it its most important cultural mark of quality.[49]

EU Culture Prizes

The European Union is the patron of four European culture prizes – in cultural heritage, architecture, literature, and contemporary music. Searching for safe areas to become involved in supporting culture on the European level and in accordance with all the limitations resulting from the Treaties, the European Union has noticed a considerable potential for the promotion of the European idea in rewarding exceptional achievements in these four fields.[50]

European Union Prize for Cultural Heritage – Europa Nostra Awards

This prize has been awarded by the European Union since 2002 under cultural programmes and rewards for exemplary achievements in the broadly defined

[45] Ibidem, Part I, p. 19 and pp. 93–94.

[46] See: *Case Study: European Capital*..., op.cit., Documentation Centre on European Capitals of Europe, Transatlantic Cities Network.

[47] E. Palonen, *Multi-level Cultural Policy and Politics of European Capitals of Culture,* "The Nordic Journal of Cultural Policy" no. 1/2010*,* http://www.idunn.no/ts/nkt/2010/01/art01 (last visited 10.12.2012).

[48] *Summary of the European Commission conference "Celebrating 25 years of European Capitals of Culture" Brussels 23-24 March 2010,* Brussels 2010, p. 4, http://www.ec.europa.eu/culture/documents/conclusions_ecoc.pdf (last visited 13.12.2012). See also: *European Capitals of Culture: The road to success*, Luxembourg 2009.

[48] More on the role of the ECoC in the EU cultural policy in M. Sassatelli, *Becoming Europeans. Cultural Indentity and Cultural Policies,* Basingstoke 2009.

[50] *Study on the impact of the EU Prizes for Culture. Final Report*, ECORYS, March 2013, http://www.ec.europa.eu/culture/key-documents/documents/eu-culture-prizes-study_en.pdf (last visited 6 July 2013).

fields of conservation, preservation and promotion of historical cultural heritage in Europe.

The prize is awarded in 4 categories:

- conservation projects,
- research,
- dedicated service to heritage conservation by individuals and/or groups,
- education, training and awareness raising within Europe's cultural heritage sector.

Every year the international jury gives between 25 and 28 Awards and 6 Grand Prix gold medals – which include a monetary award of EUR 10,000 – for conservation, revitalisation, research, and promotion projects executed by teams and individual persons from the entire continent. All selection procedures are coordinated by Europa Nostra,[51] a pan-European organisation embracing 250 non-governmental organisations, 150 associations and 1,500 individual members from 50 states, including non-European countries. The prize is financed as a EU Special Action under the programmes Culture 2000 and Culture Programme. The list of winners proves that the aim of Europa Nostra is to promote the most important achievements – both in terms of scale and type – in the broadly defined area of cultural heritage.

European Prize for Contemporary Architecture – Mies van der Rohe Award

The European Union Prize for Contemporary Architecture and the Special Mention for an Emerging Architect are awarded every two years to recent excellent examples of architectural creativity. The executive bodies responsible for the selection procedures and award ceremonies are the European Commission and the Mies van der Rohe Foundation in Barcelona. The prize has existed since 1988 although, initially, it was named the Mies van der Rohe Award for European Architecture. Since 2000, it has been awarded under Special Actions of the 'Culture 2000' and Culture Programme. The winning projects must be located in one of the countries participating in the EU Programmes. The main objectives of the Award are as follows: '*to recognise excellence in the field of architecture and to draw attention to the important contribution of European professionals in the development of new concepts and technologies. The Prize also sets out to promote the profession* (...) *by supporting young architects as they set off on their careers.* (...) *For each edition, the Jury selects from among nominations submitted by the member associations of the Architects' Council of Europe and the other European architects' associations, a group of experts and the Advisory*

[51] Europa Nostra is an organisation founded by NGOs dealing with heritage in the Office of the Council of Europe in Paris in 1963. It established the award already in 1973. In 2000, the European Union recognised it as a pan-European Federation for Heritage. For more on the activities of Europa Nostra see: http://www.europanostra.org (last visited 2.12.2012).

Committee a single work to be granted the Prize and a single work to be granted the Special Mention, both for their excellence in conceptual, technical and constructive terms'.[52]

The winning works are an integral part of the contemporary urban space, in both private and social-public dimension. Thus, the award highlights extraordinary private single-family houses, as well as outstanding examples of public architecture, such as museums, sports centres, airports, railway stations, etc.

European Union Prize for Literature

This prize has been awarded since 2009 and is aimed at young authors from the countries participating in the Culture Programme. Each year, national juries in 11 or 12 states (in a rotating order) select one winner each. The selection criteria are set by the European Commission and are binding for all participants of the Culture Programme:

- the author must be a citizen of one of the 12 countries selected;
- the author have published between 2 and 5 works of fiction;
- the books should have been published during the five years before the prize.[53]

The Prize is coordinated by a consortium composed of the European Booksellers Federation, the European Writers' Council and the Federation of European Publishers, which supervises the selection procedures in the countries participating in the given edition, organises the award ceremony, as well as undertakes actions promoting the winners in the EU Member States.

The EUPL is a successor of the previous award in contemporary literature and translation, namely the 'Aristeion Prize' of 1990–1999. From 1996, this prize was awarded under the Ariane programme and under different rules. It included a separate award for translators. The winners of the Aristeion Prize are, among others: Manuel Vazquez Montalbán, Herta Müller, Salman Rushdie, and Antonio Tabucchi.

European Union Award for Contemporary Music – The European Border Breakers Awards

Apart from the legislation supporting the development of the music industry in Europe, the European Union is also involved in 'soft', promotional activity aimed at providing support particularly to emerging artists outside their countries of origin. Since 2009, under a Special Action of the Culture Programme, the European Border Breakers Awards (EBBA) supported by the European Commission and the European Broadcasting Union aim to reward each year 10 young artists who succeed in reaching a broad audience with their debut album outside of the

[52] http://www.miesarch.com/index.php (last visited 2.12.2012).

[53] The rules, the rotating list of states and the list of winners can be found on the website of the EU Prize for Literature, http://www.euprizeliterature.eu (last visited 2.12.2012).

country where the album was produced. European artists (or groups) are selected for an award on the following criteria:

- original debut album of artists or groups from an EU Member State,
- sales in EU Member states outside the country of production,
- sales during the last year,
- touring capacity outside of the country the artist(s) is (are) based,
- the artist's capacity to give live performances.[54]

The winners of the award include many artists who are now world famous, such as ZAZ, Adele, Katie Melua, The Thrills or The Fratellis. However, in the opinion of young recipients of music, it is the least effective of the abovementioned awards, as it duplicates the most important European award in popular music, namely the MTV Europe Music Award.

European Heritage Days

The aim of this initiative, launched in 1985 by the Council of Europe, is to promote and provide access to the European cultural heritage, particularly local cultural heritage and its diversity. Since 1999, the European Heritage Days (EHD) has been a joint action of the Council of Europe and the European Union, with the permanent slogan 'Europe, a common heritage'. The EHD are an annual event held in September and their popularity is constantly increasing due to the ever richer offer of thematically and visually interesting attractions in historic places which are often otherwise unavailable to the public. Another important and noteworthy fact is that the EHD are organised primarily on the regional and local level, which makes the initiative even more attractive to the people as it often refers to the heritage that they consider their own.[55] The EU subsidises the coordination and promotion of the campaign, but its contribution is rather small in comparison with the funds provided locally. For the European Union, the project is one of those aimed at improving the EU's visibility as a catalyst of positive actions in the field of culture. Presently, the EHD are executed under Special Actions of the Culture Programme.

New EU actions for heritage: Europeana and European Heritage Label

Europeana and digitisation of the European cultural heritage

Europeana, the European digital library, is the fruit of a project initiated in 2005 by the European Commission and aimed at establishing digital libraries and providing access to cultural and scientific heritage through the Internet. The multilingual portal was launched in November 2005 and its resources include

[54] The EBBA criteria and list of winners can be found at: http://www.ec.europa.eu/culture/our-programmes-and-actions/prizes/ebba-2009_en.htm, and http://www.europeanborderbreakersawards.eu/eng/content/ebba (last visited 2.12.2012).

[55] In Poland, a total of 1400 various events in more than 330 locations was held in 2011.

digitised collections of museums, libraries, audioarchives and visual archives from all parts of Europe. The project's development, progress and success depend primarily on intensive activity of the Member States towards the digitisation of their own resources and making them accessible, which involves, in practice, finding solutions to many legal and financial (e.g. copyright-related) problems and providing the funds for digitisation as well as organisational and technical problems (digitisation standards) on state level. The basis for EU action in the field of digitisation and providing online access to cultural heritage are the Commission Recommendations and Council Conclusions of 2006,[56] and an important impetus for the work on Europeana was provided in 2007 by the establishment of the European digital library fund coordinated by the Dutch National Library.

Currently, Europeana provides access to 19 million objects and in accordance with the Commission Recommendation of 27 October 2011, its resources should reach 30 million objects, including 2 millions audio and audiovisual objects.[57] It is a far-reaching goal to include in the Europeana by 2025 all public domain masterpieces, that is key cultural or historical works and objects as determined and selected by Member States. Another important problem to be solved is the balancing of the number of objects made available by the individual Member States. The recommendation of 2011 sets out the minimum numbers of objects which should be made available on the Europeana portal by 2015, on the basis of population and national income. The expected increase in numbers is from 30 per cent for the states which have already provided many of their resources – e.g. Italy with almost 2 million objects – to a radical expansion in the case of other states, such as Cyprus (from 53 objects in 2011 to the expected 75 thousand in 2015).[58] Yet another very important aspect is the establishment of translation platforms, which would ensure broader access to the Europeana, as well as the protection and conservation of the resources. The development of Europeana has been entered in the Digital Agenda for Europe as one of the flagship initiatives of the Europe 2020 Strategy.

European Heritage Label

The European Heritage Label (EHL) is the latest European Union action for promoting the historical and cultural elements of the common European heritage that have played an important role in the development of the united Europe and the European Union.

[56] See: Commission Recommendation of 24 August 2006 on the digitisation and online accessibility of cultural material and digital preservation, Commission of the European Communities, OJ L226, 31.08.2006, p. 28; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Europeana: next steps", COM (2009), 22.08.2009, 440 final.

[57] Commission Recommendation of 27 October 2011 on the digitisation and online accessibility of cultural material and digital preservation, OJ L 283, 29.10.2011, p. 39.

[58] Ibidem, Annex II , p. 45.

The EHL's aim is to instil the sense of belonging to the community into Europeans and to strengthen the European identity of the EU's citizens through stronger identification with the values promoted by it. The action is yet another attempt of the Union to resolve the stalemate that the EU's image has reached, being perceived by the majority of its citizens as a technocratic legal and political creation and not an integration project referring to values.

Executed since 2006, initially as an intergovernmental initiative, in November 2011 the EHL was transformed into a EU action[59] with a detailed schedule of activities up until 2025. The Decision establishing the action redefines its objectives, specifies new sites (sites, transnational sites and national thematic sites)[60] eligible to apply for the EHL and describes the selection procedure in detail. The European Heritage Label is an action aimed at the promotion of the idea of common Europe through referring to its cultural and historical heritage, and not at the protection or conservation of the heritage, which puts it in synergy with the activities of the UNESCO and the Council of Europe in this area.

It should be stressed that since 2013 the selection of the sites entered on the list will not be based on their aesthetic value, but rather on their historical, symbolic and axiological value for the processes of European integration. Hence the strong emphasis on the sites related to the processes of establishing the European Union; thus, among the 64 sites[61] which have received the EHL under the intergovernmental initiative since 2006, there is, for instance, the house of Robert Schumann near Metz, the Gdańsk Shipyard in Poland.

All the sites which applied so far will once again undergo a verification procedure to check whether they comply with the action's priorities. The sites proposed by the Member States (maximum 2) will be evaluated by a European panel of experts appointed proportionally by the European Parliament, the European Council, the European Commission and the Committee of the Regions. In the final selection procedure, the right to use the EHL can be granted to only one site from each Member State. The new selection procedure will be fully applied from 2015.

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[59] Decision No 1194/2011/EU of the European Parliament and of the Council of 16 November 2011 establishing a European Union action for the European Heritage Label, OJ L 303, 22.11.2011, p. 1.

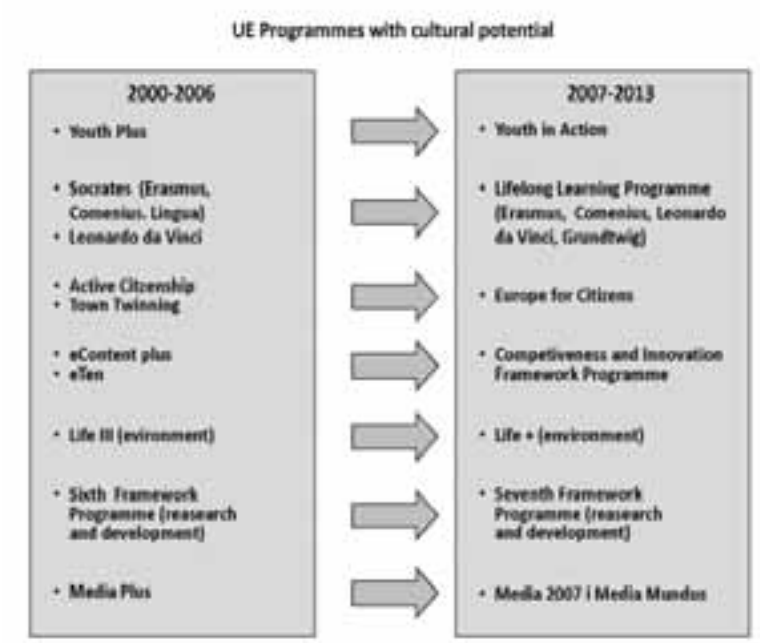
[60] In accordance with the definition provided for in the Decision establishing the EHL, the term 'sites' refers to: *'monuments, natural, underwater, archeological, industrial or urban sites, cultural landscapes, places of remembrance, cultural goods and objects and intangible heritage associated with a place, including contemporary heritage'*; 'transnational sites' are: *'several sites located in different Member States which focus on specific theme'*; and 'national thematic sites are': *'several sites located in the same Member State which focus on one specific theme'*. See: Article 2 (1–3), ibidem, p. 3.

[61] The list of the 64 sites can be found at: http://www.europa.eu/rapid/press-release_IP-10-250_en.htm?locale=en (last visited 5.12.2012).

Other programmes of the European Community with cultural potential

Article 167(4) TFEU (ex Article 151 of the Treaty of Amsterdam) provides that *'The Union shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures'*. This provision has paved the way for supporting cultural programmes under other actions and policies of the European Union and, in the context of the development of the cultural policy, has had an increasing impact on the options of supporting culture on the European level and including it in mainstream EU policies. Apart from the Structural Funds, which are discussed below, projects in the broadly defined field of culture can also be executed under other EU programmes which are not directly aimed at the culture sector. All these actions and programmes are described in, among others, the *Inventory of Community actions in the field of culture* of 10 June 2007[62] and the Commission Staff

Chart 2. European Union programmes with cultural potential



Source: own compilation.

[62] Commission Staff Working Document Accompanying Document to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European agenda for culture in a globalizing world, "Inventory of Community actions in the field of culture", Commission of the European Communities, Brussels, 10.07.2007, SEC(2007) 570.

Working Document, "The European Agenda for Culture – progress towards shared goals" of 19 July 2010[63]. The Chart 2 presents the most important programmes with cultural potential executed by the European Union in 2000–2006 and 2007–2013.

Culture in EU Structural Funds

Revival of cultural heritage; supporting the development of tourism through refurbishing monuments, vintage buildings and cultural landscapes; construction and modernisation of concert halls, philharmonics, opera houses, theatres, and museums; construction of culture centres and modernisation of art schools and libraries; purchasing equipment for cultural institutions; digitisation of the collections of museums and archives; supporting the development of companies operating in the CCI field; conducting trainings and activation programmes in the culture sector – all these are types of projects in the field of culture that receive financial assistance from the European Union under Structural Funds – the most important EU source of funds for cultural projects executed directly in the EU Member States.

The provision which has opened the possibility of subsidising culture from the Structural Funds was Article 128(4) of the Treaty of Maastricht, which came into force on 1 November 1993. In practice, the fact that cultural aspects were taken into account in actions and policies of the European Union translated into integrating culture into the regional development policy, the cohesion and employment policies, and recently into making the European economy more innovative and internationally competitive. This also means that, while encouraging the Member States to open the Structural Funds to cultural projects, the European Union has adopted the premise that *'the development of cultural activity is not in itself an aim of the Structural Funds. Their aim is regional development and cohesion, using various means'*.[64] An analysis of the projects executed so far shows that this principle has not at all facilitated the obtaining of funds for culture under the Structural Funds and that it has had a considerable influence on the formulation of the tasks and objectives of the projects applying for EU funds.

The general framework for the implementation of the cohesion policy is set on the Community level, while the Member States independently decide how to spend the funds through National Strategic Reference Frameworks and Operational Programmes at the national and regional level. The independence of action at the national level translates into very different degrees of use of the Structural Funds by the Member States as an instrument supporting culture, as well as into considerable diversification of the objectives and internal division of funds allocated to supporting culture-based projects.

[63] Commission Working Document, "The European Agenda for Culture – progress towards shared goals", Brussels, 19.07.2010, SEC(2010) 904.

[64] See: Commission Working Document, "Application of Article 151(4) of the EC Treaty: use of the Structural Funds in the field of culture during period 1994–1999", Brussels (no date), p. 10.

The culture sector has been supported from the Structural Funds under three EU budget perspectives: 1994–1999, 2000–2006, 2007–2013. The new multi-annual perspective 2014–2020 will also support the cultural sector. Each of the periods had its own specificity, with particularly important factors being the EU enlargements of 2004 and 2007.

From the perspective of the present times, the period of 1994–1999 was an important testing ground. It is then that the perception of culture under the Structural Funds was shaped – as tourism, cultural heritage and cultural infrastructure. This viewpoint dominated the philosophy of granting structural funds by the Member States in the field of culture under the next budget perspectives.

In 2000–2006, financial support for culture from the Structural Funds was granted mostly by the Member States under their operational programmes, which covered 94 per cent of the total budget of the Structural Funds.[65] Only two Member States – Greece and Portugal – established separate sectoral operational programmes dedicated solely to culture,[66] while in most Member States the financing of cultural projects was included in sectoral operational programmes at the national level and regional operational programmes. The grants provided under the Funds could reach as much as 75 per cent of the total cost of the project (25 per cent being national funds).

In 2000–2006, the highest number of operational programmes with cultural priorities were launched in France – 11, followed by Italy – 6, Spain – 6, Austria – 3, and Germany – 1.[67] There were also countries, such as Ireland, Denmark or Luxembourg, which did not include cultural priorities in their operational programmes at all. In Poland, in 2004–2006, the Community subsidised 300 projects, the total value of which was PLN 1.7 billion.[68]

Culture-related projects were also supported directly at the European level through Community Initatives Programmes, e.g. INTERREG, URBAN II or Leader+, under which large supranational, transregional and transborder projects were executed.

[65] See: *Study on the Contribution of Culture to Local and Regional Development- Evidence from the Structural Funds, Final Report*, Centre for Strategy and Evaluation Services, ERICARTS, September 2010, p. 26.

[66] Under its national sectoral operational programme, in the years 2000–2006 Greece subsidised 59 museums, 73 archeological sites and monuments and 40 contemporary culture projects and technical assistance projects. *'Major objectives for the Culture OP were to create a better balance in the regional distribution of cultural sites generally and to upgrade the capacity of cultural institutions. The intention was that cultural institutions would move away from being primarily repositories of cultural objects to become centres for active uses of cultural resources for range of purposes'*. See: *Study on the Contribution of Culture to Local and Regional Development- Evidence from the Structural Funds, Case Studies, Part 1,* Centre for Strategy and Evaluation Services, ERICARTS, March 2010, p. 5.

[67] See: *Study on the Contribution... Final Report*, op.cit., p. 37.

[68] See: M. Smoleń, *Inwestycje w kulturę się liczą! (Investments in Culture Count!),* Warszawa 2011, http://www.poiis.mkidn.gov.pl (last visited 14.12.2012).

Under the budget for 2007–2013, the European Union continues subsidising investments in cultural infrastructure in Europe and emphasises linking the assistance provided to the cultural sector with the priorities of the revived Lisbon Agenda (actions for increased competitiveness and employment in Europe), the Europe 2020 Strategy and the European Agenda for Culture. Although still rather declaratively than through actual action, the European Union promotes entering culture-based projects into various contexts of the cohesion policy. These include Community Development, Economic and Competiteveness Development, Environemental Development, Innovations/Knowledge Economy Development, People Development (education, learning, training, skillls), Rural Developmnent, SME Development, Social Development/Integration, Spatial/Urban Regeneration and Tourism Development, where culture should become a tool for introducing changes in areas so far not associated with culture.[69]

Two Structural Funds are used as instruments for financing cultural projects under the cohesion policy: the European Regional Development Fund (ERDF) and the European Social Fund (ESF). It is estimated that in the overall budget of the cohesion policy for 2007–2013, amounting to EUR 347 billion, the expenses for culture constitute approx. EUR 6 billion, which is approx. 1.7 per cent of the Structural Funds and only a portion of the actual expenses for culture, since this does not take into account the projects executed in such areas as, for instance, human capital, information society and innovation.[70] A grant from the Structural Funds may constitute up to 85 per cent of the total budget of the project (15 per cent being national funds).

Currently, the largest number of cultural projects are executed under the European Regional Development Fund. In the three framework objectives of the Fund – Convergence, Competitiveness and Territorial Cooperation – the EU has included priorities for investments in the field of culture which should be taken into account by the EU Member States. The European Union put emphasis on *'cultural heritage and tourism development for Convergence regions, promotion of cultural assets for socioeconomic development and tourism in Competitiveness regions, and development of entrepreneurship and joint use of cultural infrastructures for areas involved in the Territorial Cooperation Objective'*.[71] Furthermore, on the initiative of the Polish Ministry of Culture and National Heritage, culture was set as a separate investment priority for the ERDF under the Convergence objective,[72] which should potentially strengthen the position of

[69] See: *Study on the Contribution... Final Report*, op.cit., pp. 42–43.

[70] Ibidem, p. 39.

[71] *Use of Structural Funds for cultural projects. Study,* European Parliament, Brussels 2012, p. 28, http://www.europarl.europa.eu/committees/fr/studiesdownload.html?languageDocument=EN&file=75895 (last visited 20.12.2012).

[72] Article 4(7), Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999, OJ L 210, 31.07.2006, p. 3; in the wording: *'investments in culture, including*

cultural projects within the national implementation programmes. At the same time, no country managed to create a separate operational programme for culture in the years 2007–2013.[73]

Data published by the European Commission indicates that, in 2007–2013, under the ERDF and the ESF, 3 billion euro is allocated for the protection and preservation of cultural heritage, 2.2 billion for the development of cultural infrastructure, 775 million to support cultural services.[74]

The available data shows that, e.g. under the ERDF the countries to spend the most percentage of funds on cultural projects are Malta (8.2 per cent) and Cyprus (5.1 per cent), which is explained by their specific economic conditions (tourism and heritage as the essential part of the economy), while the countries to spend the least are the UK (0.3 per cent) and Luxembourg (0 per cent); the average being between 1 (France) and 2 (Finland) per cent. In Central and Eastern Europe this value is, for instance, 1.9 per cent in the Czech Republic, 1.7 per cent in Hungary, 2.7 per cent in Lithuania.[75]

Poland established a separate priority under the national Operational Programme 'Infrastructure and Environment' (Priority XI: 'Culture and cultural heritage'). Culture-based projects could also be executed under all 16 Regional Operational Programmes in accordance with the priorities provided for therein. In accordance with the available data, under Structural Funds in 2007–2013 Poland is spending the most funds, in absolute terms, among all Community members, as the amount of EUR 1 014 million constitutes a whopping 17 per cent of all EU funds devoted to culture in the current programming period (EUR 6 billion). In the context of the overall budget allocated to Poland under the cohesion policy (more than EUR 65 billion), the expenses for culture constitute

protection, promotion and preservation of cultural heritage; development of cultural infrastructure in support of socio-economic development; sustainable tourism and improved regional attractiveness; and aid to improve the supply of cultural services through new higher added-value services'.

[73] In Greece this decision resulted from a change of priorities and a resignation from subsidising infrastructure for digitisation of cultural resources and for projects improving Greece's competitiveness. See: *Study on the Contribution..., Case Studies*, *Part 1*, op.cit., p. 6. In Portugal, the sectoral operation programme was abandoned due to issues related to the management of EU funds and to creating integrated cross-sectoral operational programmes. See: J. Cerveira Pinto, *Culture and Structural Funds in Portugal,* EENC Paper, September 2012, p. 8., http://www.ec.europa.eu/culture/our-policy-development/documents/report-structural-funds-portugal.pdf (last visited 6.12.2012).

[74] See: *Use of Structural Funds*..., op.cit., p. 31. In the documents setting the priorities for the European Social Fund, the cultural component of projects financed from this fund always plays an ancillary role and culture is not included as a separate are to be subsidised. Grants from the ESF can be given to projects which can show an essential relation between the actions in the field of culture and the creation of new jobs, combating unemployment and social exclusion.

[75] *Cohesion Policy 2007-2013: Culture*, European Commission, May 2010, http://www.ec.europa.eu/regional_poli cy/activity/statistics/2007_culture.pdf (last visited 6.12.2012).

approx. 1.6 per cent of the total funds, which places Poland around the European average.[76]

An analysis of the projects in the field of culture executed with assistance from the Structural Funds in 2000–2006 and 2007–2013 justifies the statement that the changing role of culture in European societies in the last ten years simply had to start extending the scope of financing provided under the Structural Funds beyond infrastructure and heritage. Gradually, the European Union started noticing and drawing conclusions from the fact that culture-based projects can be used as an instrument for combating exclusion, unemployment, discrimination, and poverty; both at the level of large urban agglomerations and small local communities.

Another grounds for the greater involvement of the Structural Funds in supporting innovative projects in the field of culture are the results of studies and the actual experience of the Member States, which show that culture and access to modern culture infrastructure are slowly becoming some of the most important factors shaping the attractiveness of cities and regions as potential locations for investments and jobs for highly qualified employees in various sectors of the economy, including the dynamically developing cultural industries and creative industries.[77]

Furthermore, the changes taking place in the allocation of EU funds can be related to yet another important issue – the contribution of the cultural sector and cultural and creative industries to the development of cities and regions. Experience across Europe shows that EU Structural Funds have played an important role not only in supporting cultural investment but also in developing innovative policies. There would not be a Creative Estonia policy programme, a Quartier de la Creation (Nantes), a revitalised Temple Bar quarter (Dublin) or a Prototype Fund for video games (Dundee) without EU funding.[78] Hard data show that 7 per cent jobs in Amsterdam and 9 per cent of business turnover in Helsinki were from the creative sector, which was also one of the fastest growing sectors in these cities.[79] These data are a clear indication that the EU should consistently support urban development projects and the culture sector is and will be, to an increasing extent, their natural generator of these projects.

[76] D. Ilczuk, M. Nowak, *Culture and Structural Funds in Poland*, EENC Paper, June 2012. http://www.eenc.info/wp-content/uploads/2012/07/DIlczuk-MNowak-Culture-and-the-Structural-Funds-in-Poland.pdf (last visited 6.12.2012). This study is part of a project coordinated by the European Expert Network on Culture, the task of which was to prepare recommendations for the DG for Education and Culture in the context of negotiations concerning the shape and priorities of the cohesion policy for 2014–2020 on the basis of a quantitative analysis and a SWOT analysis, which allow for the evaluation of the use of Structural Funds in the field of culture by the individual EU Member States. The authors quote examples of model use of the Structural Funds in the field of culture in Poland, and formulate the priorities for 2014–2020 from the viewpoint of Poland's experience.

[77] See: *Use of Structural Funds*..., op.cit., p. 58.

[78] Ibidem, p. 77.

[79] *Study on the Contribution... Final Report,* op.cit., p. 58.

However, the above does not change the fact that the investments most frequently financed under Structural Funds are still first and foremost 'hard' investments in culture infrastructure (facilities and cultural infrastructure), while the use of the Structural Funds as an instrument supporting non-infrastructure projects, including projects in the field of cultural and creative industries, remains unsatisfactory in most Member States.

It should also be noted that in all culture-based projects sustainability remains an issue of crucial importance. The ultimate success of hard investments in the culture sector will depend on multiannual programmes of 'soft', non-investment activities which should complement the former. Without these soft activities investments in cultural infrastructure might not only fail to bring about the expected social and cultural development in the long run, but could also become a serious financial burden. Empty concert halls or incompetently managed cultural centres are model examples of investments which are particularly prone to being burdened with the responsibility for the bad condition of local budgets during the crisis and, what is even worse, which can provoke a general query about the purpose of involving EU funds in this type of investments.

Also, if the actions supporting the cultural and creative industries do not reach a certain critical mass and will not be adequately supported at the local and national levels under long-term development strategies, they will not fulfil the hopes pinned on them.

Currently, work is underway on a new multiannual plan for the cohesion policy for 2014–2020. This plan closely links the cohesion policy to the Europe 2020 Strategy and its three objectives: smart, sustainable and inclusive growth. The proposals presented by the Commission in October 2011 in the Commission Staff Working Document "Elements for Common Strategic Framework 2014 to 2020" indicate that the new structure of the cohesion policy is not advantageous to the culture sector. Some even call it a regression in comparison with the previous perspective. Culture has not been included among the eleven thematic priorities of the cohesion policy,[80] closely linked to the Europe 2020 Strategy, which will surely weaken the process of introducing culture to mainstream activities of the European Union. The Commission refers to culture and creative industries, as well as to cultural heritage and intercultural actions only in the second part of the document, in proposals of specific key actions under the thematic priorities of the new cohesion policy. Key actions directly concerning culture appear in thematic priority 1 – research and innovation, thematic priority 3 – competitiveness

[80] Commission Staff Working Document, "Elements for a Common Strategic Framework 2014 to 2020, the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund", Brussels, 14.03.2012, SWD(2012) 61 final.

of enterprises, thematic priority 6 – cultural infrastructure, and thematic priority 9 – social inclusion and combating poverty.[81]

Culture has also not been included as a separate investment priority in the Commission proposal concerning the European Regional Development Fund – the main source of funds for culture-based projects. In the Commission's proposal, culture was only mentioned in priority 6 of the ERDF: 'protecting the environment and promoting resource efficiency' with a direct reference to national heritage: 'protecting, promoting and developing cultural heritage'. This is the only explicit reference to culture in this document.

It should be stressed that it is rather disturbing – bearing in mind the future of projects financed from the ERDF – that the Commission's proposal does not include any reference to infrastructure and cultural services, which are very important in the context of the dynamics of 'hard' investments.

This new architecture of the cohesion policy in the field of culture gives rise to many doubts and criticism in the European cultural circles.[82] The European Parliament has also presented many reservations about the Commission's proposal in the report concerning the share of culture in the Structural Funds. The report clearly states that the regulation proposed by the Commission *'fails to grasp the multidimensional nature of culture and its potential for social cohesion and experimentation in the new economy. The draft Common Strategic Framework instead echoes some elements of the new generation of the EU policies building on a wider concept of culture beyond attractiveness and tourism goals. Despite this, the role of culture remains underestimated'*.[83]

Therefore, at this stage of negotiations it is difficult to assess whether the final shape of the cohesion policy for 2014–2020 will take into account the needs of the cultural sector, or whether culture based projects will have to seek assistance from other priorities, such as innovation and competitiveness of the EU economy.

[81] See: Table 11: Thematic priorities, investment priorities and key actions of cohesion policy 2014–2020 in: *Use of Structural*..., op.cit., p. 50.

[82] One of the organisations which expressed reservations and constructive criticism regarding the regulations concerning the cohesion policy and culture-based projects proposed by the European Commission was the Culture Action Europe, http://www.ec.europa.eu/regional_policy/what/future/csf_documents_en. (last visited 17.12.2012); Culture Action Europe criticised the positioning of culture in the Commission's proposal and pointed out the socioeconomic potential of culture-based projects and their importance for the implementation of the Europe 2020 strategy. Furthermore, the organisation presented the list of *'opportunities for culture-based initiatives that could be funded under each of the thematic objectives within each objective for each fund'*, http://www.ec.europa.eu/regional_policy/what/future/pdf/csf/civil/culture_action_europe_comments.pdf (last visited 17.12.2012).

[83] *Use of Structural Funds...,* op.cit, pp. 50–51.

Conclusions

The reasons for which culture has not been taken into account in the key solutions for the architecture of the Structural Funds for 2014–2020 are diverse and would require a separate analysis. However, let us point out two issues.

On the one hand, the very conservative position of culture in the Commission's proposal seems to ignore the changes which have taken place in light of the European Agenda for Culture after 2007, and which are generally considered a radical mind-shift in cultural policy of the EU.

On the other hand, we can reverse the situation and consider this state of affairs the first real consequence of the changing priorities and perception of the role of culture by the European Union. Culture moved closer to the centre of attention of European politicians and decision-makers, not as an autonomous value-creating sphere, but as the driving force behind modern innovative economy, having a visible macro-economic contribution to the European Union GDP and a high potential for employment in CCS sectors.[84] The economisation of discourse on the cultural sector at the EU level results, on the one hand, in a better visibility of its potential, and on the other hand, in its direct subordination to the strategic social and economic objectives of the EU.

The paradigm shift in EU cultural policy after 2007 mentioned in the previous chapter will translate not only into the future of the programmes and measures described above, but also into the directions of development of culture in Europe.

What have the last twenty years of experience in the field of culture brought to the Union? How to measure the success or failure of the European Union in this field? By the number of implemented projects – monuments preserved, festivals organized, cultural centres and modern concert halls built with EU support, or by the number of good projects which have not received funding? By the level of satisfaction of the public and consumers of culture, or by the level of frustration in cultural circles and institutions suffering from increasing underfunding and more and more affected by the chronic disease of European culture – dependence on all kinds of grants? In light of my analysis of selected activities and programmes of the European Union, the answer is not at all clear.

[84] The conservative place of culture in the Commission project and its absence among the priorities of the cohesion policy for 2014–2020 stands in contradiction to the dynamism of actions for the inclusion of culture in mainstream activities of the EU. Apart from the analyses performed for European institutions mentioned in this paper, the Council of the European Union also referred to the socioeconomic potential of culture. In 2009–2011, the Council adopted three Conclusions concerning the potential of the culture sector and the creative sector. In the Conclusions, the Council pointed out, among others, the importance of the culture sector and the creative industries in the regional development in Europe and in the development of innovation and creativity; the Council also noticed their growing role in combating poverty. See: http://www.ec.euro pa.eu/culture/our-policy-development/policy-documents/council_en.htm (last visited 2.02.2013).

The paradigmatic change in EU cultural policy is a fact, although culture in Europe is bound to feel its impact only upon the start of the next generation of programmes and measures, the shape of which is determined by the implementation of the European Agenda for Culture. Will the shift of emphasis from supporting cultural activities to supporting cultural and creative industries ensure a more multidimensional developments of culture in the era of globalisation, or will it deepen the crisis in the non-profit sector? In the context of limited financial capability of the European Union, combining support for non-profit cultural activities and commercial cultural activities under one programme is still a problem and gives rise to controversy in Europe's cultural circles.

Are we able to diagnose well today whether the chosen direction is safe for the development of culture itself? Is creativity – the new mantra in cultural policy of the EU, which is now being inflected in all possible ways – a remedy for all its weaknesses? Is it a well-tailored framework for the right interpretation of the needs of the European culture and its creators? Only time will show. Today, one thing is certain: if culture and the European Union are to coexist in a symbiosis benefiting both the former and the latter in the European project, they have to learn each other. The European Union cannot just content itself with focusing only on those needs which are easiest to fulfil. EU cultural policy cannot focus solely on flagship programmes and on the economics of culture. The area where culture needs European support is very broad. The motto 'unity in diversity' obliges the European Union to treat culture much more seriously.

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