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## Polish Policy in the Context of the Euro Area Reform

**Abstract:** *This article analyses, first of all, the evolution of the European Union system in light of the reforms aimed at rehabilitating and consolidating the euro area. The principal conclusion of this analysis points to the fact that the differences among the EU Member States and the concentration of the decision-making process in the EU around the euro area, which has been observed for the last ten years, is culminating today with the ongoing reform of the euro area, which is becoming the core of European integration. But it is currently uncertain whether this development will take place within the legal and institutional framework of the EU, or whether the consequences of the autonomisation of the euro area will lead to a fragmented EU. Secondly, the article focuses on Polish policy towards the euro area reforms, especially the issue of whether Poland should join this area. The current policy, referred to as 'keeping a foot in the door', can be effective in the short term (it is aimed at maintaining the coherence of the EU during the euro area reforms), but it cannot meet the long-range strategic challenges, which require a clear programme of joining the euro area by Poland, thus ensuring its presence in the 'centre' of the process of European integration.*

### Introduction

The current strategy of Poland towards the reforms aimed at the rehabilitation and consolidation of the euro area – a strategy which consists of measures (rather effective, so far) aimed at ensuring consistency between all EU Member States while at the same time maintaining a restrained position with

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regard to joining the euro area (most commonly referred to as ‘keeping a foot in the door’) – can only be effective in the short term. It is not sustainable in the medium and long-term perspectives. The problem is that the actions aimed at the rehabilitation and consolidation of the euro area have been laid down in a coherent, active programme, the implementation of which entails ever more serious economic and political consequences, both at the national and the EU levels.<sup>1</sup>

The most efficient countries of the euro area (Germany and France) see the solution for the current Eurozone crisis not in the ‘disintegration’ of the euro area<sup>2</sup> – understood as getting rid of the weakest Member States, or even as complete dissolution – but, on the contrary in the deepening of integration within the euro area (its rehabilitation and consolidation). This direction of reforms of the Eurozone is clearly outlined by the plan to establish a banking and political union. These countries are ready to consolidate the Eurozone and make it the centre of the European integration process, even at the expense of the goal of EU cohesion. Those Member States that will remain outside this area will either have to be strong enough (for example the United Kingdom, Denmark and Sweden) to remain attractive partners for the new centre, or will remain on the periphery of European integration, narrowed down to the EU Internal Market with the addition of some EU-wide policies. The determination on the part of the Eurozone countries to strive above all for the most efficient euro area is demonstrated by the fact that they did not hesitate to reach for ‘non-EU’ (intergovernmental) measures aimed at the rehabilitation and consolidation of the euro area – such as the European Stability Mechanism or the Fiscal Compact. Those countries that remain outside the euro area will find it increasingly difficult to keep up with the pace of its evolution. Furthermore, in cases of any obstruction in the decision-making process which would prevent reforms of the euro area within the EU’s legal framework, further intergovernmental measures will surely be applied, restricted to the Eurozone group only, despite the fact that there will be ever more serious calls for placing limitations on the process of EU reforms (in

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<sup>1</sup> So far, the euro area reform programme has been most comprehensively described in two communications of the European Commission: *A Blueprint for a Deep and Genuine Economic and Monetary Union. Launching a European Debate*, Communication from the Commission, Brussels, 28.11.2012. COM (2012) 777 final; *Towards a Deep and Genuine Economic and Monetary Union. The introduction of a Convergence and Competitiveness Instrument*, Communication from the Commission, Brussels, 20.3.2013. COM (2013) 165 final.

<sup>2</sup> Cf. S. Kawalec, E. Pytlarczyk, *How to Contain Risks Throughout the Process of Eurozone Dismantlement and Rebuild Confidence in the Future of the European Union*. Paper for 10<sup>th</sup> EUROFRAME Conference on Economic Policy Issues in the European Union, 24.05.2013, Warsaw, Poland.

the euro area) which do not take into consideration the opinions of the other Member States.

The subject of this article does not concern the specific (especially economic) reasons for Poland to join the euro area, but there are two important conclusions from the deliberations contained herein which should be mentioned in this context:

**First**, by remaining outside the euro area, Poland risks finding itself at the periphery of the process of European integration – all the more so because maintaining the current special position of an attractive partner (especially for Germany) cannot go on forever. Poland's position will get ever weaker with the progressing consolidation of the euro area.

**Second**, as the consolidation of the euro area progresses, it will be increasingly difficult to join it, because the procedural conditions for abrogating the status of an EMU Member State with a temporary derogation are becoming more and more complicated, while the Eurozone membership criteria are building up. They are already considerably stricter than the existing economic convergence criteria.

If Poland continues to stand with 'one foot in the door', the growing rift between the euro area, which is becoming increasingly consolidated and detached from the rest of the EU, and the non-euro area countries (even if, like Poland, they declare their willingness to simultaneously carry out the same reforms) may reach a point where it will no longer be possible to 'do the splits', with one leg on each side of the rift (another humorous metaphor for the Polish strategy towards the euro area reform).

## **1. The diversifying Union: determinants and consequences**

For over twenty years, the European Union has been diversifying itself internally. We can even say that the establishment of the EU by the Treaty of Maastricht was in fact an expression of this process. The idea was to create a single legal and institutional framework of European integration for those areas in which the Member States had divergent interests. As the Member States were not ready to include cooperation in the field of foreign policy in the Community structure at that time, they established the separate second pillar of the Union (CFSP). The establishment of the EU was also a response to the 'Schengen method' – i.e., in the mid-1980s, a group of five Member States concluded the Schengen Agreement (a separate international agreement outside the framework of the Community), regulating some matters of fundamental importance for the emerging internal market (the abolition of physical border controls of nationals of the signatory countries at the

internal borders between them). The third pillar of the European Union included the Schengen *acquis*, thus preventing the fragmentation of the European integration process. Since then, the term ‘Schengen method’ has been accompanying the process of European integration, and is mentioned often, especially in times of political transformation (crises) in the EU, such as the adoption of the Prüm Convention during the crisis associated with rejection of the Constitutional Treaty, or more recently the establishment of the European Stability Mechanism and the Fiscal Compact in the form of the Treaty.

Nevertheless, the internal diversification has so far taken place mostly within the institutional and legal framework of the European Union, in accordance with the procedures laid down in the founding treaties. It is recognised that a certain degree of internal ‘flexibility’ in the process of European integration is essential to ensure its effectiveness, especially in light of the EU enlargement strategy and the accompanying progressive diversification of interests of individual Member States and their economic and political capacities. In this sense, internal diversity of the European Union is not a threat to its cohesion; it is even necessary to maintain the effectiveness of European integration, which now includes 28 countries. There are, therefore, various special forms of cooperation within the institutional and legal framework of the European Union, which can be limited to specific groups of Member States. As we know, not all Member States of the EU belong to the Schengen area or to the Economic and Monetary Union (and the euro area). While some Member States might deepen their cooperation under the enhanced cooperation procedure or establish permanent structured cooperation under the Common Security and Defence Policy, the acceding countries may, in some areas and for some time, enjoy a special status resulting from derogatory periods. All these forms of internal diversification remain within the institutional and legal framework of the Union, and thus, in principle, they do not violate the Union’s coherence.

It should be added that after years of difficult negotiations, at the end of the last decade the European Union finally underwent a deep political reform. Under the Lisbon Treaty (which entered into force on 1 December 2009), the European Union turned from an ‘unidentified political object’ into a coherent international organisation, combining all the previously-existing three pillars into a single legal and institutional system.<sup>3</sup> The importance of the Treaty of Lisbon is now often overlooked and it is frequently claimed – on the wave

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<sup>3</sup> For more on this subject, see: J. Barcz, *Traktat z Lizbony. Wybrane aspekty prawne działań implementacyjnych* (*The Treaty of Lisbon. Selected Legal Aspects of Implementation*), Warszawa 2012.

of trendy criticism – that ‘the Lisbon Union’ belongs to the past. However, while being aware of all the challenges facing the European Union,<sup>4</sup> it is still best to maintain some moderation with respect to this criticism. Owing to the Treaty of Lisbon, the European Union faced the severe financial crisis centred around the euro area as a coherent political and legal system, with flexible and efficient decision-making procedures. The current situation with respect to European integration would be incomparably more difficult if it had faced the Eurozone crisis while still a three-pillar system, susceptible to the temptations of renationalisation and fragmentation.

Despite the above, the financial crisis in the euro area has nevertheless revealed a number of fundamental challenges to the cohesion of the European Union, three of which deserve a special analysis.

**First**, the crisis and the reform measures taken have revealed the full extent and importance of the internal diversity of the EU, and especially of the gradual ‘emancipation’ of the euro area. The growing importance of ECOFIN (the Council configuration composed of finance ministers) has been visible at least since the implementation of the third phase of the Economic and Monetary union began (1998), and later since 2002 (when national currencies were replaced by the euro in the Eurozone countries). The same has been true for the Eurogroup, an initially informal structure making decisions on matters not limited to monetary policy. It was pointed out that entry into the euro area, which requires meeting the economic convergence criteria, is not only about joining a group of countries with a common currency, but also (and perhaps mainly) about entering the emerging ‘hard core’ of European integration. However, the discussions on the advisability – and in particular on the date – of Poland’s entry into the euro area has so far focused solely on the need to meet the economic convergence criteria. Of course, the fulfilment of these criteria is an absolute prerequisite for joining the euro area, but failing to consider the political aspect has led to a failure to appreciate the evolving importance of the euro area as the emerging centre of European decision-making. To expect Poland to be a major actor in the European Union without its joining the euro area indicates either total ignorance of how the EU functions or a significant amount of political cynicism. Poland learnt this the hard way, during its Presidency of the European Union in the second half of 2011. Everything went extremely smoothly with respect to the current legislative and administrative matters; however the Polish Presidency found itself almost completely marginalised in the main decision-making matters, i.e. in matters concerning the rehabilitation of the euro area, and in fact the future

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<sup>4</sup> Cf. M. Schinas, *The EU in 2030: A Long-term View of Europe in a Changing World: Keeping the Values, Changing the Attitudes*, “European View” Vol. 11(2)/2012, pp. 267–275.

fate of the EU. The only thing left for Poland to do was to ‘keep its foot in the door’ and ‘do the splits’, to quote the imaginative expressions used by the press to refer to Poland’s strategy within the EU.

**Second**, the measures taken with the aim of rehabilitating and consolidating the euro area are leading to a revitalisation of the above-mentioned Schengen method on an unprecedented scale. Later in the article we discuss the content of the on-going and planned reforms of the euro area and the EU itself. At this point, however, we should focus on the method (procedure) of their implementation. Admittedly, the most efficient of the Eurozone countries and the EU institutions (especially the Commission) are trying to carry out these reforms primarily within the institutional and legal framework of the European Union: the revision of the Treaties – the TFEU (expanding Article 136 TFEU), the adoption of relevant secondary legislation (the six-pack, the two-pack and the establishment of a banking union), and the launching of the enhanced cooperation procedure (introduction of a planned tax on financial transactions). This shows that decision-makers are indeed aware of the importance of preserving the cohesion of the European Union. However, faced with the need for rapid action and the difficulties in decision-making on the part of some Member States (especially the UK), some countries have not hesitated to apply the Schengen method to regulate important measures or implement institutional reforms at the intergovernmental level, outside the institutional and legal framework of the EU. This is how they launched the essential regulations for the ‘Greek mechanism’,<sup>5</sup> the permanent financial rescue mechanism for the euro area (the European Stability Mechanism, which is a separate international organisation established under a special international agreement) and they also established the Fiscal Compact by a separate international agreement, further strengthening fiscal discipline measures laid down in the reformed Stability and Growth Pact (under the six-pack).<sup>6</sup> Inasmuch as the EU Court of Justice, in its 27 November 2012 judgement in the Case C-370/12 *Pringle*, held that the intergovernmental measures taken so far did not violate EU law,<sup>7</sup> it can be

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<sup>5</sup> Cf. D. Sobczyński, *Ramy prawne tzw. mechanizmu greckiego oraz Europejskiego Mechanizmu Stabilności (Legal Framework of the Greek Mechanism and the European Stability Mechanism)*, “Europejski Przegląd Sądowy” No. 2/2012.

<sup>6</sup> Eurozone Portal, <http://eurozone.europe.eu>. For more on this treaty, see: P. Craig, *The Stability, Coordination and Governance Treaty: Principle, Politics and Pragmatism*, “European Law Review” No. 37/June 2012, pp. 231 and ff.

<sup>7</sup> For more see: J. Barcz, *Środki międzyrządowe konsolidujące strefę euro w świetle wyroku Trybunału Sprawiedliwości UE z 27.11.2012 r. w sprawie C-370/12 Pringle (Intergovernmental Measures for Consolidating the Eurozone in Light of the Judgement of the Court of Justice of 27.11.2012 in Case C-370/12 Pringle)*, “Państwo i Prawo” No. 8/2013; E. de Lhoneux, Ch.A. Vassilopoulos, *The European Stability Mechanism before the Court of Justice of the European Union. Comments on the Pringle Case*, Cham 2014.

safely assumed that when implementing the Eurozone consolidation programme in the future, if the euro area states encounter problems in the EU decision-making process they will not hesitate to use further intergovernmental measures, even at the cost of a possible breach of EU law (and the cohesion of the European Union). The determination shown by the most efficient Eurozone countries in their pursuit of rehabilitation and consolidation of the euro area indicates that what should be feared is not so much the disintegration of the euro area (meaning either a withdrawal or expulsion of some Member States, or dissolution, or collapse),<sup>8</sup> as a progressing autonomisation of the euro area in relation to the European Union, and in the extreme case a complete formal secession of this group from the EU, which would be tantamount with the fragmentation of European integration. This process has already begun: new elements of the reform of the euro area (financial assistance mechanisms and disciplinary mechanisms for budget policy, the banking union, and the future political union) are clearly starting to exceed the boundaries of the European Union's institutional and legal framework.

**Third**, an extremely important factor to be taken into account when assessing policy options and procedures for the implementation of measures to rehabilitate and consolidate the euro area is the growing anti-EU populism. Without going into its origins,<sup>9</sup> we will only state that it has a paralysing effect on the policy-making process. European politicians are driven primarily by their chances of success in national elections, and are not willing to take actions that would jeopardise the chances of the political parties they represent, whether it is, as in Poland, about taking a clear decision on the date of entry into the euro area, or expressing support for its reforms. Thus, finding a method to strengthen the democratic legitimacy of the European Union (primarily through stronger integration of the Member States' societies in EU affairs) is a major political challenge, including in the context of preserving coherence in the EU integration process. It is possible, as shown by the example of Poland's entry into the Schengen area and the accompanying approval of the amendment of the Polish Constitution which it necessitated in 2006 (to which all political parties agreed, despite the very complex domestic political situation at the time). But accession to the euro area cannot be carried out without public acceptance,<sup>10</sup> and the level of this acceptance must be strong enough so that no political party has an interest in manipulating EU scepticism to raise fears about joining the euro area.

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<sup>8</sup> Cf. S. Kawalec, E. Pytlarczyk, *How to Contain Risks Throughout the Process of Eurozone Dismantlement and Rebuild Confidence in the Future of the European Union...*, op.cit.

<sup>9</sup> Cf. A. Somek, *What is Political Union?*, "German Law Journal" Vol. 14(5)/2013, p. 561 ff.

<sup>10</sup> *Ibidem*.

In considering these challenges it is necessary to take into account their consequences for the cohesion of European integration (and the European Union), as well as for individual EU Member States. It can be taken as a foregone conclusion that within the European Union there is an on-going process of deep diversification of Member State status, with the main dividing line being membership, or non-membership, in the euro area. It is hard to predict whether this diversification will continue within the institutional and legal framework of the European Union, or lead to the autonomy of the Eurozone, and in the extreme-case scenario to the fragmentation of the European Union. In an earlier presentation I described this process as a return to the idea of a Europe *à la carte*, but in a different sense.<sup>11</sup> While initially this concept meant that states would sit at a common table and select the dishes they liked from a common menu, and then together determine the fate of the EU integration process, today the concept of a Europe *à la carte* may be taken to mean that different groups of countries will sit at different tables, depending on the dishes selected from the menu prepared by the most efficient Eurozone members: some of them may sit at the main Eurozone table (where there will also be a certain order of precedence in the seating arrangements), while others would sit at various 'side tables', some of which might be placed at the edge of the dining hall, i.e. on the periphery of European integration. Thus, thus the current state of affairs can be looked at as a question of which table each Member State will be sitting at.

We should also consider the fact that the consequences of such a diversification of EU Member State status will be different for the 'old' and the 'new' Member States. Let us note that all the original Member States of the European Communities, including especially Germany and France, are in the euro area. For them, emancipation or even a secession of the euro area from the EU would mean a return to the close cooperation already developed within a proven group of countries. While it might come at the expense of losing some efficiency on the global scale, it would also mean getting rid of certain inconvenient limitations resulting from the membership of the Central and Eastern European countries, especially as regards relations with Russia. For the new Member States (from the 'Big Bang' enlargement of 2004 and 2007), and especially Poland, remaining outside the centre of integration may have completely different implications. In fact, it would mean that the achievement of Poland's new position on the political map of Europe – programmed after the political transformation in the years 1989/1990 and con-

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<sup>11</sup> In my speech during a discussion titled *Political Evolution of the European Union. Ideas and Reality*, which took place at the invitation of the Polish President on 19.03.2012, as part of the cycle of debates *Future of Europe. The Polish perspective*. For an extended version of this speech, see: *Europa à la carte: Konsolidacja czy fragmentacja Unii Europejskiej*, op.cit.



sistently implemented, first through the Association Agreement with the European Communities and then by joining the European Union – will have gone to waste. For Poland would once again find itself between the consolidated Western Europe and the unpredictable ‘East’. From the point of view of Polish strategic interests, i.e. remaining in the centre of European decision-making, joining the euro area is thus of key importance. This decision has the same weight as the 2004 Accession Treaty to the European Union. This will be discussed again in a bit more detail towards the end of this article, with reference to Zbigniew Brzeziński’s strategic analysis.<sup>12</sup>

## 2. The concept behind the Polish policy

Poland’s attitude towards the current situation in the European Union has already been mentioned. In the language of both the press and the political discourse it is described, quite aptly, by three terms. The first, the **strategy of ‘keeping a foot in the door’**, refers to the fact that Poland, although outside the euro area, nevertheless takes action to preserve the cohesion of the European Union, when adopting the measures for its rehabilitation and consolidation. Poland’s activity in this respect was particularly evident during its Presidency of the EU Council, and indeed was relatively effective. The most spectacular example of this effectiveness is that it ensured the partial opening of the separate Euro Summits to the representatives of non-euro area Member States. Poland also contributed to keeping the separate political agreements and international treaties concerning the euro area open to those EU countries which do not belong to it: the Euro Plus Pact and the Fiscal Compact are open to all EU Member States, while the Treaty establishing the European Stability Mechanism allows for the participation of non-euro area countries only in aid operations and on an *ad hoc* basis.

Poland’s approach is also described as a **strategy of ‘trotting along the euro train’**. This phrase quite accurately reflects the situation in which, while being outside the euro area, Poland is trying to meet all the new emerging requirements addressed to the Eurozone countries under the rehabilitation and consolidation programme. This strategy is also relatively effective because it strengthens Poland’s credibility in the EU and its image of as country in good shape economically, a country not only declaring a desire to join the euro area in the future, but also taking concrete measures to this end to fulfil the conditions of strengthening competitiveness. The strength of this strategy is also that (as has been noted repeatedly by Leszek Balcerowicz)

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<sup>12</sup> Z. Brzeziński, *Strategic Vision. America and the Crisis of Global Power*, New York 2012.

such measures are in the objective interest of the Polish economy, regardless of whether Poland enters the euro area or not.

Finally, the present Polish attitude towards the reform of the euro area also is called, somewhat facetiously, a **strategy of ‘doing the split’**. In fact, the term describes not so much the content of the strategy, but rather its consequences. It is easy to see that the catalogue of requirements addressed to the Member States of the euro area is growing and the process of consolidation of this area is gaining momentum: the paths of the reforming euro area countries and the non-euro area countries are diverging and moving further and further away from each other. With one foot in the euro area (implementation of the reforms) and the other one is in the group of countries outside the euro area, Poland will find its split extending until, at some point, it will not be able to physically maintain it any longer.

Moving on now to assessment of the Polish approach to the measures for rehabilitation and consolidation of the euro area, it is worth noting at the outset that the above-described colloquial terms, used in the language of both politicians and the press to show the essence of the Polish approach, also relatively accurately reflect its fundamental weaknesses. The positions described are in fact quite uncomfortable: keeping a foot in the door, especially if the pressure to close it grows stronger, becomes painful and eventually forces a person to withdraw the foot; trotting along a train is not feasible in the long run as the train picks up speed; and doing the split, as impressive as it might look, can only be a short-term element of an exercise programme. Put simply, as was pointed out at the outset of this article, the current approach (strategy) of Poland can be effectively carried out in the short run only, and is certainly not sustainable in the medium and long term.

The most important arguments in favour of this strategy must be assessed in the relevant context. The two arguments most often quoted are:<sup>13</sup>

**First**, that Poland should wait until the rehabilitation programme is completed, as joining the euro area during the financial crisis, while remedial programmes are being developed, would be premature;

**Second**, Poland itself must be well prepared for the entry into the euro area, solidly fulfilling the convergence criteria at a level significantly exceeding the formal requirements.

However, a highly troubling fact is usually overlooked by these two arguments – the declining public support for Poland’s entry into the euro area (currently at about 30 per cent). This makes the ruling parties reluctant to

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<sup>13</sup> For example, the position of the former Minister of Finance Jacek Rostowski in the debate at the headquarters of “Gazeta Wyborcza” *Europass czy euro pas (Europass or euro – we pass)* on 24.04.2013, reported in “Gazeta Wyborcza” of 25.04.2013, p. 16.

decisively come out in favour of the campaign for accession before the elections of 2015. At the same time, given the current distribution of power in the Polish parliament, introducing the amendment to the Polish Constitution that would be required for its entry into the euro area is out of the question. Legal convergence, like fulfilling the economic convergence criteria, is also necessary in order to abrogate (by the EU institutions) the status of temporary derogation (to enter into the euro area). As a result, there is a political stalemate with respect to taking a strategic decision on the date of entry into the euro area. Hence alternative solutions, as mentioned above, are sought. However, although they can be implemented relatively effectively, as has been stressed they can only be applied in the short-term perspective. This entails a number of significant consequences. While the need for good preparation for entry into the euro area, i.e. fulfilment of the convergence criteria, is indisputable (otherwise membership would not be possible at all), the idea of waiting for a full rehabilitation of the euro area should be further discussed. In the first place the euro area, like the rest of the Union, is constantly evolving. Waiting for the ‘completion’ of these reforms might mean nothing but chasing the horizon. And one could argue that the best path, especially for new members of a structure, is to find a good place in the decision-making process during the deep reforms of the structure.

Finally, there is also the issue of credibility, which is extremely important in international politics. Today, probably more than ever before, Poland is a respected and attractive partner in the European Union, even for the most important actors. This situation, however, is not going to last forever. Only if it is a member of the euro area will Poland be able to effectively use this window of political opportunity, and it is hard to predict when the window will start closing. However, Roman Kuźniar is right by pointing out that the years 2015–2017 mark a limit beyond which entry into the euro area will become increasingly difficult. Unless Poland takes concrete steps to accede to the euro area, after this time it will likely start to lose its political attractiveness, and hence its capability to strengthen its position in the decision-making processes in the euro area (and the EU) will become increasingly limited.

In the next section we discuss the new circumstances surrounding and related to the reforms of the euro area, which may justify the above thesis. But the present section should be concluded with a final observation: It is hard to resist the impression that what really lies behind the ‘strategy of waiting’ are various intentions on the part of political parties (it should be noted that none of the parliamentary parties has ever explicitly stated that it was against Poland’s accession to the euro area). For eurosceptic parties, the strategy of waiting until Poland is properly prepared for Eurozone membership, or waiting for the completion of the reform of the euro area, is probably

equivalent to putting the matter away forever. In contrast, for the ruling party (*Platforma Obywatelska*, Civic Platform), it much rather means waiting until the next election, hoping for its situation to improve enough so that it can make and enforce the decision to enter the euro area. The current political stalemate makes it rather impossible to do it differently. However, this does not preclude developing and carrying out at least an active strategy for entry into the euro area, especially as regards educating the public by comprehensively highlighting the importance of euro area membership. The anti-euro message – which posits that Poland is an economic ‘green island’ among the other, crisis-stricken EU countries, mainly because it is not yet in the euro area – is not only untrue, but in addition has fatal consequences in terms of the public’s perception. These consequences are becoming ever more difficult to ‘reverse’.

### **3. Cohesion of the European Union: consequences of euro area consolidation for the Union’s political and institutional system**

From the point of view of the political and institutional system, there are two types of consequences of Eurozone consolidation that are becoming increasingly important for those countries planning to join it.

**First**, there are the consequences resulting from meeting the conditions and procedures for entry into the euro area. In addition to the tightening control over the fulfilment of the convergence criteria (the carefree abrogation of conditions, as was done with Greece, will surely not be repeated), the very decision-making procedure in this area has become more complex. The Treaty of Lisbon added an important element to the abrogation procedure (i.e. inclusion in the euro area) referred to in Article 140(2) TFEU, namely the need for getting an ‘invitation’ from the euro area members (laid down in paragraph three). In the discussion on joining the euro area Poland must, therefore, take into account that it is no longer enough to simply fulfil the convergence criteria and have the will to join. Poland must also make sure that the euro area members themselves envision it as one of them. The second group of new conditions will be (is) related to the need to adopt the EU legislation addressed exclusively to the euro area members. This legislation is currently contained (partly) in the six-pack, the two-pack, the planned measures under the enhanced cooperation procedure, and in future measures to be adopted to establish a ‘genuine’ Economic and Monetary Union (banking union and political union). Although these terms do not involve special procedural difficulties (as the said EU legislation usually contains general

clauses stating that it applies solely to the euro area countries), they will certainly play an important role in the domestic political debates, especially raising the issue of loss of sovereignty. Finally, the third group of new conditions for entry into the euro area are separate intergovernmental measures adopted outside the EU framework (political agreements and international treaties), which EU Member States have to adopt by the date of entry at the latest<sup>14</sup> (currently these measures are: the political agreement Euro Plus Pact and two international treaties – the Treaty establishing the European Stability Mechanism and the Fiscal Compact). Being in the form of international treaties they provide significant new conditions, as they require ratification. Debates during the ratification process of the Fiscal Compact<sup>15</sup> and the approval (ratification) of the decision of the European Council 2011/199/EU amending Article 136 of the Treaty on the Functioning of the European Union<sup>16</sup> offered a foretaste of the controversies that await Poland during ratification of the Treaty establishing the European Stability Mechanism. And it cannot be excluded that in time there will be subsequent treaties – Fiscal Compact II and III, which will also require ratification, and which will most probably have to be conducted in accordance with art. 90 of the Polish Constitution (a decision process that is more difficult even than amending the Constitution itself).

**Second**, there are the institutional consequences, i.e. the institutional autonomy of the euro area. Indeed to some extent the non-euro area Member States have managed to ensure the participation of their own representatives

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<sup>14</sup> Cf. J. Barcz, *Instrumenty międzyrządowe dotyczące kryzysu w strefie euro a spójność Unii: możliwość przystąpienia państw członkowskich UE spoza strefy euro (Intergovernmental Instruments Concerning the Crisis of the Euro Area and the Cohesion of the EU: the Possibility of Non-Euro Area EU Member States Joining the Euro Area)* in: *Traktat z Lizbony – wybrane zagadnienia (Treaty of Lisbon. Selected Problems)*, eds. M.M. Kenig-Witkowska, R. Grzeszczak, Warszawa 2012, p. 105 ff.

<sup>15</sup> The main legal issue, which entails serious political consequences, was the formula for ratification of the Fiscal Compact. The arguments for the application of art. 90 of the Polish Constitution were brought together by M. Dobrowolski, *W sprawie trybu ratyfikacji przez Rzeczpospolitą Polską traktatu fiskalnego (On the Ratification Procedure of the Fiscal Compact in Poland)*, “Państwo i Prawo” No. 6/2013, p. 41 ff, while the representative text for the dominant view that art. 89(1) of the Polish Constitution should be applied instead is the article by J. Kranz and A. Wyrozumska, *Powierzenie Unii Europejskiej niektórych kompetencji a traktat fiskalny (Vesting Some Competences in the European Union and the Fiscal Compact)*, “Państwo i Prawo” No. 7/2012, p. 20 ff.

<sup>16</sup> Cf. R. Chruściak, *Ratyfikacja w Polsce decyzji Rady Europejskiej w sprawie uzupełnienia art. 136 TFUE: spory polityczne i konstytucyjne (Ratification of the European Council decision amending Article 136 TFEU in Poland: Political and Constitutional Disputes)* in: *Rewizja Traktatów stanowiących podstawę Unii Europejskiej po wejściu w życie Traktatu z Lizbony. Praktyka, problemy prawne i proceduralne (Revision of the Founding Treaties of the European Union after the Entry into Force of the Lisbon Treaty)*, ed. J. Barcz, Warszawa 2012, p. 143 ff.

in the separate summits of the euro area (this is guaranteed by the Fiscal Compact and the rules of procedure of the Euro Summits, adopted in March 2013), but continuing this practice in the face of further institutional reforms of the euro area<sup>17</sup> is rather out of the question.<sup>18</sup> More institutional autonomy is possible for the euro area in such matters as: a separate ‘Euro Committee’ in the European Parliament (and in the future possibly even a separate chamber of the euro area), and the strengthening of the position of the EU Commissioner for the EMU and the euro in the European Commission (primarily as a result of creating a separate budget for the euro area); strengthening the status of the Court of Justice of the EU (CJEU) by removing paragraph 10 from Article 126 TFEU (which currently precludes the possibility of filing a complaint on the violation of the Treaties under the excessive deficit procedure), or the establishment of a separate procedure before the CJEU in this area; further strengthening of the status of the Eurogroup by giving it legislative powers (in fact, transforming it into a separate ‘Council of the euro area’); the German-French proposal of June 2013 to establish a separate office of President of the Eurogroup (in addition to the existing President of the Euro Summit), with the express aim of making it independent from the European Commission; and finally the strengthening of the status of a separate Euro Summit (which has been legally anchored in the Fiscal Compact).<sup>19</sup> Some of these reforms will have to be introduced via revision of the TFEU or under another international treaty (once again by applying the Schengen method). In this context, there will certainly be a need to ratify such measures in Poland.

However, the fundamental problem will be the widening rift between the euro area countries and the non-euro EU Member States. The deepening process of diversification, which certainly cannot be neutralised by ‘keeping one’s foot in the door’, will mean pushing the latter countries out of the decision-making processes taking place within the euro area. The postulates of an influential group of German economists and lawyers (Glieniecker Gruppe) present a clear view of this direction. They propose the conclusion of a separate Euro-Treaty, providing for a separate political system of the euro area, Euro-government, budgetary autonomy, and a separate euro-area parliament

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<sup>17</sup> For all the planned institutional reforms see: Communication from the European Commission, *A Blueprint for a Deep and Genuine Economic and Monetary Union...* op.cit, p. 37 ff.

<sup>18</sup> Solutions for maintaining EU cohesion in the context of the current reform process are proposed by the Centre for European Reform, see: Ch. Grant with K. Barysch, H. Brady, D. Buchan, C.M. O’Donnell, J. Springford, S. Tindale and Ph. Whyte, *How to build a modern European Union*, CER, October 2013.

<sup>19</sup> Cf. J. Barcz, *Szczyt państw strefy euro (Euro Summit). Ocena z ustrojowego i prawnego punktu widzenia (Euro Summit. A Political and Legal Assessment)*, “Europejski Przegląd Sądowy” No. 1/2014.

(Euro-Parliament).<sup>20</sup> This programme is most fully expressed by the idea of a political union, the authors of which make no effort to conceal the fact that it is a return to the idea of a multi-speed Europe, with a Euro-Treaty which would cover only euro area countries. One fundamental issue that remains is the compliance of such a Euro-Treaty with the current Treaties upon which the European Union is based. Any attempt to conclude such a Treaty ‘outside’ the legal and institutional framework of the EU (as with the Treaty establishing the ESM and the Fiscal Compact) would undoubtedly constitute a breach of EU law. The only way that would then remain would be to add such a Treaty, with the consent of all EU Member States, to the EU founding treaties. In both cases, the effect would be the fragmentation of the European integration process: in the first instance carried out in violation of present EU law; and in the second – legitimised by the consent of all Member States.

## Conclusions

- 1) The internal divergence of the EU is becoming a reality. It is difficult to predict whether it will be deepened within the institutional and legal framework of the EU or whether the legal basis of European integration will be fragmented as a result of the autonomy of the euro area.
- 2) Despite the on-going problems, the dominant programme of EU reform is aimed at deepening the integration within the euro area. The current financial crisis of some Eurozone countries will probably, therefore, lead to the consolidation of the euro area instead of its disintegration, avoiding the dissolution, collapse or exclusion of the weakest members. Without a doubt, the euro area (in a modified form) will further consolidate and strengthen its position as the centre of European integration.
- 3) For EU Member States, the main problem is now to define their place in the diversified Union: whether they want to and are able to belong to the European integration process forming at the centre (the euro area), or prefer to remain in the EU but outside the euro area. In the latter case if they have some special assets they may indeed be able keep their special position (like the UK), but if they don’t they are likely to be marginalised and pushed to the periphery of European integration.
- 4) From the point of view of this main challenge, the current Polish strategy, which consists in taking measures to preserve the cohesion of the EU (‘keeping one’s foot in the door’) while maintaining a moderate position

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<sup>20</sup> Glienicker Gruppe, *Towards a Euro Union*, Portal: Notre Europe, Jacques Delors Institute (downloaded on 26.10.2013), originally published in “Die Zeit”, 17.10.2013.

on joining the euro area, is to some extent effective in the short run, but impossible to maintain in the medium and long term. If it is maintained too long, Poland will gradually become marginalised in the European Union.

- 5) Entry into the euro area is crucial to being at the centre of the decision-making process of European integration (regardless of whether the euro area will remain within the institutional and legal framework of the EU or separate itself from the Union). From the strategic point of view, entry into the euro area is therefore a decision of an importance equal to the accession to the European Union in 2004. The goal should be to keep Poland anchored in the centre of the European integration structure. At the same time, the doors are closing more and more: with the progressing reform and consolidation of the euro area, the conditions and procedures for entry are becoming increasingly difficult, which can only lead to a diminution of Poland's current unique 'political appeal' for the most efficient Eurozone countries (especially for Germany).
- 6) Finally, it should be taken into consideration that the European Union is an optimal design for Europe from a geostrategic point of view. There are no rational alternatives to it in existence. Zbigniew Brzeziński<sup>21</sup> emphasises that the weakening of European integration will lead to a return to political divisions, especially to an increasing temptation on the part of some countries (Germany, France, as well as Italy) to establish special relations with Russia. Such a vision of the situation in Europe should encourage Poland to engage in special reflection. Regardless of how deeply the European Union will diversify, Poland should be at the centre of the process of European integration, together with leading European countries, especially Germany.

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<sup>21</sup> *Strategic Vision...*, op.cit., pp. 174–75.