

Robert Grzeszczak\*

## What Does the Crisis Teach Us about the European Union?

**Abstract:** *This article discusses the impact of the crisis on the processes of European integration. From this broad perspective, certain general and detailed problems have been selected for analysis, including the 'operational code' of European integration that was developed at the point in time when political decisions were taken to initiate the integration processes. The European Union's operational code is based on pursuing the policy of *fait accompli* and giving priority to integration in the policies of the member states, regardless of the area of integration and the values concerned. Even the principles of democracy have been subordinated to this priority. In the light of the fact that public voting has been bypassed on issues related to integration, including economic ones, the legitimacy and effectiveness of these decisions have been called into question. The entire discussion is burdened by the lack of any fundamental consensus about what the political outcome of the integration should be, nor to what extent the crisis, in its various aspects (economic, political, social and democratic), may change the European Union.*

### Introduction

The crisis in the European Union (EU) is a crisis of democratic legitimacy and economic policies, as well as a clear erosion of the EU's position as a global actor. The nature of the European integration crisis results from a number of factors. It cannot be understood without examining the roots of the problem, and this article proposes that the cause of the crisis lies in the peculiar integration-oriented *modus operandi*, i.e. the EU's code of conduct in key matters.

Due to the crisis of integration processes, particularly the financial crisis of the Eurozone, the EU faces the challenge of maintaining its cohesion; hence the need for the resurrection (revival) of Europe. The meaning behind

---

\* Prof. **Robert Grzeszczak**, Ph.D. – Chair of European Law, Faculty of Law and Administration, University of Warsaw.

this plea is not self-evident. It certainly means the need to adopt a supranational perspective based on loyalty and solidarity of the member states. It also expresses an urgent need to take decisions concerning the political outcome of the integration processes. As for the crisis in economic policy, this reveals the need to create effective and legitimate, i.e. democratic, institutional structures. Much has been said about the crisis and its various manifestations, e.g. as a crisis of trust, a crisis of democracy, lack of legitimisation of the integration process, as well as an economic crisis (and it is the economic dimension which particularly intensifies the sense of urgency and turmoil).

The crisis of economic policies is believed to be synonymous with the Eurozone crisis, which is an invalid generalisation because the latter is related rather to the global financial crisis. With regard to the structure of the currency union, the Maastricht Treaty is another source of the crisis in the EU itself. However, this article focuses on what is generally referred to as the crisis of the European Union as a whole, and this is primarily a crisis of the member states. As a system of economic, legal, political and social linkages, the EU cannot operate effectively without efficient member states. What is more, only an efficient state is capable of taking advantage of the benefits of integration. This can be seen (by negative example) in the case of Greece, whose internal (economic and political) problems nearly shattered the entire monetary union in 2010. As a result of the strong linkages in the member state–EU relationship, the crisis has affected the entirety of integration processes.

The intensity of the economic crisis varies between countries and, as a consequence, its economic and social impact assumes various forms.<sup>1</sup> It should be kept in mind that, despite its focus on integration, the EU is a highly complex and divided organisation. The process of federalisation is unquestionable and while it resembles the federal system of the US, it also differs essentially from the American model in that it ‘operates on OLD tissue’. In doing so it attempts to unite various non-homogeneous traditions: economic, political, cultural, social, and legal. At the same time, the term ‘federal’ continues to be perceived in Europe as an F-word, i.e. a politically dangerous concept that should not be highlighted nor referred to directly.<sup>2</sup> A relatively recent example of this is the removal of the statement concerning integration based on federalism from the preamble to the treaty establishing a constitution for Europe.

---

<sup>1</sup> A.Z. Nowak, *Koniec strefy euro? (The End of Eurozone)*, “Gazeta Bankowa” No. 4/2012, p. 38.

<sup>2</sup> *The EU and Federalism: Politics and Policies Compared*, ed. F. Laursen, Farnham-Burlington 2010, p. 14.

The EU crisis helps make more appealing the visions of and calls for re-nationalising specific policies. The EU's ineptitude suggests that the particular states might be able to act more effectively on their own. Thus, there is a self-evident and urgent need to establish effective and legitimised institutional structures. The revival of the EU should be accompanied by initiatives resulting in a durable, structural consolidation of its economy, e.g. the establishment of a fiscal union. With the Eurozone crisis growing more acute, it has become clear that despite the recent revision of the treaties, maintaining them in their present form is impossible and another major revision amending the economic system of the EU is indispensable.

## **1. The key issue – the code of European integration**

European integration is a project constructed and conducted by elites, resulting from pragmatic aspirations and compromises, the content of which was determined by the Founding Fathers: de Gaulle, Schuman, Adenauer, and De Gasperi. The first two decades of the Communities, from 1951 to 1975, were known as the time of 'economic glory', coinciding as they did with a period of global economic growth. In consequence, it was possible to smoothly combine the projects of the political elites with benefits for societies. The debate on the (un)democratic character of the integration project was suspended for the sake of efficiency.<sup>3</sup>

The integration processes which developed after World War II had a particular historical and political context and background, and their specific objectives included the prevention of another war between the countries taking part in the economic integration. However, the achievements of the European Union, such as, in particular, ensuring peace on the continent, introducing the freedom of movement and maintaining economic growth, have today lost their appeal in the eyes of the citizens, and are no longer perceived as goals which the particular states can attain in a more effective way owing to their membership in the EU. What is more, these traditional magnets of the EU are now less attractive for candidate countries, as exemplified by the slow pace of negotiations with Turkey, the limited enthusiasm for accession in Croatia, or Ukraine's cautious stance regarding its possible EU accession.

European integration was launched as a strictly political project shaped, similarly to foreign policy, in government offices removed from parliaments and societies. Nonetheless, it brought about measurable economic benefits and, as the years went by, the initial political motivation behind integration was

---

<sup>3</sup> G. Majone, *Europe as the Would-be World Power*, Cambridge 2009, pp. 43–45.

replaced by a strictly economic one. The development of the single market led to the initiation of a formal political integration (based on treaties) and the establishment of the European Union. In consequence, the EU has developed its own *modus operandi*, which is still being used. This concerns the manner in which political decisions regarding European integration are made and forced through in the member states. This 'EU style' has not been set out in any official documents and does not arise directly from the treaties establishing the EU. However, the first paragraph of the Preamble to the Charter of Fundamental Rights of the EU envisages the dogmatic inevitability of integration.<sup>4</sup>

The code of European integration is also based on the overlapping and conflicting powers of the EU and the member states (German *Kompetenzverflechtung*) and the limited decision-making autonomy at both the EU and state levels.<sup>5</sup> The model of governance in the European Union is not based on a tripartite system, but on the principle of institutional balance. The member states, or specifically their governments, have adopted the new, supranational legal order of the EU and surrendered the exercise of some of their powers because the governments themselves actively participate in the EU's governance within this new legal order. As a form of compensation for the transferred powers, the EU offers new opportunities to the member states, in that they have the right to take part in the development of policies to be implemented in all EU member states (the internal dimension) and in relation to third countries (the external dimension).<sup>6</sup>

The need for the member states to give priority to integration in their policies, regardless of the area of integration and the values concerned, has been the primary operating principle of the EU. Even, or perhaps particularly, the principles of democracy have been subordinated to this priority. Therefore, as Majone stresses, it is not surprising that the legislative initiative at EU level is maintained by an unelected body, i.e. the European Commission.<sup>7</sup>

The EU's operational code has been based mainly on the strategy of *fait accompli*, which renders useless public debate and the activities of those opposed in the member states. Monnet openly acknowledged the principle that since the people aren't ready to agree to integration, you have to get on

---

<sup>4</sup> The Preamble to the Charter of Fundamental Rights of the EU: '*The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.*'

<sup>5</sup> F.W. Scharpf, *Optionen des Föderalismus in Föderalismus in Deutschland und Europa*, Frankfurt–New York 1994, p. 14.

<sup>6</sup> R. Grzeszczak, *Władza wykonawcza w systemie Unii Europejskiej (The Executive Power in the European Union)*, Warszawa 2011, p. 39.

<sup>7</sup> G. Majone, *Europe as...*, op.cit., p. 2.

with it without telling them too much about what is happening.<sup>8</sup> Democracy in international relations is the Achilles heel of democratic theory. Over the years, Habermas has increasingly addressed this problem and has envisaged a multilevel global constitutional system to deal with the conundrum.<sup>9</sup>

The *fait accompli* method was used to introduce the currency union before reaching a consensus regarding the political union. Political integration has been placed subsequent to the centralisation of monetary policy; in consequence, the European Central Bank has been operating in a political vacuum until the present time. Such a situation is unknown in contemporary democracies.<sup>10</sup>

The process of unification is not keeping pace with the advancing integration of various, frequently divergent phenomena within the EU. Structural problems follow from this; differences in the pursuit of many policies, as well as divergent perspectives and interests.<sup>11</sup> Accepting, instead of ironing out the differences, their existence in the process of integration leads to the member states giving up and pooling parts of their sovereignty. For some time now, the model of shared sovereignties has shaped the legal and political relations both within the EU as well with respect to the member states. This also means that at a certain time in its development (in the 1990s), the EU became the antithesis of the nation state.<sup>12</sup> It was a critical moment, when the economic structure, based on the integration model adopted in the 1950s, began to transform into a hybrid political system.<sup>13</sup> The European Union is regarded as the first truly polycentric community, that challenges the existing traditions of statehood and departs from the notion of a nation state.<sup>14</sup>

Given the above, are the member states or is the European Union itself responsible for Europe in the time of crisis? The crisis and the associated challenges confirm that the responsibility for Europe rests not so much with either the member states or the EU, but rather with public and private entities for whom the EU should act as a mediator rather than a sovereign decision-making entity. It should be emphasised that the notion of sovereignty should

---

<sup>8</sup> G. Ross, *Jacques Delors and European Integration*, London 1995, p. 194.

<sup>9</sup> J. Habermas, *Die Krise der Europäischen Union im Lichte einer Konstitutionalisierung des Völkerrechts. Zur Verfassung Europas: ein Essay*, Berlin 2011, p. 12.

<sup>10</sup> G. Majone, *Europe as...*, op.cit., p. 2; M. Gallagher, M. Laver, P. Mair, *Representative Government in Modern Europe*, London 2011, p. 11.

<sup>11</sup> *Understanding the European Union's External Relations*, eds. M. Knodt, S. Princen, London–New York 2005, p. 22.

<sup>12</sup> D. Wincott, *National States, European Union and Changing Dynamics in the Quest for Legitimacy* in: *Accountability and Legitimacy in the European Union*, eds. A. Arnulf, D. Wincott, Oxford 2002, p. 488.

<sup>13</sup> N. MacCormick, *Questioning post-sovereignty*, "European Law Review" No. 6/2004, p. 863.

<sup>14</sup> N. Walker, *European Constitutionalism*, "Current Legal Problems" No. 59/2006, p. 51.

not be used in this context at all, as we should accept that the EU is now in its post-sovereignty stage.<sup>15</sup>

Habermas attacks the prevailing conflation of popular sovereignty and state sovereignty, which he sees as due to a *collectivist misunderstanding*. State sovereignty has to do with ‘*Willkür*’ – freedom of action guaranteed by classical international law – which is necessary for outward action. This is clearly different from autonomy under the Kant’s ‘laws of freedom’, which citizens enjoy as members of a self-legislative body. Popular sovereignty implies that the political exercise of power is characterised by a process where the citizens themselves are the legislators, either directly or through their representatives. There is a connection between the two types of sovereignty, as state sovereignty comprises the capabilities necessary for protecting citizens’ freedom and security and for realizing political goals. The normative meaning of democracy implies that political capabilities are extended beyond national borders when this is needed to control the political agenda. Hence the importance of the EU, which is truly a law-based system premised on a set of fundamental principles. But a distinctive trait of the European integration process is that it takes place among already legally domesticated and constitutionalised states.<sup>16</sup>

Public legitimisation of each new EU concept should become the fundamental principle of the ‘new code of integration’, adapted to the exigencies of globalisation, the constitutionalisation of international law and democratisation of societies in the 21<sup>st</sup> century.<sup>17</sup> Thus, the *fait accompli* strategy must be abandoned once and for all. If any clear conclusions can be drawn from the experience of the last five decades it is, as Majone emphasises, that in democratic conditions every integration project implemented by political elites in a top-down manner can only advance insofar as it is legitimised either by its effectiveness or democratic support.<sup>18</sup> Another question that seems to remain open is whether choosing unity in diversity applies to every aspect of integration.

## 2. Legitimation and effectiveness

The European project and the so-called ‘Community method’ focus on the objective of integration. Hence, the integration processes are sometimes said to be legitimised in a peculiar, functional way that differs from that typical

---

<sup>15</sup> For more on this subject, see: N. MacCormick, *Questioning...*, op.cit.

<sup>16</sup> J. Habermas, *Die Krise der Europäischen...*, op.cit., pp. 36–42.

<sup>17</sup> J. Klabbers, A. Peters, G. Ulfstein, *The Constitutionalization of International Law*, Oxford 2009, p. 258.

<sup>18</sup> G. Majone, *Europe as...*, op.cit., p. 234.

of nation states. The conflict between democracy and effectiveness is indeed inherent in the model of economic integration. The European Commission's considerable legislative powers, on the one hand, and its governing and executive functioning based on an extended apparatus of professional civil servants on the other hand, bring the EU closer to the bureaucratic model of governance and make it more effective. So far, the integration-oriented measures have been legitimised, though indirectly, by this effectiveness, which is known as the functional model of legitimisation.<sup>19</sup>

If the EU consisted of just a market, the above model would be valid. However, the EU represents more than merely economic integration and thus it suffers from a deficit of democracy and legitimisation. The readiness to sacrifice democracy at the 'altar of integration' and its effectiveness is manifested by the legislative monopoly granted to the Commission, an unelected body.<sup>20</sup>

However, the social relations and, consequently, the legal environment have changed enormously over the last few decades. Effectiveness alone is no longer sufficient for the further development of integration processes. Increasingly complex legal structures and institutions are developing, particularly with regard to the European Union and its legal system. The post-World War II period witnessed unprecedented changes in the social, economic, legal, national, regional, international, supranational, and post-national systems on the European continent.<sup>21</sup> The law *per se* has become a public institution, with exceptional potential for integration thanks to the well-developed system of rules governing the legal discourse. Unlike its political counterpart, the legal discourse easily shifts from abstract concepts to cases of particular individuals.<sup>22</sup>

EU law is created as a result of the interaction between private and public entities, EU institutions and member states, as well as specialist (expert) groups, leading to what is known as European governance.<sup>23</sup> A distinguishing feature of EU legislation is the tendency for a continuous increase in the law-making activity of the administration, which creates particular legal subsystems while arranging for the fulfilment of collective needs on a mass scale.

---

<sup>19</sup> R.D. Kelemen, *Eurolegalism, the Transformation of Law and Regulation in the European Union*, Cambridge, MA 2011, p. 36.

<sup>20</sup> G. Majone, *Unity in Diversity: European Integration and the Enlargement Process*, "European Law Review" No. 33/2008, pp. 457–81, G. Majone, *Europe as...*, op.cit., p. 72.

<sup>21</sup> *Europe's Constitutional Mosaic*, eds. N. Walker, J. Shaw, S. Tierney, Oxford 2011, p. 404.

<sup>22</sup> J. Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, A. Romaniuk (Polish translation), Warszawa 2005, p. 92.

<sup>23</sup> See: *Good Governance in Europe's Integrated Market*, eds. C. Joerges, R. Dehousse, London 2002.

These subsystems often modify the most fundamental legal standards and influence the legal and factual situations of citizens, which entails a weaker legitimisation of the law. Thus, the 'unique' legal determinants of governance in the EU are manifested in the fact that the basic sources of European law are decisions taken by the executives of the member states at meetings of the Council, complemented by the extensive participation of the EU administration (European Commission).

At the onset of European integration, federalist ideas were conveyed quite clearly and openly. In essence, they were based on a belief in the rapid Europeanisation of societies, accompanied by a shift of allegiance from the national to the European Community level. However, this process has not taken place. According to Majone, the idea of federalism has been replaced by '*cryptofederalism*', which denotes covert efforts to build a federal state using the *fait accompli* method already mentioned above. It is exemplified by the introduction of a common currency or the establishment of new offices such as the High Representative of the Union for Foreign Affairs and Security Policy or the President of the European Council. Many believe that these offices merely keep up the appearance of common objectives in the respective foreign policies of the 28 member states.<sup>24</sup>

The question about the outcome of European integration process is again becoming urgent. It is a question about the target formula and, consequently, the choice of corresponding political, legal and economic instruments. However, half a century into the history of the European Community, we more or less realise that it is up to the citizens, not the political elites, to answer this question. Actually, perhaps it will take a real threat to the very existence of the Union that might bring about a broader reflection and true democratisation of the EU structures.<sup>25</sup>

The European Union has two fundamental sources of legitimisation: the EU member states and the citizens. Throughout the history of European integration, what the political elites have regarded as merely a means to effect further, bolder changes has often turned out to be the maximum that the societies are willing to accept.<sup>26</sup> However, the EU's dynamics of searching for legitimisation and responsibility for both internal and external actions is changing. Europe's distinctive characteristics arise from the fact that its

---

<sup>24</sup> G. Majone, *Europe as...* op.cit., p. 72.

<sup>25</sup> J. Habermas, *Die Krise der Europäischen...* op.cit., p. 42.

<sup>26</sup> R. Grzeszczak, *Legitymizacja demokratyczna Unii Europejskiej. Ewolucja procesu legislacyjnego i rola parlamentów narodowych (The EU's Democratic Legitimacy. Evolution of the Legislative Process and the Role of National Parliaments)* in: *Suwerenności ponadnarodowość a integracja europejska (Sovereignty, Supra-nationality and European Integration)*, ed. J. Kranz, Warszawa 2006, p. 205.



nation states have achieved their highest level of development while being members of the EU, and that the EU itself has created a supranational structure, with institutions entrusted with extensive powers. Should such a European Union demonstrate a different basis of legitimisation as compared to national bodies? Among scholars, there are both advocates<sup>27</sup> and opponents<sup>28</sup> of this different, functional basis of legitimisation of the EU.

Kelemann refers to this particular legitimisation of the EU as ‘eurolegalism’, describing it as a particular strategy for managing integration-related affairs. Pursuant to this strategy, the EU uses different regulations within the particular national systems to implement common rules. This concept is based on the results and the effectiveness of specific political decisions (political functionalism). The formation of the internal market and the monetary union most distinctly reflect the paradigm of integration priorities.<sup>29</sup>

The question remains open whether the European Union will succeed in legitimising itself, particularly considering the growing lack of trust in the European project as well as the re-nationalisation of policies that have been common so far.

### **3. Paradox of globalisation: strengthening of integration tendencies**

Globalisation encompasses fields such as law, economics, politics, technology, culture, and ideas, where different economies, legal systems or cultural values overlap and become similar to one another.<sup>30</sup> Globalisation consists of objective, transnational processes and phenomena, leading to the internationalisation of various intermingling areas as a result of technological and civilisational progress on the one hand, and the accompanying deliberate political responses that bring down various kinds of barriers and on the other. Globalisation develops, to a considerable degree, without or even against the will of the nation states. However, they are forced to respond to today’s

---

<sup>27</sup> G. Majone, *Europe’s democratic deficit: the question of standards*, “European Law Review” No. 4/1998, p. 5.

<sup>28</sup> D. Wincott, *National States, European Union and Changing Dynamics in the Quest for Legitimacy in: Accountability and Legitimacy in the European Union*, eds. A. Arnall, D. Wincott, Oxford 2002, p. 487.

<sup>29</sup> R.D. Kelemen, *Eurolegalism... op.cit.*, p. 36.

<sup>30</sup> I. Clark, *Globalization and Fragmentation*, Oxford 1997, pp. 20–21; *Globalisation and European Integration. Critical Approaches to Regional Order and International Relations*, eds. P. Nousios, H. Overbeek, A. Tsolakis, Oxon-New York 2012, p. 18.

challenges in both the internal and external dimensions.<sup>31</sup> In consequence, integration gains more significance and appeal. By joining their forces, whether economic or political, the nation states are able to respond to the challenges of globalisation more effectively.

A peculiar paradox occurs in this global balance of power. In international relations, globalisation causes a sudden increase in the number of actors (entities), and strengthens the constitutionalisation of international law.<sup>32</sup> Regardless of whether reforms and new challenges are described using the unclear but currently very popular 'language of globalisation', or whether tendencies and new paradigms are distinguished, it is evident that the current order based on the central role of nation states will soon come to an end.<sup>33</sup> Member states are no longer capable of coping with challenges on their own due to the globalisation of the world economy, uneven demographic growth, problems of illegal immigration and the associated conflicts between various cultures, as well as the issues of climate change, environmental and energy security, or terrorism. Thus, the globalisation processes are the reason why nation states are quite open to regional integration processes.<sup>34</sup> The essence of the paradox mentioned above is that in order to perform its functions effectively and retain its independence, a nation state is forced to become part of the international linkages and to participate in globalisation to the greatest extent possible.<sup>35</sup>

#### **4. Political and legal narratives about the European Union in the time of crisis**

The economic crisis has exacerbated the mutual distrust among the EU member states, which is a major hindrance to European integration. In many

---

<sup>31</sup> J. Kranz, *Suverenność w dobie przemian* ((*Sovereignty in the Time of Changes*)) in: *Suverenności ponadnarodowość a integracja europejska* (*Sovereignty, Supra-nationality and European Integration*), ed. J. Kranz, p. 15.

<sup>32</sup> J. Klabbers, A. Peters, G. Ulfstein, *The Constitutionalization of International Law*, Oxford 2009, p. 13; J. Habermas, *Die Krise der Europäischen...*, op.cit., p. 97.

<sup>33</sup> D. Wincott, *National States...* op.cit., p. 488.

<sup>34</sup> A. von Bogdandy, *Globalization and Europe: How to Square Democracy, Globalization, and International Law*, "European Journal of International Law" Vol. 15(5)/2004, p. 885; *The Politics of the Globalization of Law. Getting from Rights to Justice*, ed. A. Brysk, New York-Oxon 2013, pp. 14 and ff.

<sup>35</sup> J. Barcz, *Pojęcie suwerenności w świetle współzależności między sferą ponadnarodową i państwową* (*The notion of sovereignty in light of the interaction between the State and supra-national spheres*) in: *Suverenności ponadnarodowość a integracja europejska* (*Sovereignty, Supra-nationality and European Integration*), ed. J. Kranz, pp. 53–63.

respects, the crisis has called into question the general belief in Europe's common destiny.

The EU, in a sense, is a moving target for both political and legal concepts. The theoreticians and visionaries of the last decade, particularly Joseph Weiler, Jürgen Habermas, Fritz Scharpf and Giandomenico Majone, presented models and possibilities for the development of Europe in the time of crisis, as well as visions of Europe's future after the crisis. In the 21<sup>st</sup> century, the European Union has become associated not only with integration, consolidation, harmonisation and unification, but also with disintegration and flexibility. Lawyers see the EU as 'an international legal experiment'<sup>36</sup>, a collective entity situated 'between' a traditional nation state and an international organisation,<sup>37</sup> or an entity with a cosmopolitan constitutional order.<sup>38</sup>

As indicated by Weiler and Trachtman, the concept of European constitutionalism, represented both in scholarship and in the judgements of the Court of Justice of the EU, involves the transition from a Union based on an international law order to a Union having its 'constitutional charter' and governed by its own autonomous constitutional law. The signs of this transition would primarily include formulation of the doctrine of the supremacy of EU law, the direct and indirect effect principles, establishing supranational bodies operating alongside intergovernmental bodies, adoption of the Charter of Fundamental Rights of the European Union as the foundation of the EU's legal system, and creating a mechanism for the protection of these rights.<sup>39</sup>

General reflections concerning the legal character of the EU are accompanied by references to various legal categories that can be applied to it, e.g. an international organisation, an association of sovereign states, a federation-like association, a community, a political and economic union of states, a supranational organisation, a confederation, a federation, a partial federation, a democratic system of states and citizens, or a post-modern state.<sup>40</sup>

The various remedial measures taken in the EU can be divided into those aimed at achieving results as fast as possible (short-term measures) and those aimed at protecting the EU against crisis in the future (long-term measures). All the measures taken essentially boil down to attempts to boost the

---

<sup>36</sup> G. de Burca, B. de Witte, *The Delimitation of powers between the European Union and its Member States* in: *Accountability and Legitimacy in the European Union*, eds. A. Arnall, D. Wincott, Oxford 2007, p. 192.

<sup>37</sup> *Europe's Constitutional Mosaic*, op.cit., p. 404.

<sup>38</sup> D. Halberstam, E. Stein, *The United Nations, the European Union, and the King of Sweden: Economic Sanctions and Individual Rights in a Plural World Order*, "Common Market Law Review" No. 46/2009, p. 60.

<sup>39</sup> J.H.H. Weiler, J.P. Trachtman, *European Constitutionalism and Its Discontents*, "Northwestern Journal of International Law & Business" Vol.17(1)/1997, p. 356.

<sup>40</sup> See: A. Rosas, L. Armati, *EU Constitutional Law. An introduction*, Oxford 2012, pp. 7–19.

economy.<sup>41</sup> However, in view of the threats to the essence of the integration process – and the economic union itself – it turns out that this diversity often translates into very different recipes for combating the crisis.

Some indicate the need for greater independence of the member states, and emphasise the role of the nation state in combating crises. Others mention the benefits of cumulative efforts and the supremacy of joint action separated from particular national interests. With each consecutive crisis, both the supporters of strong and, to the extent possible, complete integration, and the proponents of returning to the ‘Europe of Fatherlands’ seem to solidify their arguments and become more entrenched in their views.<sup>42</sup> And both sides make some valid points.

Combating the economic crisis is not a matter of taking a few more or less bold decisions. It is a process of (re)building the internal trust and, even more importantly, the external trust, that is the trust of investors, businessmen and states outside the EU. This process is based on a consistently followed ideology. The European Union does not lack ideas; on the contrary, it struggles with the rapid accumulation of ideas, which results from, among other factors, the varying degrees of integration within the EU itself.

The EU member states have shown varying degrees of intensity of integration for several years. From the beginning, this phenomenon has been described using various formulations. Most of them, such as ‘multi-speed Europe’, ‘*Europa a la carte*’, ‘variable geometry Europe’, ‘core Europe’ or ‘Europe of concentric circles’, describe the existing forms of variation and stress the political dimension of flexibility, giving more or less emphasis to either the positive or negative aspects.<sup>43</sup> Some of them highlight the need and significance of achieving common integration goals, though in various time frames, while others legitimise cherry-picking from among integration policies. Differences in the EU concern, for example, membership in the Schengen zone, accession to stage three of the monetary union and, consequently, adoption of the common euro currency, as well as the implementation of EU policies, including the freedoms of the internal market. These are permanent or temporary exemptions with various legal natures. Although the member states, in principle, may not cherry-pick from among EU poli-

---

<sup>41</sup> See also: N. Moloney, *EU Financial Market Regulation after the Global Financial Crisis: “More Europe” or More Risks?*, “Common Market Law Review” No. 47(5)/2010, p. 1317.

<sup>42</sup> See: S. Verhelst, *The reform of European Economic Governance: towards a sustainable Monetary Union?*, Egmont Paper, No. 47/June 2011, Egmont The Royal Institute for International Relations, Brussels, p. 66; see also: D. Adamski, *Europe’s (misguided) constitution of economic prosperity*, “Common Market Law Review” No. 50(1)/2013, pp. 47–85.

<sup>43</sup> For a broad discussion on the subject, see e.g. G. de Burca, J. Scott, *Constitutional Change in the European Union. From Uniformity to Flexibility*, Oxford 2000.

cies, it is possible to complement them with additional forms of cooperation. For example, according to the ‘*Europa a la carte*’ concept, the choice of policies depends on the capabilities and will of a particular state. The notion of concentric circles is linked with the concept of a European core, consisting of the model EU states, surrounded by the less integrated members (e.g. United Kingdom, Denmark), then by countries such as Switzerland or the members of the European Economic Area, and finally by countries associated with the EU.

The greatest variation can be seen in the status of the EU member states within the currency union, where some countries belong to the Eurozone, some are subject to temporary derogations, while others have been granted permanent derogations. The diversity is even greater since there are considerable differences between the Eurozone members themselves with respect to their financial efficiency, and the EU member states have various approaches to the common currency and remedial measures to be taken with respect thereto in times of crisis, ranging from supporting decisive action to advocating extremely restrained positions.<sup>44</sup>

In 2012, the idea of a ‘closer fiscal union’ emerged. However, its implementation will require changes at the level of primary law<sup>45</sup> and the adoption of additional measures in the secondary law of the EU. The method adopted here resembles the ‘*Europe a la carte*’ formula, proposed years ago, according to which each member state could choose its preferred scope of obligations from the proposed EU ‘menu’. In consequence, the influence and role of a particular member state in the EU decision-making process would correspond to its adopted scope of responsibility for common affairs.<sup>46</sup>

The EU is actually experiencing an outpouring of ideas for combating the crisis. Most of them, however, concern the core of the EU, i.e. the EMU member states. As the economic situation in the EU has shown signs of stabilisation since 2012, the European Council has been developing exit strategies for the currently conducted economic and financial stimulation policies. These exit strategies are supposed to be implemented as soon as the economic recovery solidifies. However, the unclear interaction among European institutions,

---

<sup>44</sup> See: J. Barcz, *Instrumenty międzyrządowe dotyczące kryzysu w strefie euro a spójność Unii: możliwość przystąpienia państw członkowskich UE spoza strefy euro (Intergovernmental instruments concerning the Euro zone crisis and the coherence of the EU: the possibility for member states outside the Euro zone to join)* in: *Traktat z Lizbony – wybrane zagadnienia (The Treaty of Lisbon: selected issues)*, eds. M.M. Kenig-Witkowska, R. Grzeszczak, Warszawa 2012, pp. 105–128.

<sup>45</sup> *Editorial comments, Some thoughts concerning the Draft Treaty on a Reinforced Economic Union*, “Common Market Law Review” No.49(1)/2012, p. 4.

<sup>46</sup> J. Barcz, *Instrumenty międzyrządowe...*, op.cit., pp. 103–114.

coupled with the lack of consent among the member states with regard to the proposed reforms and the lack of vision make it very difficult to predict how the currently proposed measures will be implemented in the future.<sup>47</sup>

## 5. Europe's revival

Europe's revival is a function of at least two interlinked elements: firstly, good governance within the powers granted to the EU, and secondly, its economic efficiency.<sup>48</sup> Thus, politics and law are allied with the economy. In the EU system, an evident transition is occurring from the classical model of government, delimited by state borders, to governance where the law-making power is divorced from institutions operating within a nation state.<sup>49</sup> The classical decision-making method determined by hierarchical relationships is giving way to a method emphasising mutual links and relationships.<sup>50</sup>

Unfortunately, the crisis shows that it is very easy to undermine public trust in the EU institutions. In times of danger and insecurity, societies turn to national institutions, even though these operate in accordance with the EU law and use EU funds. As a result, the relationship between the EU and its citizens is extremely fragile. It is very possible that, in the event of difficulties, extreme groups may succeed in taking power (e.g. in Greece), and there will be a turn toward an individualistic and, in a sense, nationalistic 'us and them' way of thinking. This 'national perspective' often obscures the common perspective. The societies of the EU member states draw a lot of benefits from the single internal market, but they are used to high standards of living and any deterioration in these standards gives rise to opposition against those persons currently in power and, in turn, against the EU as a whole.

The revival of Europe means adopting the community perspective based on loyalty and solidarity as well as defining the political form towards which the integration processes are supposed to lead. In view of the economic and fiscal policy crisis, it is necessary to create effective and legitimised institutional structures. A common financial government (a cosmopolitan economic government<sup>51</sup>) supervising the budgets of the Eurozone member states is

---

<sup>47</sup> M. Giovanoli, D. Devos (Eds.), *International Monetary and Financial Law – The Global Crisis*, Oxford 2010, p. 621.

<sup>48</sup> J. Gaspers, *The EU's position as a global foreign policy player has been impacted by the debt crisis*, European Council on Foreign Relations, European Foreign Policy Scorecard 2012, 12.02.2012, at: <https://matisak.wordpress.com/2012/02/12/the-eus-position-as-a-global-foreign-policy-player-has-been-impacted-by-the-debt-crisis>

<sup>49</sup> See: *Good Governance in Europe's Integrated Market*, op.cit.

<sup>50</sup> P. Craig, G. de Búrca, *EU Law. Text. Cases and Materials*, Oxford 2011, pp. 144 and ff.

<sup>51</sup> J. Habermas, *Die Krise der Europäischen...* op.cit., p. 39.

necessary to manage the economy of the internal market, particularly that of the monetary union.<sup>52</sup> The matter is extremely delicate and difficult. Since an economic government would replace national governments with regard to their budget policies, the question arises as to how (if at all) it would be controlled by the national parliaments. The magnitude of the challenges involved can be seen in the concept of a fiscal union that, although formally outside the EU structures, comes close to the model of a European economic government.

In the time of economic crisis, observing the fundamental principles of integration and counteracting the threat of protectionism and other forms of national egoism and populism have become more than a mere slogan.<sup>53</sup> The crisis and the resulting internal situation in some countries should not become a pretext for attacking the foundations of the internal market and the EU Treaty freedoms. Furthermore, the crisis should not be exploited, particularly by politicians, when resolving matters not directly associated with the Eurozone turmoil, such as the EU enlargement policy, the European Neighbourhood Policy or the Common Security and Defence Policy.

## Conclusions

While some time ago questions were asked about the future of the Eurozone or the future of Greece, now it has become clear that these questions pertain to the EU *per se*, and not just its specific sectors. The EU institutions, member states and, most importantly, the EU citizens themselves have become aware of the gravity of the problem. This creates a rare opportunity to take measures based on real democratic legitimisation under the new structural conditions of democracy and the rule of law in the EU.<sup>54</sup> However, it is not easy to do so, since so far European integration has been a project of the elites, based on a dogmatic inevitability of integration rather than the will of the people.

The unprecedented crisis in the first two decades of the 21<sup>st</sup> century teaches us that the EU needs serious and lasting institutional and procedural

---

<sup>52</sup> P.J. Rhys Morgan, *Euro Crisis. Aggregate Demand Control is European Single Currency Weakness*, Morganist Economics 2012, pp. 32 and ff and pp. 12 and ff; see also D. Adamski, *National power games and structural failures in the European macroeconomic governance*, "Common Market Law Review" No. 49(4)/2013, p. 1319.

<sup>53</sup> M.P. Maduro, L. Azoulai, *Introduction. The Past and Future of EU Law*, Oxford 2010, p. XVIII.

<sup>54</sup> See especially: P.F. Kjaer, *Between Governing and Governance*, Oxford 2010, p. 2; M. Gallagher, M. Laver, P. Mair, *Representative Government in Modern Europe*, London 2011, p. 8.

changes. It is a paradox that the crisis offers an opportunity for increasing the sense of solidarity among the people of the EU member states. If the EU weathers the crisis, the trust in its economy may rise, thus strengthening its role as a global player. However, before the EU manages to snatch success from the jaws of crisis and overcome the stagnation, it has to complete the socially and politically difficult path of reforms, i.e. revamp its institutional order.<sup>55</sup>

There is no doubt that the decision-making process will be centred around the Eurozone, from which, perhaps, its currently least efficient members will be excluded to make room for new, more efficient ones. The process will probably continue regardless of whether the Eurozone retains its close ties with the European Union or 'separates itself' from the Union and, as a result, initiates a fragmentation process.<sup>56</sup>

The crisis has certainly made it very clear that economy needs more economics and less politics. The changing times necessitate adjustments to the code of integration. The deliberations in this article are haunted by the question of the expected outcome of the integration processes. This question is as old as the Communities themselves. However, it has yet to be answered. A return to the Europe of the time when the Communities were being established seems impossible and is surely not advisable. Too much has changed since then: the economic environment, the world itself, and the role played by Europe as a global actor. Politics are different, and so are the people.

---

<sup>55</sup> *Before and After the Economic Crisis: What Implications for the 'European Social Model'?*, ed. M.A. Moreau, Cheltenham 2011, p. 48.

<sup>56</sup> J. Barcz, *Instrumenty międzyrządowe...*, op.cit., p. 113.