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## **Sweden's Accession to the Euro Area and the Principle of Sincere Cooperation in the European Union**

**Abstract:** *While Sweden is one of the EU Member States outside the euro area, in terms of both its legal and economic situation its position in the context of membership in the Economic and Monetary Union is special and different from both Denmark and the UK, as well as the six EU Member States from Central Europe which remain outside the monetary union. This study presents Sweden's policy concerning its membership in the EMU in the context of the principle of sincere cooperation in the EU. In the first part, the legal and political context of Sweden's membership in the EMU is briefly outlined. Sweden has no legal basis to permanently remain outside the euro area. The second part is devoted to the question of to what extent Sweden fulfills the conditions of membership in the euro area – it has met the economic conditions for membership in the monetary union exceptionally well. In the third part, the principle of sincere cooperation is discussed in light of provisions of the treaties, EU legal doctrine, and the jurisprudence of the Court of Justice of the EU. Taking this into account, Sweden's policy towards membership in the EMU raises very serious doubts about whether it is consistent with one of the basic principles on which the functioning of the EU is based, i.e. the principle of sincere cooperation.*

**Keywords:** the principle of sincere cooperation, Sweden, euro area, Economic and Monetary Union

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## **Introduction**

Out of the twenty eight Member States of the European Union (EU), presently nineteen are members of the Economic and Monetary Union (EMU). Among the nine states outside the euro area, in terms of their legal status concerning membership in the EMU one group includes Denmark and the United Kingdom. These two states reserved the right to not join the third stage of the EMU in their relevant protocols annexed to the Treaty on European Union (Treaty of Maastricht; TEU). The second group comprises the six EU Member States from Central and Eastern Europe, who do not meet all the conditions (convergence criteria) – especially the economic ones – of membership in the euro area (Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania).

The remaining EU state which does not belong to the monetary union is Sweden. In terms of both its legal and economic situation, Sweden's position in the context of membership in the EMU is special and different from both Denmark and the UK as well as the remaining six 'new' EU Member States outside the monetary union. Because of Sweden's specific situation and its policy towards membership in the euro area it is worth examining its position in the context of one of the main principles on which the cooperation between the EU and the Member States is based, namely the principle of sincere cooperation.

Thus the purpose of this study is to present the situation of Sweden and its policy concerning its membership in the EMU in light of the principle of sincere cooperation. In the first part the legal and political context of Sweden's membership in the EMU is briefly outlined. The second part is devoted to the issue to what extent Sweden fulfils the conditions of membership in the euro area. In the third part, in light of provisions of the treaties, EU legal doctrine and the jurisprudence of the Court of Justice of the EU the principle of sincere cooperation is examined. The final part contains conclusions.

### **1. Sweden and the Economic and Monetary Union – the legal and political context**

When in the early 1990s negotiations were finalized over the content of the TEU (in its Maastricht version), which constitutes the basis for implementation of the EMU, Sweden was not yet a member of the European Communities. As a result, it was of course not possible to

adopt similar protocols attached to the TEU as in the cases of Denmark<sup>1</sup> and the United Kingdom,<sup>2</sup> on the basis of which these states are not obliged to participate in the third stage of the EMU. In the accession treaty (signed in 1994) concerning the accession to the EU of Norway, Austria, Finland and Sweden (due to the negative outcome of its referendum Norway has not ratified this treaty and has not acceded to the EU), there are no provisions which would permit Sweden to not proceed to the third stage of the EMU. According to Article 2 of the Act concerning the conditions of accession, 'from the date of accession, the provisions of the original Treaties and the acts adopted by the institutions before accession shall be binding on the new Member States and shall apply in those States under the conditions laid down in those Treaties and in this Act'.<sup>3</sup> Despite this, the Swedish government declared that the final decision on membership in the monetary union belongs to the Swedish Parliament.<sup>4</sup>

In preparation for their decision, in October 1995 a committee of the government of Sweden (Swedish Government Commission on the EMU) was appointed, consisting of five economists and three political scientists, and headed by Lars Calmfors. The Commission's task was to examine the following issues: 1) the overall consequences of implementation of the monetary union; 2) the effects for Sweden arising from the membership in and remaining outside the monetary union; 3) an appropriate economic policy for Sweden, both in the case of accession and a decision not to join a monetary union; 4) adjustments in the exchange rates between members and non-members of the monetary union.<sup>5</sup> The report, prepared by the

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<sup>1</sup> Protocol on certain provisions relating to Denmark, Treaty on European Union, OJ 1992 C 191/1.

<sup>2</sup> Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland, Treaty on European Union, OJ 1992 C 191/1.

<sup>3</sup> Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Kingdom of Norway, the Republic of Austria, the Republic of Finland, the Kingdom of Sweden. Act concerning the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union. concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded, OJ 1994 C 241/9.

<sup>4</sup> L. Calmfors, *The consequence of the monetary union – an introduction*, "Swedish Economic Policy Review", No. 1/1997, p. 3.

<sup>5</sup> *Ibidem*, pp. 3–4.

Commission, was issued in November 1996 in the Swedish language,<sup>6</sup> and an updated English version of the report was released in 1997.<sup>7</sup>

In 1997, the Swedish government proposed to Parliament the adoption of an opinion according to which Sweden should not introduce the single currency from the start of the third stage of EMU.<sup>8</sup> In December 1997, the Swedish parliament decided that Sweden would not join the monetary union, but would adopt a ‘waiting and watching’<sup>9</sup> strategy, and that the Swedish currency would not be included into the Exchange Rate Mechanism of the European Monetary System.<sup>10</sup> This decision meant that the convergence criteria would deliberately not be met.

In consequence of the decisions and actions of the Swedish authorities, the Council of the EU, in its decision of 3 May 1998, stated that the law in Sweden referring to the functioning of the central bank is not in accordance with the provisions of the then Arts. 107 and 108 of the Treaty establishing the European Community and the Statute of the European System of Central Banks, and that the Swedish currency has never participated in the ERM II, and that therefore Sweden does not fulfil the conditions necessary for adoption of the single currency.<sup>11</sup>

Following the decision of the Council Sweden is, in accordance with the present Art. 139.1 of the Treaty on the Functioning of the European Union (TFEU), ‘a Member State with a derogation’. Such a state of affairs, that is remaining outside the euro area, is meant to be temporary (with the exception of the UK and Denmark which have separate protocols). A state

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<sup>6</sup> L. Calmfors, H. Flam, N. Gottfries, M. Jerneck, R. Lindahl, J. Haalnad Matlary, C. Nordh Berntsson, E. Rabinowicz and A. Vredin, *Calmforsrapporten*, SOU, Stockholm 1996, 158.

<http://www.regeringen.se/sb/d/108/a/3803> (last visited June 14, 2015).

<sup>7</sup> L. Calmfors, H. Flam, N. Gottfries, M. Jerneck, R. Lindahl, J. Haalnad Matlary, C. Nordh Berntsson, E. Rabinowicz and A. Vredin, *EMU – A Swedish Perspective*, Amsterdam 1997.

<sup>8</sup> Government Bill 1997/98:25 on Sweden and Economic and Monetary Union, Stockholm, October 2, 1997, p. 4; <http://www.regeringen.se/content/1/c4/36/82/6f5eccd1.pdf> (last visited 14.06.2015).

<sup>9</sup> S. Czech, *Eurooutsider z wyboru. Przyczyny i następstwa odrzucenia euro przez Szwecję (Eurooutsider by choice. Causes and consequences of the rejection of the euro by Sweden)* in: *Systemy gospodarcze i ich ewolucja. W kierunku jednolitego europejskiego obszaru walutowego (Economic systems and their evolution. Towards a single European currency area)*, S. Swadźba (ed.), Katowice 2008, p. 324.

<sup>10</sup> U. Söderström, *Reevaluating Swedish Membership in the European Monetary Union. Evidence from an Estimated Mode* in: *Europe and the Euro*, A. Alesina, F. Giavazzi (eds.), Chicago 2010, p. 379.

<sup>11</sup> Council Decision (EC) 1998/317 of 3 May 1998 in accordance with Article 109(j) of the Treaty, OJ 1998 L139/30.

with a derogation is obliged to seek to meet the convergence criteria, and in accordance with Art. 140.1 TFEU at least every two years, or at the request of a state with a derogation, the Commission and the ECB shall report to the Council 'on the progress made by the Member States with a derogation in fulfilling their obligations regarding the achievement of economic and monetary union'. The exchange rate policy of the state with a derogation is also a 'matter of common interest' (Art. 142 TFEU).

A very important event in the context of Sweden's possible membership in the EU monetary union was the referendum held on 14 September 2003, in which Swedish citizens were asked whether their state should join the euro area. With a turnout of 82.6 per cent, the majority (55.9 per cent) voted 'against' the accession of Sweden to the EMU, while 42 per cent were 'for' and 2.1 per cent of the votes were invalid.<sup>12</sup> It is worth noting that in 2003, before the referendum, the governor of the central bank of Sweden (Riksbank) Lars Heikensten recalled that in 1994 and 1997 the Swedish central bank opted for Sweden's membership in the monetary union because, according to this institution, the benefits would outweigh the negative effects of such a decision.<sup>13</sup>

## 2. Meeting the convergence criteria by Sweden

In accordance with the provision of Art. 140.1 TFEU, the Commission and the European Central Bank prepare progress reports on countries with a derogation in meeting the convergence criteria. Based on the content of these reports and the Eurostat data, Table 1 contains data showing to what extent the conditions of participation in the third stage of EMU have been met by Sweden since 1998 (the aforementioned Council decision 98/317/EC of 3 May 1998 was taken on the basis of the results achieved by the EU countries in 1997) and up until 2013.

As can be seen from the data in Table 1, the policy of Sweden in relation to membership in the EU monetary union has remained consistent, that is, Sweden has still not adapted its legislation on the functioning of the central bank to meet the EU requirements, and the Swedish crown has

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<sup>12</sup> *Referendum on the introduction of the euro 2003*, Stockholm 2004, p. 9.

[http://www.scb.se/statistik/ME/ME0113/2003A01/ME0113\\_2003A01\\_BR\\_02\\_ME08-SA0401.pdf](http://www.scb.se/statistik/ME/ME0113/2003A01/ME0113_2003A01_BR_02_ME08-SA0401.pdf) (last visited 15.06.2015).

<sup>13</sup> On the political determinants of 2003 referendum see, for example: N. Aylott, *Lessons Learned, Lessons forgotten: The Swedish Referendum on EMU of September 2003*, "Government and Opposition" No. 40(4)/2005, pp. 540–564.

*Swedish Monetary Policy and EMU*, p. 3; [http://www.riksbank.se/Upload/Dokument\\_riksbank/Kat\\_publicerat/Broschyrer/penemu\\_e.pdf](http://www.riksbank.se/Upload/Dokument_riksbank/Kat_publicerat/Broschyrer/penemu_e.pdf) (last visited 15.06.2015).

not been included into the ERM II. At the same time, in those periods for which data are available the Swedish currency exchange rate against the euro was relatively stable and within a range  $\pm 15$  per cent to the reference value. In addition, in the context of the topic of this study Sweden's ability to meet the other convergence criteria should be noted and particularly strongly emphasized.

Over the entire period since 1998 to 2013 Sweden has maintained a high level of price stability – its inflation rate exceeded the reference value (as calculated in accordance with the TFEU for control over how the EU Member States meet the criteria for membership in the third stage EMU) only once, in 2009. Sweden's situation with reference to the criterion of long-term interest has been even better – not once in the years 1998 to 2013 has its level exceeded the reference value, and mostly it has been well below this figure.

**Table 1. The meeting by Sweden of the convergence criteria, 1998–2013**

Year/ crite- rion	Price stability	Public finance			Exchange rate		Long- term rate of interest <sup>5</sup>	Legal compatibi- lity of the central bank with EU law
	HICP inflation <sup>1</sup>	Exist- ence of exces- sive deficit <sup>2</sup>	Sur- plus(+)/ deficit(-) of public finance sector <sup>3</sup>	Gross pub- licdebt <sup>3</sup>	Partici- pation in the ERM II	Ex- change rate to euro <sup>4</sup>		
1998	1.0	No	+1.9	70.5	No	n.a.	5.0	No
1999	0.6 (ref. value: 2.4% <sup>6</sup> )	No	+1.5	65.0	No	n.a.	5.0 (ref. value: 7.2% <sup>6</sup> )	No
2000	1.3	No	+3.7	55.3	No	n.a.	5.4	No
2001	2.7 (ref. value: 3.3% <sup>7</sup> )	No	+4.8	55.9	No	n.a.	5.1 (ref. value: 7.0% <sup>7</sup> )	No
2002	2.0	No	+0.0	52.6	No	n.a.	5.3	No
2003	2.3 (ref. value: 2.4% <sup>8</sup> )	No	+0.3	52.0	No	n.a.	4.6 (ref. value: 6.4% <sup>8</sup> )	No
2004	1.0	No	+1.8	50.5	No	n.a.	4.4	No
2005	0.8 (ref. value: 2.8% <sup>9</sup> )	No	+3.0	50.4	No	n.a.	3.4 (ref. value: 6.2% <sup>9</sup> )	No

2006	1.5	No	+2.3	45.9	No	0.3	3.7	No
2007	1.7 (ref. value: 3.2% <sup>10</sup> )	No	+2.5	40.6	No	0.0	4.2 (ref. value: 6.5% <sup>10</sup> )	No
2008	3.3	No	+2.5	38.3	No	-3.9	3.9	No
2009	1.9 (ref. value: 1.0% <sup>11</sup> )	No	-0.5	42.3	No	-10.4	3.3 (ref. value: 6.0% <sup>11</sup> )	No
2010	1.9	No	+0.3	39.4	No	10.2	2.9	No
2011	1.4	No	+0.3	38.4	No	5.3	2.6	No
2012	0.9 (ref. value: 3.1% <sup>12</sup> )	No	-0.6	38.3	No	3.6	1.6 (ref. value: 5.8% <sup>12</sup> )	No
2013	0.3 (ref. value: 1.7% <sup>13</sup> )	No	-1.1	40.6	No	+8.7 – -1.6 <sup>14</sup>	2.2 (ref. value: 6.2% <sup>13</sup> )	No

<sup>1</sup> The average annual percentage change.

<sup>2</sup> This refers to whether the state was, during at least part of the year, covered by the Council decision on the existence of an excessive deficit..

<sup>3</sup> As per cent of GDP.

<sup>4</sup> The average annual percentage change. A positive number means an appreciation of the currency, a negative one – depreciation.

<sup>5</sup> The average annual percentage change.

<sup>6</sup> Reference value between April 1999–March 2000.

<sup>7</sup> Reference value between May 2001–April 2002.

<sup>8</sup> Reference value between September 2003–August 2004.

<sup>9</sup> Reference value between November 2005–October 2006.

<sup>10</sup> Reference value between April 2007–March 2008.

<sup>11</sup> Reference value between April 2009–March 2010.

<sup>12</sup> Reference value between April 2011–March 2012.

<sup>13</sup> Reference value between May 2013–April 2014.

<sup>14</sup> Maximum percentage upward and downward deviations of the bilateral exchange rate against the euro from its average level in May 2012 over the period 16 May 2012–15 May 2014.

Source: own compilation on the basis of the documents cited below.<sup>14</sup>

<sup>14</sup> *Convergence Report 2000* (Frankfurt, 2000), <http://www.ecb.europa.eu/pub/pdf/conrep/cr2000en.pdf>; *Convergence Report 2002* (Frankfurt, 2002), <http://www.ecb.europa.eu/pub/pdf/conrep/cr2002en.pdf>; *Convergence Report. December 2004* (Frankfurt, 2004), <http://www.ecb.europa.eu/pub/pdf/conrep/cr2004en.pdf>; *Convergence Report. December 2006* (Frankfurt, 2006), <http://www.ecb.europa.eu/pub/pdf/conrep/cr200612en.pdf>; European Central Bank, *Convergence Report. May 2008* (Frankfurt, 2008), <http://www.ecb.europa.eu/pub/pdf/conrep/cr200805pl.pdf>; European Central Bank, *Convergence Report. May 2010* (Frankfurt, 2010), <http://www.ecb.europa.eu/pub/pdf/conrep/cr201005pl.pdf>; European

In the years 1998–2013 the Swedish economy was also characterized by a very strong performance in terms of public finances. Only three times throughout this period did the country have to deal with a deficit in the public finance sector – i.e. in 2009, 2012 and 2013. At the same time, the level of these deficits were very slight, at 0.5 per cent, 0.6 per cent and 1.1 per cent respectively of Sweden's GDP, at the time well below the acceptable level of 3 per cent of GDP. In previous years, a surplus in the Swedish public finance sector was typical. Consequently, in the case of Sweden the Council of the EU has at no time ever issued a statement on the existence of an excessive deficit. This state of affairs in the EU is rather exceptional – at this point in time the occurrence of an excessive deficit has been stated by the EU Council 38 times. Except for Sweden, the only other EU Member States which the Council of the EU has not found to have had an excessive deficit are Estonia and Luxembourg.<sup>15</sup> Taking into account that the excessive deficit procedure takes a few years, and in the case of many of the EU Member States was initiated two or even three times, it can be concluded that an excess government deficit, within the meaning of the TFEU (and earlier TEC), was and still is, the norm rather than the exception in the EU. In this respect, it is Sweden that is an exception.

As a consequence of the surpluses within the public finance sector in Sweden in 1998–2013, the level of public debt of the state in relation to its GDP underwent a very substantial decrease – from 70.5 per cent in 1998 to 40.6 per cent in 2013. Thus also in this respect Sweden is an exception in the EU. Even though in 1998–1999 the level of public debt of Sweden exceeded the reference value, this could not have constituted an obstacle to the recognition that Sweden had met this criterion because the Treaty establishing the European Community (TEC) contained a provision that allowed states in which the level of public debt to GDP ratio exceeded the reference value of 60 per cent GDP to join the EMU (indicated in a protocol attached to the TEC).<sup>16</sup> The then Art. 104c(2) of the TEC treaty stated

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Central Bank, *Convergence Report. May 2012* (Frankfurt, 2012), <http://www.ecb.europa.eu/pub/pdf/conrep/cr201205pl.pdf>; European Central Bank, *Convergence Report. June 2014* (Frankfurt, 2014), <http://www.ecb.europa.eu/pub/pdf/conrep/cr201406pl.pdf>; Eurostat data: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tec00127&plugin=1>; <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tsdde410&plugin=1> (last visited 26.06.2015).

<sup>15</sup> [http://ec.europa.eu/economy\\_finance/economic\\_governance/sgp/corrective\\_arm/index\\_en.htm](http://ec.europa.eu/economy_finance/economic_governance/sgp/corrective_arm/index_en.htm) (last visited 20.06.2015).

<sup>16</sup> Protocol on the excessive deficit procedure. Treaty on European Union, OJ 1992 C191/1.

that to become a member of the EMU the public debt ratio to GDP should not exceed the reference value 'unless the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace'. Based on this provision, states in which the public debt ratio to GDP exceeded the reference value (taken into account when the decision to qualify for the EMU was made) have been included in the monetary union. These states were, among others, the following<sup>17</sup>: Belgium: 122.2 per cent; Italy: 121.6 per cent; Greece: 103.4 per cent; Netherlands: 72.1 per cent; Spain: 68.8 per cent; Ireland: 66.3 per cent; Austria 66.1 per cent; Portugal 62 per cent; Germany: 61.3 per cent. Thus, if for the third stage of the EMU states in which public debt exceeded the level of 100 per cent of GDP were qualified, the same decision would have had to be made in the case of Sweden. It is quite evident that Sweden is a state in which the level of public debt has been actually, and very clearly, declining – which exactly meets the criteria in the above-cited former Art. 104c(2) TEC. The best proof of this –which at the same time shows the uniqueness of Sweden in this regard – is in the data on the level of the public debt of the same states in which the public debt exceeded the reference value of 60 per cent of GDP when they were qualified for the third stage of the EMU. In 2013 the level of public debt to GDP of these states was as follows: Belgium: 101.5 per cent; Italy: 132.6 per cent; Greece: 175.1 per cent; Netherlands 73.5 per cent; Spain: 93.9 per cent; Ireland: 123.7 per cent; Austria: 74.5 per cent; Portugal: 129.0 per cent; and Germany: 78.4 per cent.<sup>18</sup> Thus, the level of public debt of these states has decreased significantly only in Belgium, while in other countries it has risen, and in the cases of Greece, Ireland and Portugal the increase was very large.

Taking into account the above data, which shows the extent to which Sweden has fulfilled the conditions for participation in the EU monetary union in the period 1998–2013, we can conclude that Sweden has not only met the economic conditions for accession to the third stage of EMU, but in fact no other EU Member State has come close to its efficient control. Sweden remaining outside the euro area is thus the result of its political decisions not to change its legal regulations concerning the central bank of Sweden and not to include the Swedish currency in the ERM II.

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<sup>17</sup> Council Decision (EC) 1998/317 and Council Decision (EC) 2000/427 of 19 June 2000 in accordance with Article 122(2) of the Treaty on the adoption by Greece of the single currency on 1 January, OJ 2000 L167/19.

<sup>18</sup> Eurostat data:

<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tsdde410&plugin=1> (last visited 25.05.2015).

### 3. The principle of sincere cooperation of the EU Member States in the treaties, doctrine and jurisprudence of the Court of Justice of the European Union and Sweden's membership in the EMU

Taking into account the provisions of the Accession Treaty (on the basis of which Sweden joined the EU), the TFEU, and the fact that Sweden does not have the same legal basis as the UK and Denmark to remain outside the euro area, as an EU Member State Sweden should strive to meet all the convergence criteria and to adopt the single currency. Such actions would be consistent with not only one of the fundamental principles upon which the EU functions, but one that is also the basis of international cooperation regulated by international agreements. Thus this part of the study presents the importance of the principle of sincere cooperation – as resulting from the provisions of the treaties, the EU legal doctrine, and the jurisprudence of the EU Court of Justice – in the context of Sweden's membership in the EMU.

The principle of sincere cooperation is also called in the literature the principle of loyalty and was earlier referred to as the principle of solidarity.<sup>19</sup> However, it seems that the use of the latter term is not justified in the context of Sweden's obligations to join the EMU. The 'principle of sincere cooperation' is included in the TEU (Art. 4.3), whereas Part Five of the TFEU ('External action by the Union') contains the 'Solidarity

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<sup>19</sup> A. Wróbel (ed.), *Wprowadzenie do prawa Wspólnot Europejskich (Unii Europejskiej) (Introduction to the law of the European Communities (European Union))*, Kraków: 2004, p. 79; E.M. Szyszczak and A. Cygan, *Understanding EU Law*, London 2005, p. 61; J. Galster (ed.), *Podstawy prawa Unii Europejskiej. Zarys wykładu (Basics of European Union law. An outline of a lecture)*, Toruń 2006, pp. 250–262; Z. Brodecki, *Traktat o Unii Europejskiej. Traktat ustanawiający Wspólnotę Europejską. Komentarz (Treaty on European Union. Treaty establishing the European Community. A commentary)*, Warszawa 2006, pp. 160–163; M. Herdegen, *Prawo europejskie (European law)*, Warszawa 2006, pp. 72–73; M. Adamczak-Retecka, *Efektywność jako zasada prawa wspólnotowego (Efficiency as a principle of Community law)* in: *Zasady ogólne prawa wspólnotowego (General principles of Community law)*, C. Mik (ed.), Toruń 2007, p. 150; M. Witkowska, *Zasady funkcjonowania Unii Europejskiej (Principles of the European Union)*, Warszawa 2008, p. 215; M. Górski, *Zasada solidarności – obowiązki wynikające dla instytucji Wspólnoty (The principle of solidarity – the obligations for the Community institutions)* in: *Solidarność jako zasada działania Unii Europejskiej (Solidarity as a principle of the European Union)*, C. Mik (ed.), Toruń 2009, p. 123; J. Sozański, *Ogólne zasady prawa a wartości Unii Europejskiej (po traktacie lizbońskim) – studium prawno porównawcze (General principles of law and the values of the European Union (after the Lisbon Treaty) – a study of comparative law)*, Toruń 2012, pp. 224–225; J. Barcz, M. Górka and A. Wyrozumska, *Instytucje i prawo Unii Europejskiej (Institutions and law of the European Union)*, Warszawa 2012, p. 101.

Clause' in Title VII (which consists of only Article 222). The content of this Article relates to completely different aspects of the functioning of the EU (that is, activities, cooperation and mutual assistance of the Union and the Member States in the event of a terrorist attack, or natural or man-made disaster).

Provisions requiring the Member States of the European Communities to loyally discharge their accepted obligations were present already in the founding treaties. Art. 86 of the Treaty establishing the European Coal and Steel Community required Member States to take all appropriate measures, general or specific, to assure the execution of their obligations arising from the decisions and recommendations of the Community institutions, and to facilitate the accomplishment of the Community's aims. In the Treaty establishing the European Economic Community, the obligation to cooperate in good faith was contained in Art. 5: 'Member States shall take all general or particular measures which are appropriate for ensuring the carrying out of the obligations arising out of this Treaty or resulting from the acts of the institutions of the Community. They shall facilitate the achievement of the Community's aims. They shall abstain from any measures likely to jeopardise the attainment of the objectives of this treaty'. Exactly the same wording was included in Art. 192 of the Treaty establishing the European Atomic Energy Community. These cited provisions of the founding treaties of the European Communities remained unchanged until the Treaty of Lisbon. It should be noted that after the entry into force of the Treaty of Amsterdam, the principle of sincere cooperation was included not in Art. 5 TEC, but in Art. 10 of the TEC.

The current provisions concerning the principle of sincere cooperation are similar to those cited above. With respect to cooperation between the EU institutions and the EU Member States, Art. 13.2 TEU states that the EU institutions 'shall practice mutual sincere cooperation'. This aspect of the principle of sincere cooperation, which concerns sincere cooperation between the EU and its Member States, is particularly important in the context of the topic of this study. It explicitly results from Art. 4.3 TEU, which states, that 'pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the treaties'. The same paragraph of Art. 4 TEU imposes on the EU Member States the obligation 'to take any appropriate measures, general or particular, to ensure fulfilment of the obligations arising out of the treaties or resulting from the act of the institution of the Union' (the positive dimension of the principle of sincere cooperation) and 'refrain from taking any measure which

could jeopardise the attainment of the Union's objectives' (the negative dimension of the principle of sincere cooperation).<sup>20</sup> In the context of Sweden's obligations with respect to the EMU, the positive aspect of the principle of sincere cooperation is of particular importance. As has been shown, Sweden fulfils the economic convergence criteria, but does not meet those which are a consequence primarily of a political decision. That is, Sweden has not included the crown to the ERM II and has not revised its law on the operation of the Swedish central bank. Thus if we posit that Sweden is in violation of the principle of sincere cooperation with the EU, this violation concerns the positive dimension of the principle.

Manifestations of the principle of sincere cooperation can also be found in the provisions relating to the Common Foreign and Security Policy (CFSP) and enhanced cooperation. In the framework of the CFSP this concerns the so-called 'constructive abstention from a vote', according to which any member of the Council who abstained from voting on a decision falling within Title V, chapter 2 of the TEU ('Specific provisions on the common foreign and security policy'), is not 'obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position' (Art. 31 TEU). With respect to the principle of sincere cooperation in the context of enhanced cooperation, according to Art. 327 TFEU, the EU countries which do not participate in such cooperation 'shall not impede its implementation by the participating Member States.'

The origins of the principle of sincere cooperation derive from the Roman law principle of good faith (lat. *bona fides*) and the principle that agreements should be kept (lat. *pacta sunt servanda*). As explained, for example, by Jarosław Sozański, the principle of good faith in international public law 'is the principle of fairness and honesty in [...] carrying out all obligations'<sup>21</sup> and 'is considered the most important general principle of international law, which was also confirmed by the Hague Tribunal'.<sup>22</sup> In international law, the duty to fulfil accepted obligations in accordance with the principle of good faith can be found, for example, in Art. 2.2 of the Charter of the United Nations<sup>23</sup> and in Art. 26 of the Vienna Convention

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<sup>20</sup> For more, see J. Barcz (ed.), *Ustrój Unii Europejskiej (European Union's system)*, Warszawa 2010, pp. 1-99-107.

<sup>21</sup> J. Sozański, op.cit., p. 75.

<sup>22</sup> Ibidem.

<sup>23</sup> *Karta Narodów Zjednoczonych (Charter of the United Nations)*, Dziennik Ustaw Rzeczypospolitej Polskiej (Journal of Laws) 1947, No. 23, Item 90.

on the Law of Treaties of 1969,<sup>24</sup> the latter of which provides that 'every treaty in force is binding upon the parties and must be performed by them in good faith'. In the context of the topic of this article, it is also worth recalling the content of Art. 27 of the Convention, which refers to the fact that a party to an international agreement 'may not invoke the provisions of its internal law as justification for its failure to perform a treaty'. The principle of good faith has also been invoked many times by the International Court of Justice.<sup>25</sup> It is worth noting that while the principle of sincere cooperation is considered to be a principle of the EU political system, such principles as *pacta sunt servanda* or *bona fides* are general principles of law.<sup>26</sup> Thus Koen Lenaerts and Piet Van Nuffel wrote (before entry into force of the Treaty of Lisbon) that 'since the duty to co-operate in good faith is an expression of Community solidarity, it is not the same as the principle of international law that states are required to implement in good faith the treaties which they conclude'.<sup>27</sup>

At the beginning of this section it is also worth noting that within the judgments of the Court of Justice of the EU (ECJ) different words and phrases are used with respect to the principle of sincere cooperation. For example, in the judgments in cases 230/81,<sup>28</sup> 2/88,<sup>29</sup> C-341/95<sup>30</sup> and in the joined cases C-36/97 and C-37/97,<sup>31</sup> the Court of Justice spoke about the 'sincere cooperation' resulting from Art. 5 TEEC (Art. 10 TEC). In contrast, the ruling in case 44/84<sup>32</sup> used the term 'genuine cooperation

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<sup>24</sup> *Konwencja wiedeńska o prawie traktatów, sporządzona w Wiedniu dnia 23 maja 1969 r. (Vienna Convention on the Law of Treaties)*, Dziennik Ustaw Rzeczypospolitej Polskiej, 1990, No. 74, Item 439.

<sup>25</sup> J. Sozański, op.cit., p. 75.

<sup>26</sup> J. Galster (ed.), op. cit., p. 204.

<sup>27</sup> K. Lenaerts and P. Van Nuffel, *Constitutional Law of the European Union*, London 1999, p. 419.

<sup>28</sup> C-230/81 *Grand Duchy of Luxembourg v European Parliament* [1983] ECR 00255, par. 37.

<sup>29</sup> C-2/88 *Request for judicial cooperation submitted by the Rechter-commissaris (examining judge) for criminal cases at the Arrondissementsrechtbank (District Court) Groningen, the Netherlands, in the preliminary investigation concerning, J.J. Zwartveld and Others* [1990] ECR I-3367, par. 17.

<sup>30</sup> C-341/95 *Gianni Bettati v Safety Hi-Tech Srl, Reference for a preliminary ruling: Pretura circondariale di Avezzano – Italy*, [1998] ECR I-04355, par. 77.

<sup>31</sup> C-36 & 37/97 *Hilmar Kellinghusen v Amt für Land- und Wasserwirtschaft Kiel and Ernst-Deitlef Ketelsen, Reference for a preliminary ruling: Schleswig-Holsteinisches Verwaltungsgericht – Germany*, [1998] ECR I-06337, par. 30.

<sup>32</sup> C-44/84 *Derrick Guy Edmund Hurd v Kenneth Jones (Her Majesty's Inspector of Taxes)* [1986] ECR 00029, par. 45 and 49.

and assistance' and in cases 52/84<sup>33</sup> and 75/97<sup>34</sup> 'genuine cooperation'. On the other hand, for example in the judgment in case C-275/00,<sup>35</sup> the Court of Justice used, in the context of Art. 10 TEC, the words 'loyal cooperation'. In a few judgments the Court of Justice has, in the context of Art. 5 TEEC, used the concept of 'the principle of cooperation' – for example in cases 33/76,<sup>36</sup> 45/76<sup>37</sup> or in 213/89.<sup>38</sup> In the judgments in cases C-94/00<sup>39</sup> and C-339/00<sup>40</sup> the Court of Justice spoke about the obligation of the EU Member States and institutions to cooperate 'in good faith.'

It is difficult to imagine the achievement of the objectives of the EU without respect for the principle of sincere cooperation; in other words, violation of this principle would undermine the basic structure of the legal order of the EU and would put into question the essence of the EU's actions. Erika Szyszczak and Adam Cygan wrote that the provision contained in former Art. 10 TEC appeared 'to be a rudimentary requirement for Member States who have voluntarily signed the treaty'.<sup>41</sup> It is indisputable that Sweden applied for membership in the EU, negotiated the content of the accession treaty, signed it, and ratified it voluntarily. What's more, the entry of Sweden into the EU – on the conditions contained in the accession treaty, including a commitment to strive for membership in the euro area – was the subject of a referendum in 1994. In this referendum

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<sup>33</sup> C-52/84 *Commission of the European Communities v Kingdom of Belgium* [1986] ECR 00089, par. 16.

<sup>34</sup> C-75/97 *Kingdom of Belgium v Commission of the European Communities* [1999] ECR I-03671, par. 88.

<sup>35</sup> C-275/00 *European Community, represented by the Commission of the European Communities v First NV and Franex NV, Reference for a preliminary ruling: Hof van Beroep Gent – Belgium* [2002] ECR I-10943, par.34, 42 and 49.

<sup>36</sup> C-33/76 *Rewe-Zentralfinanz eG and Rewe-Zentral AG v Landwirtschaftskammer für das Saarland* [1976] ECR 01989, par. 5.

<sup>37</sup> C-45/76 *Comet BV v. Produktschap voor Siergewassen, Reference for a preliminary ruling: College van Beroep voor het Bedrijfsleven – Netherlands* [1976] ECR 02043, par. 12.

<sup>38</sup> C-213/89 *The Queen v Secretary of State for Transport, ex parte: Factortame Ltd and Others, Reference for a preliminary ruling: House of Lords – United Kingdom* [1990] ECR I-02433, par. 19.

<sup>39</sup> C-94/00 *Roquette Frères SA v Directeur général de la concurrence, de la consommation et de la répression des fraudes, and Commission of the European Communities, Reference for a preliminary ruling: Cour de cassation – France* [2002] ECR I-0901, par. 30.

<sup>40</sup> C-339/00 *Ireland v Commission of the European Communities* [2003] ECR I-11757, par. 71.

<sup>41</sup> E.M. Szyszczak and A. Cygan, op.cit., p. 61. For more on the duties of the EU Member States resulting from the principle of sincere cooperation, see for example A. Kuś (ed.), *Prawo Unii Europejskiej z uwzględnieniem Traktatu z Lizbony (European Union law including the Treaty of Lisbon)*, Lublin 2010, pp. 262–267.

the majority of voters voted in favour of accession to the EU. Taking these circumstances into account, it should be acknowledged that Sweden has voluntarily undertaken a commitment to try to meet the convergence criteria and, consequently, to adopt the common currency.

In its judgment in joined cases 6 and 11/69,<sup>42</sup> the Court of Justice stated that the fulfilment of commitments is a 'fundamental requirement' of EC law and the solidarity is the basis of the obligations arising from the treaties and the entire system of the EC. With respect to the performance of their duties imposed on them by the provisions of the TEC, Member States may derogate only under the conditions laid down in the treaty.

The Court of Justice also emphasized in other cases that cooperation in good faith is important for the functioning of the EC. For example, in case 39/72<sup>43</sup> it stated: 'failure in the duty of solidarity accepted by Member States by the fact of their adherence to the Community strikes at the fundamental basis of the Community legal order'. And in case 128/78,<sup>44</sup> the Court of Justice stated that disrespect toward the duty of solidarity 'strikes at the very root of the Community legal order'. In its judgment in case C-387/93,<sup>45</sup> the Court of Justice pointed out that Art. 5 TEC requires that the commitments of the Member States be made in good faith.

The principle of loyalty as the basis for cooperation in the EU should also be noted. The Court of Justice referred to it in the context of intergovernmental cooperation. In its judgment in case C-105/03,<sup>46</sup> the Court of Justice found that 'it would be difficult for the Union to carry out its tasks effectively if the principle of loyal cooperation, requiring in particular that Member States take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under European Union law, were not also binding in the area of police and judicial cooperation in criminal matters, which is moreover entirely based

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<sup>42</sup> C-6/69 & 11/69 *Commission of the European Communities v French Republic* [1969] ECR 0052, par. 13, 16 and 41.

<sup>43</sup> C-39/72 *Commission of the European Communities v Italian Republic* [1973] ECR I-00101, par. 25.

<sup>44</sup> C-128/78 *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland* [1979] ECR 00419, par. 12.

<sup>45</sup> C-378/93 *Criminal proceedings against Giorgio Domingo Banchemo, Reference for a preliminary ruling: Pretura circondariale di Genova – Italy* [1995] ECR I-04663, par. 17 and 46.

<sup>46</sup> C-105/03 *Reference for a preliminary ruling under Article 35 EU by the judge in charge of preliminary enquiries at the Tribunale di Firenze (Italy), made by decision of 3 February 2003, received at the Court on 5 March 2003, in criminal proceedings against Maria Pupino* [2005] ECR I-05309, par. 42.

on cooperation between the Member States and the institutions [...]. The principle of sincere cooperation was also invoked by the Court of Justice in cases 141/78<sup>47</sup> and 97/81.<sup>48</sup>

Based on the provisions of the current Art. 4.3 TEU (and ex Art. 5 TEEC and 10 TEC), the EU Member States have obliged themselves to take all measures to discharge the commitments adopted by each other, facilitating the EU in the performance of its tasks and obliging themselves to refrain from any action that may hinder the achievement of the objectives of the Union. As stated in the literature, this specifically refers to 'taking appropriate legislative actions to implement EU law'.<sup>49</sup> For its proper implementation 'it is not enough to adopt appropriate regulations, but it is necessary to delete the provisions incompatible with the law'.<sup>50</sup> In accordance with the principle of sincere cooperation, 'it is not enough to take any legal action by Member States. These actions must be taken with due diligence and in such a way that the objectives are achieved in the best possible way. [...] Member States may not only not rely on their internal law to evade implementing the Community law or perform it incorrectly, but also may not rely on the actions of their institutions in order to justify the failure of Community law. This leads to the conclusion that the Member States are responsible for ensuring that all their institutions are committed to implementing the Community law'.<sup>51</sup> In the case of Sweden we may ask: Have the Swedish authorities done everything possible to meet all the convergence criteria and to adopt the common currency? In light of the absence of a decision to include the crown in the ERM II and the inadequacy of the law on the functioning of the central bank of Sweden, it would seem difficult to positively answer this question.

The obligation of sincere cooperation placed on the Member States means that under Art. 4 TEU, the twin duties to act (positive dimension) and to refrain from acting (negative dimension) concern the legislative, the executive and the judiciary institutions, both at the central and local levels, as well as those organs with autonomy, supervised by the state.<sup>52</sup>

The postulate that all the authorities of the EU Member States must comply with the Community law is also evident in the judgments of

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<sup>47</sup> C-141/78 *French Republic v United Kingdom of Great Britain and Northern Ireland* [1979] ECR 02923, par. 8.

<sup>48</sup> C-97/81 *Commission of the European Communities v Kingdom of the Netherlands* [1982] ECR 01819, par. 7.

<sup>49</sup> J. Galster (ed.), *op.cit.*, p. 251.

<sup>50</sup> *Ibidem*.

<sup>51</sup> *Ibidem*.

<sup>52</sup> A. Wróbel (ed.), *op.cit.*, p. 79.

the Court of Justice of the EU (EC). In its judgment in case 14/83,<sup>53</sup> the Court of Justice stated that the obligation on the Member States resulting from the provisions of Art. 5 TEEC 'to take all appropriate measures, whether general or particular, to ensure fulfilment of that obligation, is binding on all the of Member States, including, for matters within their jurisdiction, the courts'. The Court of Justice also affirmed this statement in case C-106/89.<sup>54</sup> In case C-453/00,<sup>55</sup> the Court of Justice interpreted the principle of sincere cooperation in the light of the principles of legal certainty and stability of administrative decisions, and reiterated the duty of 'all the authorities of the Member States to ensure observance of the rules of Community law within the sphere of their competence'. The Court of Justice referred to this judgment in case 8/88,<sup>56</sup> in which it stated, *inter alia*, that the authorities at all levels, both central, federal and local institutions are obliged to comply with Community law in their spheres of competences.

In several of its judgments the Court of Justice of the EU (EC) emphasized the role and importance of national courts in the context of the principle of sincere cooperation. In the case 33/76,<sup>57</sup> the Court of Justice held that, in accordance with this principle, 'the national courts [...] are entrusted with ensuring the legal protection which citizens derive from the direct effect of the provisions of Community law'. This position was reiterated in the judgments issued in case 45/76<sup>58</sup> and in case 213/89<sup>59</sup>: 'It is for the national courts, in application of the principle of cooperation laid down in Art. 5 of the EEC Treaty, to ensure the legal protection which persons derive from the direct effect of provisions of Community law'. With regard to the issue of Sweden's membership in the EMU, the appropriate decisions concerning the fulfilment of the convergence criteria belong to the central authorities, that is to the parliament and the government.

From the case-law of the Court of Justice of the EU (EC) it also clearly results that the principle of sincere cooperation is symmetric; that is, it is

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<sup>53</sup> C-14/83 *Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen* [1984] ECR I-01891, par. 26.

<sup>54</sup> C-106/89 *Marleasing SA v La Comercial Internacional de Alimentacion SA*. [1990] ECR I-04135, par. 8.

<sup>55</sup> C-453/00 *Kühne & Heitz NV and Produktschap voor Pluimvee en Eieren, Reference to the Court under article 234 EC by the College van Beroep voor het bedrijfsleven (Netherlands) for a preliminary ruling* [2004] ECR I-00837, par. 20.

<sup>56</sup> C-8/88 *Federal Republic of Germany v Commission of the European Communities* [1990] ECR I-02321, par. 13.

<sup>57</sup> C-33/76, par. 5.

<sup>58</sup> C-45/76, par. 12.

<sup>59</sup> C-213/89, par. 19.

applicable to both Member States and the authorities and institutions of the EU (earlier the EC). The Court of Justice so held in its judgment in case 230/81.<sup>60</sup> In case 2/88,<sup>61</sup> the Court of Justice held that this principle ‘not only requires the Member States to take all the measures necessary to guarantee the application and effectiveness of Community law, [...] but also imposes on Member States and the Community institutions mutual duties of sincere cooperation’. This same essence is reflected in the Court’s of Justice’s judgment in case 75/97<sup>62</sup>: ‘The Commission and the Member State must, by virtue of the rule imposing on the Member States and the Community institutions a duty of genuine cooperation which underlies, in particular, Article 10 EC, work together in good faith with a view to overcoming the difficulties whilst fully observing the Treaty provisions’. Similarly, in case T-295/05<sup>63</sup> the Court affirmed that: ‘[...] the principle of cooperation in good faith [...] must govern the relationship between the Member States and the Community institutions and [...] in accordance with settled case-law not only obliges the Member States to take all the measures necessary to guarantee the application and effectiveness of Community law but also imposes on the Member States and the Community institutions mutual duties to cooperate in good faith’. In fact, the Court of Justice stated the same in the case 275/00.<sup>64</sup>

The meeting of the convergence criteria is a competence primarily resting with the EU Member State and its central authorities. However, as a result of the provisions of the treaties some actions are also required by the EU institutions in this respect. First of all this concerns the appropriate actions and decisions of the Commission and the Council in the case of an excessive government deficit in a Member State. According to the data presented in the Table 1, in the case of Sweden no such activity on the part of the EU institutions in this respect was necessary – between 1998 and 2013 Sweden never incurred an excessive government deficit. But as has been shown, Sweden does not fulfil two criteria: the compatibility of its legislation on the functioning of the central bank with EU law, and the participation of the Swedish currency in the ERM II. Meeting the first condition is wholly within the range of competences of the Swedish authorities; in the case of the latter cooperation between the EU institutions and Member State’s authorities is necessary. However, it

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<sup>60</sup> C-230/81, par. 37.

<sup>61</sup> C-2/88, par. 17.

<sup>62</sup> C-75/97, par. 88.

<sup>63</sup> T-295/05 *Document Security Systems, Inc. v European Central Bank (ECB)* [2007] ECR II-02835, par. 70.

<sup>64</sup> C-275/00, par. 49.

would seem impossible to assert that Sweden has not included its currency in the ERM II due to a lack of willingness to cooperate in this matter on the part of the EU institutions.

The obligation of sincere cooperation, as an obligation resting on both the Member States and the EU (EC) institutions, was raised by the Court of Justice in case 52/84<sup>65</sup> and in joined cases C-36/97 and C-37/97.<sup>66</sup> However, in the judgment in the case C-94/00,<sup>67</sup> the Court of Justice stated, *inter alia*, that in cases in which the 'coordinated exercise of their respective powers' is required on the part of the Member States and institutions of the EC, such a cooperation is 'particularly crucial'.

In case 78/70<sup>68</sup> the Court of Justice held that the content of Art. 5.2 TEEC 'lays down a general duty for the Member States, the actual tenor of which depends in each individual case on the provisions of the Treaty or on the rules derived from its general scheme'. Thus, as it is pointed out in the literature, the content of the Article, which obligates the Member States and the EU institutions to engage in sincere cooperation, 'has no direct legal effect, but it is possible to rely on this provision in situations in which a clear obligation rests on the Member State'.<sup>69</sup> This provision 'has a merely declaratory nature when Member States' obligations arise from other expressly provided provisions of primary or secondary Community law'.<sup>70</sup> The Court of Justice noted in its judgment in case C-387/93<sup>71</sup> that when there are regulations directly setting out the obligations of Member States, the provisions of Art. 10 TEC may not be used alone, but in conjunction with those provisions.

A very important aspect of the principle of sincere cooperation is also the 'prohibition to take unilateral action and rely on reciprocity in the performance of the Community obligations. This means that Member States may not justify failure to comply with the Community neither by the fact that other Member States do not fulfil these obligations nor to condition the meeting of these obligations on the fulfilment of them by

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<sup>65</sup> C-52/84, par. 16.

<sup>66</sup> C-36&37/97, par. 30.

<sup>67</sup> C-94/00, par. 32.

<sup>68</sup> C-78/70 *Deutsche Grammophon Gesellschaft mbH v Metro-SB-Großmärkte GmbH & Co. KG*. [1971] ECR 00487, par. 5.

<sup>69</sup> K. Lenaerts and P. Van Nuffel, *Podstawy prawa europejskiego (Basics of European law)*, Warszawa 1998, p. 246.

<sup>70</sup> A. Wróbel (ed.), *op.cit.*, p. 79. See also J. Barcz (ed.), *op.cit.*, pp. I-94-I-95; J. Barcz, M. Górka and A. Wyrozumska, *op.cit.*, p. 102; A. Arnall, A. Dashwood, M. Ross and D. Wyatt, *European Union Law*, London 2000, p. 132.

<sup>71</sup> C-387/93, par. 17.

other Member States'.<sup>72</sup> In this context, it is worth recalling the judgment of the Court of Justice in case 52/75,<sup>73</sup> in which it stated that 'any delays there may have been on the part of other Member States in performing obligations imposed by a directive may not be invoked by a Member State in order to justify its own, even temporary, failure to perform its obligations'. Neither may a justification for failure to comply with its obligations under the EC law be 'provisions, practices or circumstances' existing in the national law of a given Member State. The Court of Justice also stated that if a Member State is not able to meet these commitments it should, in conformity with Community law, take appropriate actions in order to obtain an extension of the deadline for their implementation.

Even if the Swedish authorities would like to use the argument that they have not met the convergence criteria due to the fact that another EU Member State has not done so either, it has so far been impossible to use this argument. In the period from the start of the EMU until 2013 no other EU Member State has been in the same situation as Sweden, that is, meeting the economic criteria but not meeting those that are a consequence of its own political decision(s). Sweden also has not taken any action aimed at obtaining a permanent legal basis to remain outside the euro area – as was done in the case of the UK and Denmark.

According to the settled case-law of the Court of Justice of the EU (ECJ), the actions of a Member State that are not in accordance with the principle of sincere cooperation cannot be justified by the fact that full compliance with the EU (EC) law would be considered incompatible with the so-called 'national interests' of the state. The Court of Justice explicitly stated this in its judgment in case 39/72<sup>74</sup>: 'It cannot be accepted that a Member State should apply in an incomplete or selective manner provisions of a Community Regulation so as to render abortive certain aspects of Community legislation which it has opposed or which it considers contrary to its national interests'. Then the Court of Justice went further: 'In permitting Member States to profit from the advantages of the Community, the treaty imposes on them also the obligation to respect its rules. For a state unilaterally to break, according to its own conception of national interest, the equilibrium between advantages and obligations flowing from its adherence to the Community brings into question the equality of Member States before Community law and

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<sup>72</sup> J. Galster (ed.), *op.cit.*, p. 253.

<sup>73</sup> C-52/75 *Commission of the European Communities v Italian Republic* [1976] ECR 00277, par. 11, 14 and 12/13.

<sup>74</sup> C-39/72 *Commission of the European Communities v Italian Republic* [1973] ECR I-00101, par. 20 and 24.

creates discrimination at the expense of their nationals, and above all of the nationals of the state itself which places itself outside the Community rules’.

In its judgment in case 128/78,<sup>75</sup> the Court of Justice formulated the thesis that the infringement of the principle of sincere cooperation is a violation of the balance between the benefits and obligations of membership in the Community. Could Sweden’s accession to the euro area be against the national interest of this state? Of course such an argument can be expressed – however, it should be emphasized that, firstly, it is primarily of a political nature, not a legal one. The concept of the ‘national interest’ is very subjective and variable. Second, if ‘national interests’ were to be universally recognized and accepted as a basis for non-compliance with adopted obligations of EU law, this would constitute a consent to the selective treatment of EU commitments. It seems that it would be contrary to both the letter and the spirit of the treaties and the jurisprudence of the Court of Justice of the EU (ECJ).

Difficulties in the implementation of the EU (EC) legislation cannot constitute a rationale for the non-compliance of a Member State with its obligations. In the aforementioned judgment in case 39/72,<sup>76</sup> the Court of Justice stated that ‘practical difficulties which appear at the stage when a Community measure has to be put into effect cannot permit a Member State to unilaterally opt out of observing its obligations. The Community institutional system provides the Member State concerned with the necessary means to secure that its difficulties should be reasonably considered within the framework and principles of the common market and the legitimate interests of other Member States’.

It is worth adding that the establishment of the European Stability Mechanism (ESM) was recognized by the Court of Justice of the EU as compatible with the principle of sincere cooperation contained in Article 4(3) TEU.<sup>77</sup> The ESM was established in 2011 on the basis of the European Council decision amending Article 136 TFEU, and its aim is to provide financial assistance to EU Member States whose currency is the euro.<sup>78</sup>

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<sup>75</sup> C-128/78 *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland* [1979] ECR 00419, par. 12.

<sup>76</sup> C-39/72 *Commission of the European Communities v Italian Republic* [1973] ECR I-00101, par. 22.

<sup>77</sup> C-370/12 *Thomas Pringle v Government of Ireland, Ireland and The Attorney General. Reference for a preliminary ruling: Supreme Court – Ireland* [2012] ECLI:EU:C:2012:756, par. 148-152.

<sup>78</sup> European Council Decision of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Mem-

From the point of view of the consequences of staying outside the euro area, the EU Court of Justice's judgment confirming the provisions of the TFEU and Statute of the ESCB and the ECB permitting the ESCB to adopt a programme for the purchase of government bonds on secondary markets<sup>79</sup> was also of great importance.

## Conclusions

Sweden, unlike Denmark and the United Kingdom, has no legal basis to permanently remain outside the euro area and, in theory, should try to meet all the convergence criteria and proceed to the third stage of EMU. Since the start of the EMU (1999) Sweden has met the economic conditions for membership in the monetary union. What's more, it can be concluded that, compared with the other EU Member States, Sweden has met them exceptionally well. However, Sweden remains outside the euro area because it deliberately chooses to avoid meeting all the criteria for political reasons, the achievement of which is a matter of political will. The facts demonstrate that the Swedish policy toward membership in the euro area is unique and represents a kind of one-sided 'grant to itself' of the right to remain outside the monetary union. Seen in this way, the Swedish policy towards membership in the EMU may also provide an 'inspiration' for other EU Member States, which could also theoretically strive to fulfil all the conditions of membership in the monetary union of the EU but which, for various reasons, do not want to join it at any allocated time.

It seems Sweden's policy raises very serious doubts about its consistency with one of the basic principles on which the EU's (and previously the European Communities') functioning is based, that being the principle of sincere cooperation. This principle has been in place since the beginning of the process of integration within the EC, as the relevant provisions were contained in the founding treaties of the Communities. In addition, the jurisprudence of the Court of Justice of the EU (ECJ) 'constantly refers to the principle of solidarity of the Communities, using a dynamic interpretation of Community law, which sometimes deserves to be called bold and even

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ber States whose currency is the euro (2011/199/EU), OJ L 91/1. See, for example J. Barcz, *W sprawie formuły prawnej wprowadzenia do prawa UE Europejskiego Mechanizmu Stabilizacyjnego (On the legal formula the European Stability Mechanism introduction into EU law)*, „Europejski Przegląd Sądowy”, No. 1/2011, pp. 4–13.

<sup>79</sup> C-62/14 *Peter Gauweiler and Others v Deutscher Bundestag* [2015] ECLI:EU:C:2015:400.

law-making'.<sup>80</sup> As a result, this rule is considered to be 'a fundamental principle of Community law, without which the implementation of the Community's tasks would not be possible. Compliance with this rule is a fundamental obligation of the Member States in supporting the integration activities, and its violation undermines the existence of the Community.'<sup>81</sup>

According to the Court of Justice of the EU (EC), the principle of sincere cooperation has 'a constitutional quality'<sup>82</sup> and it is 'a fundamental principle of the EU law' and has repeatedly formed the basis for the interpretation of the EU law.<sup>83</sup> Thus the principle of sincere cooperation has played a 'fundamental role' in the European integration process.<sup>84</sup>

Alina Kaczorowska indicates the following circumstances as those which could free a state from its obligation to comply with EU law: unlawful obligation, *force majeure*, and uncertainty as to the exact meaning of the obligation.<sup>85</sup> To this list Jacek Barcik and Aleksandra Wentkowska add: concern for order, security and public morality.<sup>86</sup> However, it seems, that it would be impossible to show that the Swedish government's policy relating to its (non)compliance with the convergence criteria and its membership in the euro area is a consequence of the occurrence of any of these circumstances. As K. Lenaerts and P. Van Nuffel note, in cases where the application of EU law poses 'special difficulties, the Member States should submit them to the Commission and work together with it in good faith with a view to overcoming the difficulties'.<sup>87</sup> However, inasmuch as Sweden meets the economic conditions of membership in the euro area, it is difficult in this case to speak of any 'special difficulties' – the essence of the issue is not in such difficulties, but in the political will of the Swedish government and, as the results of referendum in 2003 showed, of Swedish society. As Nicholas Aylott notes, in this context 'the EMU referendum was held due to domestic political contingency, and

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<sup>80</sup> M. Herdegen, *op.cit.*, p. 61.

<sup>81</sup> J. Galster (ed.), *op.cit.*, p. 253.

<sup>82</sup> E.M. Szyszczak and A. Cygan, *op.cit.*, p. 62.

<sup>83</sup> J. Galster (ed.), *op.cit.*, p. 257. See also: A. von Bogdandy, *Podstawowe zasady prawa UE – teoria i doktryna, cz. III (The basic principles of EU law – theory and doctrine, part III)*, „Europejski Przegląd Sądowy”, No. 10/2009, pp. 5–6.

<sup>84</sup> J. Barcz (ed.), *op. cit.*, p. I-86.

<sup>85</sup> A. Kaczorowska, *European Union Law*, London-New York 2009, pp. 383–385.

<sup>86</sup> J. Barcik and A. Wentkowska, *Pravo Unii Europejskiej po Traktacie z Lizbony (EU law after the Lisbon Treaty)*, Warszawa 2011, p. 263.

<sup>87</sup> K. Lenaerts and P. Van Nuffel, *Constitutional Law...*, *op.cit.*, p. 421. See also K. Lenaerts and P. Van Nuffel, *Podstawy prawa...*, *op.cit.*, p. 246.

was purely advisory to its parliament, although all the parties pledged to respect the electorate's verdict'.<sup>88</sup>

According to the doctrine, an EU Member State may be liable for its infringement of the principle of sincere cooperation in the European Union.<sup>89</sup> Taking this into account in this study, the question arises of the opening by the European Commission of a procedure against Sweden under Art. 258 TFEU (ex Art. 226 TEC) for its non-compliance with its incumbent obligations. According to Art. 258, 'If the Commission considers that a Member State has failed to fulfil an obligation under the treaties, it shall deliver a reasoned opinion on the matter after giving the state concerned the opportunity to submit its observations. If the state concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union'. So far the Commission has not commenced the procedure under Art. 258 TFEU against Sweden in conjunction with its policy of not fulfilling the conditions for participation in the third stage of the EMU. The lack of the Commission's action in this case raises the issue of its reasons for such non-action.

These conclusions, including the statement that Sweden has unilaterally granted itself the right to remain outside the euro area and is in violation of the principle of sincere cooperation, can be considered as very formalistic and do not take into account political considerations. The first argument in this respect would be the negative attitude of the Swedish society towards joining the euro area – in a referendum in 2003 the majority of voters opted against the adoption of the single currency by Sweden. Here it is worth mentioning the provisions of the Treaty relating to democracy as a basic principle on which the EU functions (Art. 2 and Art. 10 TEU). This problem is very important and complex, particularly in the context of the so-called 'democratic deficit' in the EU. However, it seems that recognition of the results of the 2003 referendum and reliance on Articles 2 and 10 TEU as a basis for not implementing its commitments – which were also accepted in accordance with the relevant democratic procedures, including the aforementioned accession referendum of 1994 – would constitute a path allowing EU Member States to treat their adopted obligations in too lenient a fashion.

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<sup>88</sup> N. Aylott, *op.cit.*, p. 543.

<sup>89</sup> J. Barcz (ed.), *op.cit.*, p. I-97.

## Bibliography

- Adamczak-Retecka, Monika, *Efektywność jako zasada prawa wspólnotowego (Efficiency as a principle of Community law)* in: *Zasady ogólne prawa wspólnotowego (General principles of community law)*, Cezary Mik (ed.), Toruń 2007.
- Arnall, Anthony, Dashwood, Alan, Ross, Malcolm and Wyatt, Derrick, *European Union Law*, London 2000.
- Aylott, Nicholas, *Lessons Learned, Lessons forgotten: The Swedish Referendum on EMU of September 2003*, "Government and Opposition" No. 40(4)/2005.
- Barcik, Jacek and Wentkowska, Aleksandra, *Prawo Unii Europejskiej po Traktacie z Lizbony (EU law after the Lisbon Treaty)*, Warszawa 2011.
- Barcz, Jan (ed.), *Ustrój Unii Europejskiej (European Union's system)*, Warszawa 2010.
- Barcz, Jan, *W sprawie formuły prawnej wprowadzenia do prawa UE Europejskiego Mechanizmu Stabilizacyjnego (On the legal formula the European Stability Mechanism introduction into EU law)*, „Europejski Przegląd Sądowy”, No. 1/2011.
- Barcz, Jan and Górka, Maciej, Wyrozumska Anna, *Institucje i prawo Unii Europejskiej (Institutions and law of the European Union)*, Warszawa 2012.
- von Bogdandy, Armin, *Podstawowe zasady prawa UE – teoria i doktryna, cz. III*, „Europejski Przegląd Sądowy”, No. 10/2009.
- Brodecki, Zdzisław, *Traktat o Unii Europejskiej. Traktat ustanawiający Wspólnotę Europejską. Komentarz (Treaty on European Union. Treaty establishing the European Community. A commentary)*, Warszawa 2006.
- Calmfors, Lars, Flam, Harry, Gottfries, Nils, Jerneck, Magnus, Lindahl, Rutger, Haalnad, Matlary, Janne, Nordh, Berntsson, Christina, Rabinowicz, Ewa and Vredin, Anders, *Calmforsrapporten*, SOU 1996: 158, Stockholm 1996. <http://www.regeringen.se/sb/d/108/a/3803>.
- Calmfors, Lars, *The consequence of the monetary union – an introduction*, "Swedish Economic Policy Review", No. 1/1997.
- Calmfors, Lars, Flam, Harry, Gottfries, Nils, Jerneck, Magnus, Lindahl, Rutger, Haalnad Matlary, Nordh, Janne, Berntsson, Christina, Rabinowicz, Ewa and Vredin, Anders, *EMU – A Swedish Perspective*, Amsterdam 1997.
- Czech, Sławomir, *Eurooutsider z wyboru. Przyczyny i następstwa odrzucenia euro przez Szwecję (Eurooutsider by choice. Causes and consequences of the rejection of the euro by Sweden)* in: *Systemy gospodarcze i ich ewolucja. W kierunku jednolitego europejskiego obszaru walutowego (Economic systems and their evolution. Towards a single European currency area)*, Stanisław Swadźba (ed.), Katowice 2008.
- Galster, Jan (ed.), *Podstawy prawa Unii Europejskiej. Zarys wykładu (Basics of European Union law. An outline of a lecture)*, Toruń 2006.
- Górski, Marcin, *Zasada solidarności – obowiązki wynikające dla instytucji Wspólnoty (The principle of solidarity – the obligations for the Community institutions)* in: *Solidarność jako zasada działania Unii Europejskiej (Solidarity as a principle of the European Union)*, C. Mik (ed.), Toruń 2009.

- Herdegen, Matthias, *Prawo europejskie (European law)*, Warszawa 2006.
- Kaczorowska, Alina, *European Union Law*, London–New York 2009.
- Kuś, Artur (ed.), *Prawo Unii Europejskiej z uwzględnieniem Traktatu z Lizbony (European Union law including the Treaty of Lisbon)*, Lublin 2010.
- Lenaerts, Koen and Van Nuffel, Piet, *Podstawy prawa europejskiego (Basics of European law)*, Warszawa 1998.
- Lenaerts, Koen and Van Nuffel, Piet, *Constitutional Law of the European Union*, London 1999.
- Sozański, Jarosław, *Ogólne zasady prawa a wartości Unii Europejskiej (po traktacie lizbońskim) – studium prawnoporównawcze (General principles of law and the values of the European Union (after the Lisbon Treaty) – a study of comparative law)*, Toruń 2012.
- Söderström, Ulf, *Reevaluating Swedish Membership in the European Monetary Union. Evidence from an Estimated Mode in: Europe and the Euro*, Alberto Alesina and Francesco Giavazzi (eds.), Chicago 2010.
- Szyszcak, Erika M. and Cygan, Adam, *Understanding EU Law*, London 2005.
- Witkowska, Marta, *Zasady funkcjonowania Unii Europejskiej (Principles of the European Union)*, Warszawa 2008.
- Wróbel, Andrzej (ed.), *Wprowadzenie do prawa Wspólnot Europejskich (Unii Europejskiej) (Introduction to the law of the European Communities (European Union))*, Kraków 2004.