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EU Reform and the Financial Crisis

Abstract: The current financial crisis coincides with a period of deep political and substantive crises in the European Union. Although it is difficult to predict how it will affect the further development of the EU, it has certainly revealed the full range of the challenges which the EU is facing - both in terms of its political system and its policies. On one hand, the crisis has shown that some Member States are inclined to work in smaller groups, perhaps at the cost of the Union's cohesion. On the other hand, it has also demonstrated that the EU is attractive and that the Member States perceive it as an effective mechanism to guarantee their financial, economic and political security. At the same time, the financial crisis has definitely increased public awareness in the Member States of the need to increase the effectiveness of the EU and thus to complete the political reform, discussed for years, by putting the Treaty of Lisbon into effect. Thus, the greatest remaining challenge is to maintain the coherence of the process of European integration. While the entry into force of the Treaty of Lisbon gives the EU new momentum in this respect, it does not guarantee success - strengthening the effectiveness of the EU. Much will depend on the measures used to implement the reforms prescribed by the Treaty, which are aimed at providing regulation of the relations between the EU and its Member States in managing common issues. In the end, the decisive factor will be the political will of the Member States to use the new opportunities offered by the Treaty of Lisbon to increase the effectiveness and cohesion of the EU.

1. Three dimensions of crises in the EU

Despite the unquestionable successes of the process of European integration, the European Union is in a deep crisis. This is apparent if one examines the long process of EU reform since 2000. Problems with ratification

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of the Treaty of Nice indicated early on that this would not be a simple process. This was later confirmed by the rejection of the Constitutional Treaty (and moreover, by two of the EU's founding states – France and the Netherlands). Serious problems were also encountered during the ratification procedure of the Treaty of Lisbon.

The source of the problems regarding reform of the EU system are not, however, rooted in institutional matters. They are in fact located much deeper, for they constitute a manifestation of helplessness against the fundamental structural challenges brought on by the era of globalisation. These concern mainly the following problematic areas:

a) Defining the direction of further development of the internal market. This means, above all, prioritising the relations between the European social model and further liberalisation of the internal market. It will be difficult to find a significant spur to economic growth without a strong stimulus in terms of liberalisation of cost-generating sectors (energy, transport, infrastructure) and the service sector (which provides a significant part of national income in the Member States). Maintaining the efficiency of Community competition, and particularly state aid rules, will be a serious challenge. Another challenge which is becoming more and more urgent is reform of the Common Agricultural Policy.

b) Strengthening the political identity of the European Union.

The scale of this problem became apparent in the 1990s during the Balkan war, with which the EU-a great economic power – could not cope. It has been more recently exposed by the threat of terrorism. The conclusion of the Balkan crisis in the 1990s was possible only due to the intervention of the United States, and the EU's helplessness originated partly from divergences between the interests of the most important 'Old Member States'.

The EU aspires to participate in the critical decision-making processes on a global scale, while at the same time it is not able to take the resulting responsibility (Zbigniew Brzeziński correctly labelled this 'parasite behaviour'1). The idea that the United States, as the only great world power at present, should exercise 'self-restraint' in global policy, will remain an empty slogan until the EU becomes a more reliable and efficient partner. In addition, other serious actors on a global scale have emerged, such as China or India.²

¹ Z. Brzeziński, Wybór. Dominacja czy przywództwo (A Choice to Make. Democracy or Leadership), Kraków 2004, p. 107.

² See also: B. Góralczyk, in this volume.

Therefore, what the Union needs now is a strong political identity. It needs abiding change which would allow it to act effectively on the international stage. This transformation can only take place in the field of Common Foreign and Security Policy, in particular Common Security and Defence Policy.

c) Continuation of the enlargement strategy.

The Communities and the EU have always demonstrated a great power of attraction; in fifty years the number of Member States has increased from six to twenty seven (at present). The enlargement strategy is certainly one of the greatest successes of the integration process, as it leads to expansion of 'the zone of democracy and market economy', stabilises countries which are currently undergoing transformation, and acts as an effective instrument for safeguarding security (accepting the West Balkans as Member States would undoubtedly be the best mechanism available to ensure permanent political stability in this region). From the strategic point of view, accepting Turkey and opening a way for Ukraine are important conditions for the EU's role as a global agent. At the same time however, the inhabitants of the Member States perceive the enlargement strategy in various ways. In some of the 'Old Member States' the enlargement of 2004 caused a negative social reaction, which contributed to the rejection of the Constitutional Treaty, while the accession of Bulgaria and Romania in 2007 - countries which were poorly prepared for EU membership – contributed to the strengthening of cautious attitudes toward further enlargements.³

The structural problems described above are interwoven with political and systemic challenges of fundamental significance. It is essential to determine the form of the integration process in terms of the political system. This challenge is manifested by fears that the European Union will be transformed into a European super-state at the cost of loss of sovereignty by its Member States. These fears have dominated the political debate for several years now, partly due to the carelessness of European politicians, and partly because the threat of loss of sovereignty has always been a popular argument for groups sceptical of the European integration process. Questions of fundamental importance in terms of the political system, included both in the Constitutional Treaty and in the Treaty of Lisbon, have been raised during this debate. Pursuant to the new Treaty the EU will be transformed into a uniform international organisation, a structure created by the Member States by means of an international agreement, having such competences as the states have chosen to confer upon it.

³ See generally: Bulgaria i Rumunia w Unii Europejskiej. Aspekty polityczne, prawne i ekonomiczne procesu akcesyjnego (Bulgaria and Romania in the European Union. Political, Legal and Economic Aspects of the Accession Process), ed. J. Barcz, Warszawa 2009.

At the same time, the reform touches upon the fundamental structural problem of maintaining coherence in the process of European integration. The increase in the number of Member States with vastly different levels of economic and political effectiveness casts a new light on the problem of leadership in the European Union and escalates the temptation to diversify the formal status of its Members. There is already some differentiation in the EU existing in the important areas (e.g. the Economic and Monetary Union, the Schengen Area). This phenomenon will always be present in the process of European integration, and as long as it takes place within the governing legal framework it will not pose a threat to its coherence. At present however – in connection with the debate whether to carry on with the enlargement strategy – some ideas of deeper differentiation of groups of Member States are emerging.

In light of what has been said above, it may be postulated that the EU is currently facing 'three crises' – each one of different texture, yet all interrelated: a crisis of the political system, a policy crisis and – recently – a financial crisis. Under these circumstances, the most fundamental challenge is to define a strategy for the structural challenges that lay ahead. While the reform of the political system in itself is important and will certainly make the implementation of this strategy easier, it is not able to resolve all the structural problems. In this context, the financial crisis has ironically played an essential role by highlighting the existing problems. This is not without significance in light of the fact that one of the fundamental problems associated with the twin processes of substantive and systemic reforms remains their public reception. They are frequently perceived as entrenching the so-called 'EU deficit of democratic legitimacy'.

The financial crisis can make it easier to refute populist arguments against integration.

2. Possible scenarios of EU development

The current situation constitutes a decisive moment in the process of European integration, and several developmental scenarios are possible.⁴ In addition, different intermediate solutions cannot be excluded.

The possible scenarios oscillate between two poles: overcoming the current crises, transforming the EU into an effective international political and

⁴ See: J. Barcz, Unia Europejska na rozstajach. Dynamika i główne kierunki rozwoju reformy ustrojowej (The European Union at a Crossroads. The Dynamics and Main Directions of the Systemic Reform), Warszawa 2008, p. 28ff.

economic organisation and – as a result – making it an important player in the global decision-making process; and the opposite scenario of re-nationalisation and fragmentation of the European integration process. The latter scenario would not result in a total liquidation of the EU, but rather a very deep differentiation between the Member States. Some groups of states would unite to pursue their interests, leading to a marginalisation of some other states.

2.1. The optimal variant

The European Union currently has a very good starting point for the optimal variant for the Member States – an effective European Union which would play an important role in the global decision-making process. The conditions for this scenario are relatively clear:

- a) consistent deepening of liberalisation of the Community internal market and supporting similar trends in global policy (WTO);
- b) developing and strengthening the Area of Freedom, Security and Justice, and in particular a more active participation in fighting global threats (terrorism and other forms of organised crime) and in crisis management on the international scale;
- c) strengthening Common Foreign and Security Policy, especially the element of Security and Defence Policy (plus solid and reliable cooperation with the NATO and the United States);
- d) continuation of the enlargement strategy to stabilise endangered regions (the West Balkans) and to gain new areas which would strengthen the position of the EU as a global entity (Turkey, and later Ukraine).

2.2. Fragmentation and re-nationalisation of the European integration process

This scenario cannot be ignored. A large number of the 'Old Member States' are somehow reluctant towards the EU, or at least they exhibit an essential unwillingness towards deeper liberalisation of the internal market, which results partly from the lethargy of the social economy. Socio-political claustrophobia leads also to great reluctance towards further enlargements of the EU. It can even be said that it was difficult for the societies of the 'Old Member States' to accept new members in the 'big bang' of 2004 and 2007. It seems justifiable to surmise that the ratification problems surrounding the Constitutional Treaty were caused not by the prospect of accepting Turkey as a member, but by the lack of social acceptance of the enlargements of 2004 and 2007. The EU Member States have also been 'forgetful' as regards Common Foreign and Security Policy and the quality and model of relations with the United States.

At the same time, some 'New Member States' have experienced the so-called 'new state syndrome' whereby, after meeting the accession requirements and obtaining EU membership, they have started to act as if they were not EU Member States, perceiving the EU as a threat to their own sovereignty and interests. In addition, there are some internal political processes which raise doubts in terms of the criteria of 'democratic states'. And it is worth noting that while the EU supervises the Member States' compliance with the internal market requirements, there is essentially no control mechanism as regards maintaining the standards of a democratic state. In extreme cases, the EU could refer to the provisions of Article 7 of the TEU, which allow for suspension of a Member State's rights in case of a serious and persistent breach of the principles of democracy.

However, regardless of underlying reasons, the combination of a) social reluctance towards the EU reform in the 'Old Member States', b) lack of strong political leadership in the EU, and c) unclear ideas about the significance of the process of integration among the political elites in some of the 'New Member States' may form a formidable barrier to the reform process, or even lead to fragmentation of the EU. If one adds to this mix a diffusion of political will in the field of establishing the Common Foreign and Security Policy, then the prospect of fragmentation of the integration process becomes fairly real.

2.3. The intermediate variant – 'surviving'

In this scenario, the EU Member States would not be seek to implement deep reform of the political system. They would resign from concluding any further revision treaties and implement some limited reforms based on the currently binding treaties, concentrating on small measures liberalising the internal market. The enlargement strategy would be halted and replaced by different forms of associations (centred around the idea of liberalisation of trade). Actions in the field of foreign and security policy would be concentrated in the North Atlantic Treaty Alliance or some other form of 'structural co-operation' among certain groups of states, or could even gradually become bilateral.

This scenario may have different effects depending on the actual political intentions of the Member States. If it is driven solely by the States' 'political impotence', in other words their lack of political will to implement necessary changes during a certain period, the 'stagnation' could be overcome by changing political attitudes. After overcoming the crisis, the process of integration could then gain a new momentum. Such periods of 'Euroscle-

⁵ Cf. P. Grudziński, *Państwo inteligentne. Polska w poszukiwaniu międzynarodowej roli (Intelligent State. Poland in Search of its International Role*), Toruń 2008, p. 120ff.

rosis' are not unknown in the history of European integration. However, events may unfold differently this time. If some Member States prove to be unwilling to strengthen the integration process, this may mean that some of them aim at 're-nationalisation' and fragmentation of the EU, and others wish to 'cancel' the effects of the enlargement strategy, that is avoid the influence of 'New Member States' or marginalise them (at least some of them).

Let us now look more closely at the scenarios described above, taking into consideration the impact of the current financial crisis. While on the one hand it has highlighted existing problems in the present state of integration, on the other it has provided a stronger political justification of the need for European Union reform and for increasing the EU's effectiveness, giving politicians the legitimacy to conduct reforms. Yet one needs to remember that the current financial crisis has also revealed threats to the cohesion of the EU, as it has exacerbated group interests and/or the leadership ambitions of some Member States.

3. The main challenges

3.1. Reasons why the EU needs the Treaty of Lisbon

Realisation of the optimal variant of EU development requires implementation of the serious systemic reforms put forward in the Treaty of Lisbon. As has been mentioned, the reforms alone will not solve the crisis, but they are necessary for overcoming it. In addition, without the reforms the likelihood of the scenario of re-nationalisation or even fragmentation of the European integration process would increase.

The Treaty of Lisbon contains the following main reforms:

- a) transforming the EU from a three-pillar structure to a single international organisation, which would pull together the current three pillars and thus guarantee cohesion and effectiveness;
- b) strengthening, within this single organisation, of the decision-making process (currently subject to the Community method), mainly through increasing its effectiveness, e.g. by making decisions in the Council by qualified majority voting. The so-called double majority set forth in the Constitutional Treaty, and incorporated in a slightly modified form in the Treaty of Lisbon is to a large extent a good point of reference because 'strengthening' of the decision-making process in the EU also means making it more flexible (otherwise, it would be difficult to make any important decisions in a group of twenty-seven Member States).
- c) strengthening the EU's democratic legitimacy by increasing the role of the European Parliament in the decision-making process at the EU level,

which is to be accomplished by adding new areas to the co-decision procedure (and to the ordinary legislative procedure in the Treaty of Lisbon), where the European Parliament would become a co-legislator. At the same time, the role of national parliaments in monitoring the EU decision-making process would be increased, in particular as regards the principle of subsidiarity, and national parliaments should also increase their role on the national level – against their own governments – in matters concerning the EU;

d) strengthening the common EU axiology – in particular making the Charter of Fundamental Rights legally enforceable, as provided for in the Treaty of Lisbon, and accession by the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Paradoxically, the economic crisis contributed to some extent to overcoming problems which occurred during the ratification of the Treaty of Lisbon. Firstly, the implications of the crisis in Ireland made the voters aware of the significance of EU membership and encouraged them to learn more about the reforms laid down in the Treaty (their motives for rejection of the Treaty in the first referendum had little to do with its content and were focused on internal political problems). Secondly, the voters in Ireland were surely affected by the sudden growth of interest in EU membership in Iceland (in July 2009 Iceland filed an application for EU membership). Thirdly, the European Council agreed on reliable guarantees to overcome reservations voiced by Ireland in connection with the first referendum. Fourthly, the judgement of the German Federal Constitutional Court of 30 June 2009 also played a certain role, as it clarified the legal status of the EU as an international organisation upon the entry into force of the Treaty of Lisbon, explaining the principles of the division of competences conferred by the Member States and emphasizing the enhancement of the role of national parliaments in the process of European integration. Also the reservations expressed by the Presidents of the Czech Republic and Poland have lost their international popularity in the light of implications of the financial crisis, which rather proves how exotic the internal policy of these countries is.

3.2. The enlargement strategy

Continuation of the enlargement strategy depends primarily on the institutional background of the European Union.⁶ However, the fundamental problems of the EU's 'absorption capacity' are – on one hand – that with each en-

⁶ For more details see: J. Barcz, *Instytucjonalne uwarunkowania strategii rozszerzenia Unii Europejskiej (The Institutional Conditions of the EU Enlargement Strategy*), "Ruch Prawniczy, Ekonomiczny i Socjologiczny" Vol. 2/2009, p. 87ff.

largement the willingness of the EU to accept new Member States decreases, and — on the other hand — that the state of preparedness of potential candidates to meet the membership criteria is generally very poor (although varied). Most of the current candidate states have problems with meeting the requirements of a democratic state.

The Treaty of Nice restricted the institutional reform of the EU to those adjustments necessary for admitting twelve new states, which paved the way for the quick completion of the 'big-bang enlargement' of 2004/2007. At the same time, deep reform of the EU system, planned in the aftermath of the Treaty of Nice, has still not been implemented: the Constitutional Treaty was rejected, and the process of ratification of the Treaty of Lisbon encountered some difficulties. Undoubtedly, completing the EU systemic reform and enforcing the Treaty of Lisbon will make the continuation of the enlargement strategy easier.

The present financial crisis has confirmed the perception of the EU and the internal market as mechanisms guaranteeing financial and economic security. The application for EU membership filed by Iceland is an important signal. The impact of the financial crisis on the enlargement strategy will most probably be varied. On one hand, meeting membership criteria by the candidate states will become even more important (recent experiences with Bulgaria and Romania having not been positive), while on the other hand, the financial crisis has shown the weight of the political aspect of the enlargement strategy. This is especially clear in the case of the West Balkans. Admitting these states as members of the EU seems to be the most effective (and probably the only possible) scenario which could guarantee permanent security and political stability in the region.

3.3. Cohesion of the EU

As a result of the rapid growth in the number of EU Member States some 'differentiating' factors have also appeared: the economic and political differentiation among the Member States; their 'institutional instability'; and the trend towards separate groups of Member States trying to realise common interests beyond the process of integration in its narrow sense (i.e. in purely economic categories), and to specify areas of their possible co-operation among themselves. A process is underway for selecting decision-making groups which will significantly influence global, continental and regional relations in the future and at the same time will, to a varying extent, participate in the decision-making process within the EU, both amongst the Member States as well as states closely related to the EU.

It would seem that the process of differentiation (flexibility) in European integration is objective. However, there is still an essential question whether

this flexibility will *increase* the effectiveness of the process of European integration or *decrease* its effectiveness and lead to a fragmentation of the EU's structure.

The flexibility of the process of integration, which already exists in areas as important as the Schengen Area and the Economic and Monetary Union, is not contradictory to the optimal variant of EU development. Indeed, it can be argued that flexibility is an integral part of an effective model of the EU, especially in the light of the increase in the number of Member States and deep differences between them. However, to avoid impairment or even fragmentation of the integration process, differentiation must be implemented consensually within the legal and structural framework of the European Union.

It could be assumed that the need for flexibility in European integration will become greater, especially after the accession of the West Balkans. As the so-called permanent derogations are no longer possible, the mechanisms used for this purpose will concentrate on enhanced co-operation, such as the Eurogroup (states with full membership in the Economic and Monetary Union) and – in the field of Common Foreign and Security Policy – permanent structured co-operation (provided for in the Treaty of Lisbon). The mechanism of enhanced co-operation may work in all three pillars of the EU and may be useful in particular in the EU Area of Freedom, Security and Justice. However, from the point of view of the Member States, there is still the question of *which* decision-making group each of them will belong to.

Flexibility in European integration may also be a valuable mechanism for continuing the enlargement strategy and admitting, in the future, countries like Turkey, Ukraine, Belarus, Moldova or the Caucasian states. It is known that their potential membership causes much controversy when the issue of their candidacy arises within the EU. Due to the fact that the possible acceptance of these countries for membership is still a future matter, there are many new proposals relating to them, in particular those aimed at tightening the membership criteria (the EU's integration capacity), which would practically exclude the possibility for these countries to apply for membership. There are also proposals for establishing closer relations with these countries other than membership – e.g. in the form of the so-called enhanced partnership or within a model similar to the European Economic Area. These forms of co-operation are, however, unlikely to be acceptable to these countries (even

⁷ Cf. A. Łazowski, Zdolność absorpcji a przyszłe rozszerzenie Unii Europejskiej (Absorption Capacity and the Future Enlargement of the European Union) in: Bułgaria i Rumunia w Unii Europejskiej. Aspekty polityczne, prawne i ekonomiczne procesu akcesyjnego (Bulgaria and Romania in the European Union. Political, Legal and Economic Aspects of the Accession Process), ed. J. Barcz, Warszawa 2009.

if for reasons of prestige). Hence, increasing the flexibility of the membership criteria for this group of countries could be considered: the accession negotiations could lead to obtaining the status of a Member State with derogations in sensitive areas. These derogations would also be flexible and would be repealable by the 'Old Member States' by their own decisions, depending on individual conditions. This solution would give the acceding states EU membership status – subject to them meeting the economic, legal, political and democratic conditions of membership – while allowing the most controversial areas to be subject to derogations (flexible as to the duration and substantive scope). Such flexible derogations (though limited in time) are applied today and have not caused any great problems.

The scenarios presented above are based on maintaining the cohesion of the European Union. However, other scenarios must also be taken into consideration – ones that would lead to a fragmentation of the EU.

Firstly, in view of the difficulties encountered in the ratification process it cannot be excluded that a new type of a revision treaty will be invented after the Treaty of Lisbon enters into force. This new type of a treaty might include derogation clauses for those Member States which had problems with or second thoughts over ratification.

Fortunately this variant is the most extreme and unlikely, and it is dubious whether the Member States would agree to this solution. Therefore, a more realistic variant would be to apply the so-called Schengen method, i.e. agreements concluded by a certain group of Member States on closer co-operation in areas of particular interest to them and within the competence of the EU, to establish co-operation in areas in which other Member States do not agree to common positions. While this method operates on the edge of the principle of loyalty (pursuant to the provisions of Article 10 of the TEC, now Article 4 par. 3 TEU), it has already been applied in practice – most recently in 2005, when a group of Member States signed the Prüm Convention. The Schengen method is easy to apply, as it is very flexible: other states can 'join' the external agreements and thus express their consent to include them in the *acquis communautaire* (as it was in the case of the Schengen agreements and the Prüm Convention). However, another scenario is possible – one which would lead to permanent separation of a group of EU Member States.

The economic crisis has shown the full range of these problems. They have found expression in the attempt of the 'Eurogroup' to become independent and to separate itself from the Presidency in the EU Council on the

⁸ See: Konwencja z Prüm. Eksperyment prawotwórczy w UE. Materiały z Konferencji (The Prum Convention. A Legislative Experiment in the EU. Conference proceedings materials), Kozminski Law School Papers, Warszawa, No. 2007/3.

verge of the Czech Presidency, as well as in the attempt to manage the financial crisis only in a certain group of EU Member States. The so-called 'Eurogroup' (which has been informal so far), around which the decision-making process in many European issues is centred, deserves closer observation. The Treaty of Lisbon provides a certain legitimacy to this group, introducing into its composition a representative from the European Commission and thus strengthening its status in the EU legal framework and preventing it from 'alienation'. On the other hand, as has been mentioned, due to the financial crisis countries which, for various reasons, kept their distance from the EU (Iceland) have started applying for EU membership because they perceive it as a guarantee of financial and economic stability in the future. This is a significant political signal which reinforces the perception of the EU as a coherent and effective mechanism.

Conclusions

The current financial crisis coincides with a period of deep political and policy crises (the direction of development of the internal market, strengthening the EU's political identity, continuing the enlargement strategy) in the European Union. It is difficult to predict how it will affect the further development of the EU. It is certain, however, that it has revealed the full range of the challenges which the EU is facing – both in terms of its political system and in substantive issues. In this context, it could have some positive effect as it surely provides powerful arguments with which to oppose the frequent populist charges against integration, and opens the way to measures for strengthening the rules of the internal market and for continuing the enlargement strategy without delay. Initiating negotiations on accession with Iceland and completing negotiations with Croatia will be important signs in this respect.

The greatest challenge is still to maintain the coherence of the process of European integration. On one hand, the financial crisis has revealed that some Member States are inclined to work in smaller groups, maybe even at the cost of the Union's cohesion. On the other hand, it also has shown that the EU is attractive and that the Member States perceive it as an effective mechanism to guarantee their financial, economic and political security.

The financial crisis has awakened the societies of the Member States to the importance of increasing the effectiveness of the EU, and thus to complete the political reform which has been discussed for years, by putting the Treaty of Lisbon into effect. The entry into force of the Treaty of Lisbon gives the EU a new momentum, although it does not necessarily guarantee the suc-

cess of the optimal scenario for strengthening the effectiveness of the EU. Much will depend on the way the reforms prescribed by the Treaty are implemented, since their main task is to provide detailed regulation of the relations between the EU and its Member States in managing common issues. However, the decisive factor will be the political will of the Member States to use the new opportunities offered by the Treaty of Lisbon to increase the effectiveness and cohesion of the EU.

For Poland, increasing the effectiveness and cohesion of the EU is of fundamental importance, as it is for all new Member States, especially those which are less efficient in terms of their economic and political systems. A cohesive and effective EU guarantees the application of the principle of solidarity and, what is more, prevents differentiation of the Member States, which could result in permanent diversification of their status within the EU. While flexibility of the integration process within the EU's legal framework is an objective phenomenon, the borderline between it and the fragmentation of the EU may be vague. The current financial crisis has also revealed some unsettling trends in this respect. These should be taken into account in discussions over how soon Poland should join the 'Eurogroup'; the convergence criteria and economic conditions are not the only issues to be considered here. Membership in the 'Eurogroup' means belonging to a group around which the decision-making process of the EU is beginning to concentrate.