

# **The European Union at a historic turning point. Current challenges and scenarios of overcoming them**

## **1. Introduction**

In the recent years the European Union has found itself at a historic turning point because of a cumulation of crises that had affected it. These are, i.a., the euro area debt crisis, immigration crisis, identity crisis or the crisis related to Brexit. Rising up to the challenge and overcoming the historically most difficult crisis situation shall only be possible by carrying out system reforms. Some of them are in progress, such as, e.g., the system reform of the euro area, the asylum, immigration and external border management policy reform. Others, such as overcoming identity crisis or effects of Brexit shall require new initiatives of the EU. It is possible to evaluate both the perspectives of solving these crises and implications of the undertaken system changes for Poland, although such evaluation will inevitably be quite general. At this stage no details are known of the further stages of realization of the undertaken system reforms nor of the reforms that are only planned. Taking into account that almost all of the mentioned system projects shall be realized in a long term (by 2025), the above reservation seems fully justified.<sup>1</sup>

## **2. The European Commission's concepts related to reforming the euro area and the European Union by 2025**

### **2.1. Scenarios of the European Union development by 2025**

The White Paper of the European Commission of 1 March 2017 included five scenarios of the UE's further development until 2025. The first scenario relied on carrying on the present reform program by strengthening the common market,

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<sup>1</sup> The article was written as part of the Jean Monnet Chair EUCRIS project: *European Union in Crisis: What is Wrong and How to Fix It?*

including energy and digital technologies sector, gradual progress in the functioning of the euro area, deepening the cooperation in managing the Union's external borders and progress towards a common asylum system (CEAS) as well as a closer cooperation as regards the common security and defense policy (CSDP). The second scenario assumed further development of the common market only as regards the free movement of goods and capital (sic!), without fully guaranteed free movement of services and people. Moreover, it recommended retaining cooperation in the euro area, CSDP, immigration policy, external border control and asylum policy at the present level.<sup>2</sup> The third scenario referred to strengthening cooperation of one or several groups of states in chosen domains as well as continuing the present course of integration by the remaining Member States in accordance with the first scenario. Cooperation would be strengthened according to the concept of two or more integration speeds, that is in fact by means of the enhanced cooperation.<sup>3</sup> The enhanced cooperation would concern taxation and social policy in the euro area, immigration policy, protection of external borders, EU asylum policy and CSDP. The essence of the fourth scenario is enhancing cooperation only in such policy areas as: minimum common standards within the single market, innovation, common trade policy, strengthening and stabilizing the euro area, managing external borders, asylum policy, counteracting terrorism, as well enhancing integration within CSDP, including establishing the European Defense Union. This scenario also envisaged abandoning or restricting cooperation in regional policy, social and employment policy, as well as public health.<sup>4</sup> The last, fifth scenario recommended enhancing integration in almost all EU policy areas based on the joined decisions of the governments of all Member States. These decisions would lead to harmonizing standards within the single market, establishing Economic, Financial and Fiscal Union within EMU as envisioned in the report of the Five Presidents of 22 June 2015,<sup>5</sup> and – similarly to the fourth sce-

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<sup>2</sup> The European Commission, White Paper on the future of Europe. Reflections and scenarios for the EU27 by 2025, Brussels, 1 March 2017, COM(2017) 2025, pp. 16–19.

<sup>3</sup> The provisions on enhanced cooperation provide that if there is no other solution, a group of at least nine Member States may adopt legal acts that shall bind only the Member States participating in the enhanced cooperation. Principles of establishing enhanced cooperation and its limitations are specified in Article 20(1)–(4) TEU, Article 329(1)–(2), Article 330(1)–(2) and Article 331(1)–(2) TFEU.

<sup>4</sup> The European Commission, White Paper on the future of Europe..., pp. 20–23.

<sup>5</sup> The Report of the Five Presidents was adopted on 22 June 2015, after the reforms envisaged in Herman Van Rompuy's package failed. Cf. European Commission, Completing Europe's Eco-

nario – to enhancing the common defense and security policy (i.a., by establishing the European Defense Union), the procedure for managing external borders, the asylum policy and counteracting terrorism.<sup>6</sup>

Between April and June 2017, the EC published five of the so-called reflection papers. Each document contained proposals, and not decisions, related to the EU development until 2025.<sup>7</sup> Reflection papers expressly differed as regards their consistency with the five scenarios presented in the White Paper. The paper on globalization dealt with the analysis of profits and losses resulting from the globalization process and hardly referred to the scenarios. The paper on deepening of the economic and monetary union assumed that the further development of the EU shall include elements of the third and fifth scenarios. The paper on the future of CSDP envisioned three variants of reforming it in accordance with elements of the first, fourth and fifth scenarios presented in the White Paper. The paper concerning the social dimension of the EU included three scenarios corresponding with elements of the second, third and fifth White Paper scenarios. Only the paper on the future of EU finances referred to the five scenarios. Four reflection papers had the most significance for the debate on EU's future: on deepening of the economic and monetary union, on the future of European defense, on the social dimension of Europe and on the future of EU finances. For this reason, only these four papers will be further analyzed.

The reflection paper on deepening of the economic and monetary union, published on 31 May 2017, confirmed and at the same time revised principles of the Report of Five Presidents of 22 June 2015. It sanctioned the general direction of the euro area and EMU reform, including, i.a., establishing the Financial Union, the Fiscal Union and the Economic Union. However, some of the main goals, tasks

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conomic and Monetary Union, report by Jean-Claude Juncker in close cooperation with Donald Tusk, Jeroen Dijsselbloem, Mario Draghi and Martin Schulz, Brussels, 22.06.2015, p. 2. Nonetheless, since adoption of the Report of Five Presidents in June 2015, the role of the European semester in the euro area was increased, which lead to strengthening the coordination of economic policies. Economic management was improved thanks to establishing the European Budget Council and national productivity councils. Structural Reform Support Service was created, which contributed to improving technical service rendered to the euro area member states.

<sup>6</sup> The European Commission, White Paper on the future of Europe..., pp. 24–25. Cf. also European Commission, press release IP/17/385, Brussels, 1.03.2017, pp. 1–3. Analysis of the White Paper, cf. Komisja Europejska, Biała Księga dotycząca przyszłości UE, "Przegląd Spraw Europejskich" 2017, No. 3, pp. 5–6.

<sup>7</sup> The European Commission, White Paper on the future of Europe..., p. 26.

and deadlines of their realization were changed.<sup>8</sup> As regards the Financial Union, the priority task was to be the completion of the Banking Union and establishing the Capital Markets Union. As regards the Banking Union, it was mostly recommended to establish the two missing elements thereof: the Common Backstop for the Single Resolution Fund, functioning within the second pillar of the Banking Union, and the European Deposit Insurance Scheme (EDIS), i.e., the third pillar of the Banking Union. As opposed to the Report of the Five Presidents assuming this would take place by mid-2017, the reflection paper postponed the time limit for appointing the new structures until 2019, and in case of a failure even until 2025. As far as possible, the Common Backstop was to be created by the end of 2019, and EDIS by the end of 2025. The Capital Markets Union which would constitute the Financial Union along with the Banking Union was to be appointed in 2025.<sup>9</sup>

Within the Fiscal Union, one of the basic tasks was to establish the mechanism of macroeconomic stabilization of the euro area. The two main functions of this new structure would be protection of public investments from the effects of an economic downturn (European investment protection scheme) and unemployment insurance system in case of a sudden increase of the unemployment rate (European unemployment reinsurance scheme). The mechanism should be financed by the European Stability Mechanism or the EU general budget (provided that the mechanism is included in the EU multiannual financial framework) or an utterly new instrument, funded by premiums paid by Member States based on a GDP or VAT proportion, as well as income from excise duty, corporate income

<sup>8</sup> On the course of the system reform of the euro area, cf. J. Koleśnik, *Europejska unia bankowa – nowy wymiar ryzyka systemowego*, “Problemy Zarządzania” 2013, No. 2, pp. 101–103; A. Jurkowska-Zeidler, *Fundamentalne zmiany regulacji i nadzoru jednolitego rynku finansowego Unii Europejskiej w ramach Unii Bankowej*, “Gdańskie Studia Prawnicze” 2015, vol. XXXIII, pp. 189–192; J. J. Węc, *Dynamika reformy ustrojowej strefy euro w latach 2012–2016*, “Politeja” 2016, No. 6, pp. 174–181.

<sup>9</sup> European Commission, document opening the debate on deepening the economic and monetary union, Brussels, 31.05.2017, COM(2017) 291 final, pp. 19–23, 33. The Common Backstop was to be the last of several instruments supporting the restructuring process or liquidating credit institutions. It could be applied if the funds of the shareholders, the creditors or the Single Resolution Fund itself turned out insufficient. The subject of the debate were still sources of its financing. The European Commission proposed two alternative sources in its reflection paper. It could be either a credit line in the European Monetary Fund (after the necessary provision amendments are passed), loans or guarantees for the Single Resolution Fund granted by the euro area member states. The Capital Markets Union should facilitate access to capital financing to entrepreneurs and households and relieve banks or even become a competition for them in this scope.

tax and other tributes. The macroeconomic stabilization mechanism for the euro area should be established by the end of 2025. The idea of establishing a separate budget for the euro area was still considered, although in some indefinite future and not in specific time.<sup>10</sup>

Within EMU, the basic goal – similarly to the Report of the Five Presidents – was the deepening of the process of economic and social convergence in the euro area as well as in EMU by further strengthening the European semester and consequently by coordinating economic policies of Member States (by 2019); using the existent or planned EU structures to deepen the economic and social convergence (single market, including digital single market and Energy Union, Financial Union and Fiscal Union – by 2025); increased access of the euro area and the EU Member States (undertaking structural reforms of their economies) to EU structural and investment funds (by 2025); guaranteeing minimal social standards envisaged in the European Pillar of Social Rights, which the reflection paper of 26 April 2017 referred to.<sup>11</sup>

In the analyzed paper – as opposed to the Report of the Five Presidents – the EC did not mention the necessity of establishing the Political Union, but only the need to enhance the institutional legitimacy of the euro area. This would occur, i.a., by expanding competences of the EP and national parliaments in the area, particularly within the European Semester, establishing a stronger external representation in the International Monetary Fund based on the motion of EC of 21 October 2015, establishing the European Monetary Fund based on the European Stability Mechanism, as well as including the fiscal pact and other intergovernmental agreements regarding the euro area and EMU in the EU law.<sup>12</sup>

The EC's reflection paper of 7 June 2017 on the future of the European defense assumed three scenarios for the development of common security and defense policy by 2025. The first assumed maintaining cooperation of Member States at the present level. Hence, the Union shall – as it has so far – only complement voluntary actions of the states, and the principle of solidarity would only be of interim nature, subject to individual interpretation by Member States. Changes in CSDP would principally be reduced to establishing the European Defense Fund, which should finance only specific projects (e.g., cooperation in armament and advanced technologies, but not in the scope of creating new capabilities and forc-

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<sup>10</sup> *Ibid.*, pp. 23–27, 33.

<sup>11</sup> *Ibid.*, pp. 23–26.

<sup>12</sup> *Ibid.*, pp. 29–30.

es). The reform of the EU external border management policy would involve increasing the competences of the European Border and Coast Guard Agency.<sup>13</sup> The second scenario assumed, similarly to the first one, that the Union shall only complement voluntary actions of the states. However, it also recommended laying down a clear division of tasks between the Union and the Member States and establishing guarantees of operational and financial solidarity. This would be manifested, i.a., by enhancing cooperation in the fight with terrorism, hybrid and cyber protection, external border control and realization of European programs serving to provide advanced technologies. In the third scenario, a significant deepening of integration within the CSDP was proposed, and ultimately – establishing the European Security and Defense Union within it by 2025. At the beginning of the process of continuing this new structure, the guarantees of operational and financial solidarity of Member States shall be established, implementation rules to the mutual defense clause (Article 42(7) TEU) be introduced, cyber safety be transferred to the EU level and the European Border and Coastal Guard be strengthened by equipping it with permanent European naval forces and European intelligence data sources (i.a., drones and satellites). The Member States' defense planning should then be fully synchronized, the systematic intelligence cooperation be established as well as mutual financing and gaining capabilities in the scope of space, air and maritime surveillance, communication, strategic airlift and cybernetics. Continuing the process of constituting the European Security and Defense Union, elements of permanent multinational forces shall be established.<sup>14</sup>

The EC's reflection paper of 26 April 2017 on the social dimension of Europe also foresaw three scenarios of the further development of this area: reducing social dimension to the rules of a free market, applying principles of enhanced cooperation to social policy, and enhancing cooperation of all Member States in social policy.<sup>15</sup> The first scenario assumed maintaining regulations facilitating the transborder movement of people in the scope of social security of citizens exercising their rights of free movement, delegating employees, transborder health service and diploma recognition. However, restricting the social dimension to the

<sup>13</sup> European Commission, document opening the debate on the future of European defense, Brussels, 7.06.2017, COM(2017) 315 final, pp. 12–13, 16–17.

<sup>14</sup> *Ibid.*, pp. 12–17. The White Paper of 1 March 2017 did mention establishing the European Defense Union, and the reflection paper of 7 June 2017 spoke of establishing the European Security and Defense Union. For reasons of clarity, in the further part of this analysis I only use the second term.

<sup>15</sup> European Commission, Reflection paper on the social dimension of Europe, Brussels, 26.04.2017, COM(2017) 206 final, pp. 8–12.

single market rules would also mean resigning from numerous existent EU provisions, i.a., in the scope of employee protection, their health and security, labor time and rest, as well as annulling or limiting financial means for Member States' social programs or region restructuring.<sup>16</sup> Applying principles of enhanced cooperation to social policy would mean that within the EU there would be different social standards, different systems of social security, health service and education, and even differentiated access to EU funds.<sup>17</sup> On the other hand enhancing cooperation of all Member States in social policy would result in a greater integration of work markets, unification of social rights, including retirement and social insurance systems, as well as norms related to health protection, education and mutual diploma recognition. In the long term, economies of all Member States would be more resistant to macroeconomic shocks, and economies of countries outside the euro area would be better prepared for accession.<sup>18</sup>

The EC's reflection paper on the future of EU finances included as many as five scenarios referring to the structure and purposes of the Union's general budget. The first scenario assumed reducing expenditure as regards regional (cohesion) policy and the common agricultural policy at the cost of expenditure for new priority actions, particularly immigration and border control management policies as well as common defense and security policy (scientific research and development of military capabilities).<sup>19</sup> The second scenario envisioned radical reduction of EU budget expenditure allocated to regional policy, common agricultural

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<sup>16</sup> *Ibid.*, pp. 26–27.

<sup>17</sup> *Ibid.*, pp. 28–29.

<sup>18</sup> *Ibid.*, pp. 30–31. Along with the reflection paper, on 26 April 2017 the EC published a recommendation, a communication and proposal referring to the proclamation of the European Pillar of Social Rights. After an interinstitutional debate, it should be proclaimed by the EC, EP and the Council of the EU. However, it was mostly designed for the euro area states, although the remaining EU Member States could join. This means that the Commission decided to strengthen the EU's social dimension in accordance with the second scenario included in the reflection paper of 26 April 2017; cf. Commission Recommendation (EU) 2017/761 of 26 April 2017 on the European Pillar of Social Rights, OJ L 113, 29.04.2017, pp. 56–61; European Commission, Proposal for an Interinstitutional Proclamation on the European Pillar of Social Rights, Brussels, 26.04.2017, COM(2017) 251 final, pp. 1–10; European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions establishing a European Pillar of Social Rights, Brussels, 26.04.2017, COM(2017) 250 final, pp. 1–12.

<sup>19</sup> European Commission, document opening the debate on the future of the EU finances, Brussels, 28.06.2017, COM(2017) 358 final, pp. 30–31.

policy, immigration and external border management policy, common defense and security policy, Erasmus program, scientific research and innovation, as well as health and culture. The third scenario allowed a slight increase in expenditure through pooling extra-budgetary resources and including into the general budget the means for enhanced cooperation and stability of the euro area. Thus the general budget revenues would increase by establishing new own resources (e.g., financial transaction tax) or ad hoc contributions of the Member States.<sup>20</sup> The fourth scenario concerning expenditure was a radical version of the first scenario, i.e., it assumed reducing financial means for regional policy and common agricultural policy and increasing expenditure for, i.a., new priorities of the common defense and security policy (military capabilities and counteracting terrorism) as well as immigration and external border control policy. As regards budgetary sources it provided for essential changes. All rebates would be annulled, own resources based on VAT would either be annulled or altered. In return, new own resources would be established based, e.g., on financial transaction tax, ecological tax or the common consolidated corporate tax base, and other new sources of revenue or fees would be created.<sup>21</sup> The fifth scenario assumed increased expenditure for the common agricultural policy as well as new and already realized priority actions specified in the fourth scenario. The CDSP objectives should be financed out of the EU general budget and the extra-budgetary fund. Also, a separate budget for the eurozone and European Monetary Fund would be established and the European Development Fund would be included in the EU general budget. The revenue of the general budget would be radically altered, going beyond even the proposals included in the fourth scenario. Whole new own resources and different sources of revenue and fees would be established.<sup>22</sup>

The evaluation of European Commission's White Paper and related reflection papers as well as other documents appears ambivalent. Presenting so many scenarios of the EU's further development seemed justified, but only because of a cumulation of crises and crisis phenomena, which affected the Union. The White Paper only seemingly addressed the challenges resulting from crises, as none of the included scenarios contained a coherent concept of the further development of the EU. Moreover, the scenarios from one to four were missing reference to the system reform of the euro area and EMU commenced in 2012.

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<sup>20</sup> *Ibid.*, p. 33.

<sup>21</sup> *Ibid.*, p. 34.

<sup>22</sup> *Ibid.*, p. 35.

## 2.2. Jean-Claude Juncker's plan of 13 September 2017

On 13 September 2017 President of the European Commission Jean-Claude Juncker in an annual State of the Union Address presented the plan of continuing the commenced reforms and carrying out new system reforms. Primarily the reform of the euro area, common defense and security policy, also immigration and external border control policy, as well as asylum policy were to be continued. As regards the euro area, completing the Banking Union by establishing the European Deposit Insurance Scheme – controversial especially in Germany – was the most important matter. In order to encourage Member States to access the euro area, Juncker also proposed establishing a special accession tool providing technical and financial support to the interested countries. The most important institutional changes within the euro zone were to be transforming the European Stability Mechanism into the European Monetary Fund and creating the office of the European Minister of Economy and Finance, who would simultaneously hold the function of the Vice-President of the European Commission and President of the Euro Group. European Minister of Economy and Finance would be accountable before the EP. The Minister's competences would include, i.a., supporting structural reforms and coordinating all EU financial instruments, which the states ridden by financial or economic crisis could use.

The President of the EC also announced withdrawing from too far-reaching and too controversial – especially in states outside the euro area – institutional changes, including establishing a separate parliament and budget for the eurozone. In relation thereto, he proposed that a separate Euro area budget line be established within the EU general budget.<sup>23</sup> It should provide for four functions: structural reform assistance for Member States; financing the expenditure of the Macroeconomic Stabilization Mechanism for the euro zone, from now on called Stabilization Mechanism for short; guaranteeing expenditures of the Common Backstop for the Single Resolution Fund and providing pre-accession assistance to countries-candidates to the eurozone.<sup>24</sup> The decision on establishing a special Euro area budget line shall be considered groundbreaking, as it resolves arguments over establishing a separate budget for the zone

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<sup>23</sup> European Commission, President Jean-Claude Juncker, *State of the Union Address 2017*, Brussels, 13.09.2017, Speech 17/3165, pp. 7–8.

<sup>24</sup> European Commission, President Jean-Claude Juncker, *State of the Union Address 2017...*; Roadmap for a more united, stronger and more democratic Union, Brussels, 13.09.2017, pp. 1–2.

begun in 2011,<sup>25</sup> and finally provides an answer to the question of how the Common Backstop for the Single Resolution Fund should function. A completion of a “true” EMU should be changes in social policy in Member States. This is why in relation to the mentioned reflection paper of 26 April 2017, President of the EC opted for the establishment of the European Pillar of Social Rights guaranteeing minimal norms in social policy, but with no detriment to competences in this scope which the states have so far exercised. He also announced appointing a European labor authority responsible for monitoring situation on the labor market.<sup>26</sup>

Juncker also confirmed continuing the CSDP reform, particularly establishing the European Defense Fund, implementing provisions of the Lisbon Treaty regarding the Permanent Structured Cooperation, as well as founding the European Defense Union by 2025.<sup>27</sup> The CSDP reform would be complemented by changes in immigration policy, external border control and asylum policy, as well as in other policies in the area of freedom, security and justice. In line therewith, the President appealed to the governments of Member States to promptly and more generously feed the EU-Africa Trust Fund, which should acquire €2.7 billion, and which is to finance, i.a., actions to create employment opportunities across the African continent. He proposed making it easier for skilled migrants to get a Blue Card in order to extend the scope of legal migration. Also, he announced presenting a new legislation package aimed at introducing regulations facilitating legal migration, changing principles of illegal migrants’ return to their countries of origin and increasing the financial aid for Africa. He postulated a European intelligence unit be established and automatically share data concerning terrorists and foreign fighters with intelligence services and the police. Juncker also saw a strong case for tasking the new European Public Prosecutor with prosecuting cross-border terrorist crimes, in accordance with Article 86(4) TFEU.<sup>28</sup>

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<sup>25</sup> This opinion was not changed by the proposal of President of France Emmanuel Macron, presented below, concerning the establishing of a separate euro area budget, because it was not shared by the majority of EU Member States, including Germany.

<sup>26</sup> European Commission, President Jean-Claude Juncker, *State of the Union Address 2017...*, pp. 6–7.

<sup>27</sup> A new aspect of the reform would be the announcement of founding the European Cyber Security Office in order to counteract crime in this field more effectively. It would be based on the already established European Union Agency for Network and Information Security, ENISA; cf. *ibid.*, pp. 3–4.

<sup>28</sup> The European Public Prosecutor’s Office was decided to be established within enhanced cooperation, as the Council of the EU could not obtain unanimity on the matter. It will be appointed

Furthermore, Juncker opted for further system changes in the EU, including proposals that have long been discussed, but also new concepts. Among the first there were ideas: to combine the positions of the President of the European Commission and the President of the European Council, to introduce supranational electoral lists and to select lead candidates (*Spitzenkandidaten*) of European political parties in the EP elections. The first two initiatives have been considered in the EU since the Convent on the future of Europe in the years 2002–2003 and the inter-governmental conference in 2003–2004. The third proposal was introduced into the public debate in the years 2011–2012, when Germany, Austria and Belgium considered creating the Political Union as a way to put an end to the euro area debt crisis.<sup>29</sup>

The postulated system changes introduced into the public debate for the first time included the announcement of reforming the decision-making mechanism in the Council of the EU. It should involve departing from the principle of unanimity for the benefit of qualified majority in such matters as: common consolidated corporate tax base, VAT, taxes for the digital industry and financial transaction tax. This modification was to be introduced by the force of Article 48(7) TEU. The second new proposal referred to establishing a framework for investment screening, ensuring scrutiny and transparency in the scope of purchasing defense technology firms, parts of European energy infrastructure or a harbor by foreign entities. The third initiative was the new strategy in industrial policy, aiming at strengthening the industry's competitiveness in Member States by developing new technologies, digitalization and decarbonization. The fourth postulate was the setting up of a task force, which was to take a critical look at all EU policy areas as regards the allocation of competences between the EU and Member States and present its first report in twelve months. The task force would include representatives of the EP and national parliaments, and it would be headed by the Vice-President of the EC

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three years after the Council Regulation 2017/1939 of 12 October 2017 goes into force, that is on 20 November 2020 the earliest. It will have its seat in Luxembourg. The states that decided to appoint the European Public Prosecutor's Office are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Slovenia and Spain. Cf. Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office, OJ L 283, 31.10.2017, pp. 1–71. Cf. Procedure 2013/0255/APP, <http://eur-lex.europa.eu>, pp. 1–3, accessed 31.10.2017. Council of the European Union, 20 Member States agree on details on creating the European Public Prosecutor's Office, press release 333/17, Brussels, 8.06.2017, pp. 1–2.

<sup>29</sup> European Commission, President Jean-Claude Juncker, *State of the Union Address 2017...*, p. 9.

Frans Timmermans. The task force should solve the greatest dilemmas of the post-Lisbon legal order, that is inefficiency of the yellow card procedure, resulting from, i.a., a lack of mechanism of better communication and cooperation between national parliaments in this scope. Moreover, the task force should take up the matter of giving competences that had earlier been transferred to the EU back to Member States, as guaranteed by Declaration 18 on the delimitation of competences attached to TEU and TFEU. The fifth proposal concerned amending the Regulation on the citizens' initiative so as to, i.a., lower the age of its signatories to 16. The sixth initiative assumed revising principles of financing parties and political foundations in order to eliminate possibilities of providing EU funds to anti-European parties and foundations ("anti-European extremists"). The seventh proposal concerned adopting the new code of conduct for commissioners, which would strengthen the integrity requirements for Commissioners both during and after their mandate and would expressly allow their participation in the EP elections.<sup>30</sup>

It should be emphasized that the plan of the EU system reform presented in Juncker's address was much more pragmatic and aimed at maintaining the Union's cohesion and inclusive character than the White Paper or the EC's reflection papers. On the other hand, the postulates it included referred directly to the White Paper, especially the third, fourth and fifth scenario. It was the third scenario, where the method of continuing the euro area system reform and enhancing cooperation with regard to the EU's social policy came from, as well as some of the changes related to CSDP, particularly with reference to military capabilities (permanent structural cooperation) and judicial cooperation in criminal matters (extending competences of the European Public Prosecutor). In accordance with fourth and fifth scenarios, there would be realized the remaining system reforms, that is further changes of the CSDP involving establishing the European Defense Fund and the European Security and Defense Union; enhancing cooperation in immigration and asylum policies, border management and counteracting terrorism (i.a., setting up the European intelligence unit), as well as changes in single market policies (tax, industry, investment).

### 3. The French initiative for Europe of 26 September 2017

On 26 September 2017, less than two weeks after Juncker had delivered his address, President of France Emmanuel Macron delivered his "Initiative for Europe"

<sup>30</sup> *Ibid.*, pp. 3, 7–9.

speech at the Sorbonne University. He presented his vision of the EU system reforms. The direction for the reforms largely corresponded with Juncker's ideas. Macron considered it indispensable to continue changing the euro area, the common defense and security policy, immigration policy, external border control and asylum policy, development aid, as well as institutional system of the euro area and EU. On the other hand, some of Macron's initiative were much more radical than the proposals pronounced by the President of the EC. As regards the euro area reform, the French president – other than Juncker – was for establishing a separate budget for the area, managed by a “common” minister and overseen by a parliamentary organ at the European level (*contrôle parlementaire au niveau européen*). The budget would be funded by two sources: a tax paid by digital corporations and the carbon tax related to carbon dioxide emission. If needed, an additional source of budget revenue would be corporate income tax on the condition that the provisions in force in Member States had earlier been harmonized.<sup>31</sup> As regards economic and social challenges of the euro area, Macron proposed to work out a long-term economic and political strategy for the Economic and Monetary Union. This postulate was essential, as the lack of such strategy has been one of the greatest weaknesses of the EMU. Counteracting youth unemployment was considered just as important problem of the euro area, as the averaged unemployment rate among youth in eurozone was still high and equaled as much as 20%.<sup>32</sup> In reference to Juncker's address, the French President proposed taking action to strengthen tax and social convergence in the EMU. Tax convergence would primarily involve harmonizing national provisions on corporate income tax, while social convergence would involve establishing the European Social Pillar.<sup>33</sup>

<sup>31</sup> *Initiative pour l'Europe – Discours d'Emmanuel Macron pour une Europe souveraine, unie, démocratique*, Paris, 26.09.2017, [www.elysee.fr](http://www.elysee.fr), p. 12, accessed 19.05.2018. The digital corporations tax would mostly come from taxing American Internet companies (Facebook, Amazon, Google) in those EU states, where the companies obtain income; cf. M. Strzałkowski, *Emmanuel Macron przedstawił swój pomysł na UE*, EurActiv, 26.09.2017, pp. 1–2.

<sup>32</sup> *Initiative pour l'Europe...*, p. 11.

<sup>33</sup> Similarly to Juncker, the French President confirmed France's position on changing the Directive 96/71 concerning the posting of workers and supported the EC's legislative proposal on the matter; cf. *ibid.*, pp. 13–14. On Juncker's and EC's position on the matter, cf. European Commission, President Jean-Claude Juncker, *State of the Union Address 2017...*, pp. 6–7. After the dissent of eleven Member States – Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia – had been renounced, the EC maintained its position on the matter. The changes assumed that a worker posted by an employer in another EU Member State, for some time should have the right to the same remuneration as a local

Although the French President's proposals regarding a separate budget and an organ of parliamentary oversight in the euro area diverged from the position presented by Juncker and the EC, they were quite a concession compared to earlier postulates, when Macron opted not only for a large budget for the euro area, encompassing several percent GDP, but also for this budget to be passed by a separate parliament. The correction of French proposals was fundamentally affected by elections to Bundestag of 24 September 2017, where FDP and AfD obtained surprising good results – both decidedly opposing deep system reforms of the eurozone.<sup>34</sup>

Also, Macron's proposals regarding the reform of the common security and defense policy and policies in the area of freedom, security and justice were much further reaching than postulates included in Juncker's address. The process of constituting the European Defense Fund and establishing a permanent structural cooperation were considered the first step on the road to founding the European Security and Defense Union in some indefinite future. On the other hand, Macron proposed to establish already at the beginning of the next decade, "a common intervention force" (*force commune d'intervention*), a separate defense budget, and to work out the EU common defense doctrine.<sup>35</sup> The process of creating the "common intervention force" should begin with enhancing and institutionalizing cooperation between the armies of the EU Member States, particularly exchange of soldiers between military units. All the EU's new structures within the CDSP should complement NATO resources and at the same time guarantee Union's autonomy in security and defense policy.<sup>36</sup> In relation to the reform of the common

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worker and not only to the minimum wage, and after two years would be fully guaranteed the provisions of labor law of the state he had been delegated to.

<sup>34</sup> In these elections, CDU/CSU obtained 33% votes, SPD – 20.5%, AfD – 12.6%, FDP – 10.7%, the Left – 9.2%, and Alliance'90/the Greens – 8.9%; cf. *Bundestagswahl 2017. Das Endergebnis und die Ergebnisse in jedem Bundesland*, <https://www.merkur.de/politik/bundestagswahl-2017>, p. 1, accessed 18.05.2018. Macron's speech was delivered two days after the elections to Bundestag, but its content was sent to Chancellor Merkel shortly after the election results were announced; cf. J. Bielecki, *Po wyborach w Niemczech reforma strefy euro Macrona jest martwa*, 25.09.2017, <http://www.rp.pl>, pp. 1–2, accessed 10.10.2017. When Macron was receiving the Charlemagne Prize in Aachen, he again persuaded Merkel to effectively cooperate on reforming the euro area. It was settled then that before the sitting of the European "Council in June 2018, France and Germany would present a common proposal for system changes; cf. K. Janoś, J. Kubera, *W stronę kompromisu? Stan francusko-niemieckich rozmów o strefie euro*, "Biuletyn Instytutu Zachodniego" 2018, No. 345, pp. 1–5.

<sup>35</sup> *Initiative pour l'Europe...*, p. 4.

<sup>36</sup> *Ibid.*

European asylum system, Marcon suggested three system solutions: firstly, creating a “real asylum office” in place of the existent European Asylum Support Office, which would allow to accelerate and harmonize procedures for considering motions submitted by refugees; secondly, appointing “European border police” (*police des frontières européennes*) tending to the protection of all external borders permanently, and not on ad hoc basis as the European Border and Coast Service; thirdly, creating the European Public Prosecutor’s Office and equipping it with both competences as regards prosecuting financial crimes against the EU as envisaged in the Lisbon Treaty, but also new entitlements to combat terrorism.<sup>37</sup> On the other hand, the EU would have to significantly increase expenditure for developmental aid, particularly for the poorest African states. Therefore, Marcon advocated for establishing an additional source of financing the developmental aid, which should be the financial transaction tax.<sup>38</sup>

The proposals for changes in the EU institutional system were not new, but rather referred to postulates presented by, i.a., France and Germany in the previous years. This applied to both the idea of reducing the size of EC’s College and introducing a supranational list as well as appointing lead candidates (*Spitzenkandidaten*) of European political parties in the EP elections. A certain novelty was the manner of their realization. The first step towards reducing the size of the EC’s College was to be – which was surprising – the resignation from having own commissioner by “large founding states” of the European Communities, that is France, Germany and Italy. Ultimately, the College would be composed of 15 commissioners. As regards the supranational EP list, it should comprise 73 Deputies elected in place of British Deputies after Brexit.<sup>39</sup>

## 4. Realization of the system reforms of the European Union

### 4.1. The euro area and Economic and Monetary Union reform. Divergent positions of the European Commission and the governments of the euro area states

On 6 December 2017, the European Commission submitted a legislation package referring to the euro area reform. It referred to the Report of the Five Presidents

<sup>37</sup> *Ibid.*, pp. 4–5.

<sup>38</sup> *Ibid.*, p. 6.

<sup>39</sup> *Ibid.*, pp. 17, 19.

of 22 June 2015, the EC's reflection papers on deepening the economic and monetary union of 31 May 2017 and on the future of EU finances of 28 June, as well as to Juncker's plan of 13 September 2017. The package comprised four legislative proposals and three communications. It set the EU actions for the next 18 months. Among legislative proposals there were: Proposal for a Council regulation on the establishment of the European Monetary Fund, Proposal for Council directive laying down provisions for strengthening fiscal responsibility and the medium-term budgetary orientation in the Member States, Proposal for a regulation amending regulation of May 2017 on the establishment of the Structural Reform Support Program for the period 2017 to 2020, as well as Proposal for a regulation amending regulation laying down common provisions on structural and investment funds. The package was complemented by three communications of the EC: Communication on a European Minister of Economy and Finance, Communication on new fiscal instruments for the euro area, as well as the roadmap for completing the process of creating EMU. The proposal for the first regulation assumed appointing a European Monetary Fund instead of the European Stability Mechanism in accordance with Article 352 TFEU (elastic clause). The European Monetary Fund was therefore to be the legal successor of ESM, assuming all its rights and obligations (Article 2 of the proposed regulation).<sup>40</sup> Establishing the EMF would also mean that ESM, as an international financial institution, would be included in the EU. The EMF would be an EU organ with legal personality and own budget (Article 1 of the draft statute).<sup>41</sup> Similarly to ESM, it should be financed by fees paid by euro area Member States, and the voting rights of each member shall be equal to a number of shares allocated to it (Article 4(7) of the draft statute).<sup>42</sup>

The EMF's organizational structure would resemble the structure of the ESM. The main organs of the EMF would be a Board of Governors, a Board of Directors and a Managing Director (Article 4(1) of the draft statute). The Board of Governors would be composed of a Governor and an alternate Governor appointed by each EMF Member State, and the Governor shall be a member of the government of a given state responsible for financial affairs, that is in practice a minister of finance. The Chairperson of the Board of Governors shall be the President of

<sup>40</sup> European Commission, Proposal for a Council Regulation on the establishment of the European Monetary Fund, Brussels, 6.12.2017, COM(2017) 827 final, pp. 28–29.

<sup>41</sup> European Commission, Annex to the Proposal for a Council Regulation on the establishment of the European Monetary Fund. Statute of the European Monetary Fund, Brussels, 6.12.2017, COM(2017) 827 final, p. 1.

<sup>42</sup> *Ibid.*

the Euro Group (Article 5(1)–(2) of the draft statute). This means that the composition of the Board of Governors would be the same as of the Euro Group. The Board of Directors shall be composed of Directors and alternate Directors appointed by Governors from among people of high competence in economic and financial matters (Article 6(1) of the draft statute). As opposed to ESM, the scope of tasks of the EMF would be much broader. It would not only render financial assistance to economies in debt, but also function as Common Backstop and provide credit lines or set guarantees in support of the Single Resolution Fund (Article 3(1)–(2) of the draft statute),<sup>43</sup> and in the future it could also establish new financial instruments, i.a., to support the functioning of the euro area Stability Mechanism.<sup>44</sup>

The decisions of the Board of Governors and the Board of Directors shall be taken in one of the four procedures: unanimity, reinforced qualified majority of 85%, qualified majority of 80% and simple majority (Article 4(2)–(6) of the draft statute). However, the decision-making process would be much more flexible than that of the ESM. Unanimity would only be required with reference to those decisions of the Board of Governors and the Board of Directors which exert a significant financial influence on Members, but are not urgent (i.a., decisions on making capital calls or related to conditions for the provision of credit lines) (Article 5(6) of the draft statute). In urgent matters such as, i.a., providing stability support, financial assistance and using the Common Backstop for SRF, the Board of Governors and the Board of Directors shall take decisions by reinforced qualified majority of 85% of the votes (Article 5(7) of the draft statute).<sup>45</sup> As opposed to ESM, the decisions of the Board of Governors and the Board of Directors of the EMF would have to be approved by the Council of the EU (Article 3(1)–(2) of the draft regulation), which resulted not only from transforming the ESM to EMF, but also from Meroni doctrine.<sup>46</sup> Also, a more direct involvement of the EMF was

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<sup>43</sup> *Ibid.*, p. 1.

<sup>44</sup> European Commission, Proposal for a Council Regulation on the establishment of the European Monetary Fund..., p. 28.

<sup>45</sup> European Commission, Annex to the Proposal for a Council Regulation on the establishment of the European Monetary Fund..., pp. 2–5. ESM could take decisions by reinforced qualified majority of 85% only if a lack of decision threatened economic or financial stability of the euro area; cf. J. J. Węc, *Pierwsza polska prezydencja w Unii Europejskiej. Uwarunkowania – procesy decyzyjne – osiągnięcia i niepowodzenia*, Kraków 2012, p. 149.

<sup>46</sup> The Meroni doctrine is derived from the ECJ caselaw and relates to the extent to which EU institutions and organs may delegate competences to other organs, particularly EU regulatory agencies. Whereas in the judgment of 13 June 1958 the CJE decided that delegating competences

envisioned, together with the European Commission, in the process of managing the financial assistance programs.<sup>47</sup>

The EMF's initial authorized capital stock should reflect the authorized capital stock of the ESM and equal EUR 704,798.7 million. However, the Board of Governors should be able to increase the initial authorized capital stock if it deems such increase necessary. The principles specifying the creation of subscription key, that is contributions of the individual euro area states, should be identical to those of the ECB and ESM. This meant that with no consent of the four largest states: Germany, France, Italy and Spain, having over 77% of the shares, no decision by qualified majority or reinforced qualified majority could be taken. The lending capacity of the EMF should be no less than EUR 500,000 million, that is as much as the lending capacity of the ESM. However, in the future, the Board of Governors could increase the lending capacity if it deemed it necessary.<sup>48</sup>

The objective of the Proposal for Council directive laying down provisions for strengthening fiscal responsibility and the medium-term budgetary orientation in the Member States was to integrate the fiscal compact of 2 March 2012 into the EU law by the force of Article 126(14) TFEU.<sup>49</sup> The directive would “ensure compliance with obligations relating to the avoidance of excessive government deficits”

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by the High Authority is not possible, and if it were, it would be based on extremely restrictive criteria, in the judgment of 22 January 2014 the Court decided that the prohibition of delegating competences to agencies referred solely to discretionary authority; cf. M. Będkowski-Kozioł, *Status i zadania Europejskiej Agencji Kolejowej – stan obecny i perspektywy w świetle projektu IV pakietu kolejowego UE*, “Internetowy Kwartalnik Antymonopolowy i Regulacyjny” 2014, no 7, [www.ikar.wz.uw.edu.pl](http://www.ikar.wz.uw.edu.pl), pp. 40–41; J. Ruskowski, L. Wojnicz (eds.), *Multi-Level Governance w Unii Europejskiej*, Szczecin–Warszawa 2013, p. 46; M. Chamon, *EU Agencies. Legal and Political Limits to the Transformation of the EU Administration*, Oxford 2016.

<sup>47</sup> European Commission, Proposal for a Council Regulation on the establishment of the European Monetary Fund..., pp. 1–7, 15–16, 28–31.

<sup>48</sup> *Ibid.*, pp. 23–24.

<sup>49</sup> Article 16 of the Fiscal Compact stated that within five years of entry of this intergovernmental agreement into force, its substance should be incorporated into the legal framework of the EU; cf. Treaty on stability, coordination and governance in the Economic and Monetary Union between the Kingdom of Belgium, the Republic of Bulgaria, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden, <http://www.european-council.europa.eu/>, p. 24.

(Article 1(1) of the draft directive). Its provisions would apply to all those Member States whose currency is the euro and those whose currency is not the euro but which notified the Commission of its decision to that effect (Article 1(1)–(2), Article 4(1) of the draft directive).<sup>50</sup>

The Proposal for a regulation amending regulation of 17 May 2017 establishing the Structural Reform Support Program for 2017–2020 assumed increasing technical assistance granted within the program from EUR 142.8 to 222.8 million with the use of the funds from the current multiannual financial framework for the so-called flexibility instrument. The funds should be allocated for, i.a. – this is the fundamental change – structural reforms for the states which do not belong to the euro area, but intend to join it in the future (Article 4, Article 5a, Article 10(1) of the draft regulation).<sup>51</sup> On the other hand the objective of the Proposal for a regulation amending regulation laying down common provisions on structural and investment funds was to strengthen the connections between the EU general budget and the European Semester procedure by using the so-called performance reserves.<sup>52</sup> These funds should be used to support structural reforms the realization of which Member States undertook in their national reform programs (Article 1 of the draft regulation).<sup>53</sup>

As regards information documents of the EC, they included a pronouncement of further system changes over the next few years. Communication on the Eu-

<sup>50</sup> European Commission, Proposal for Council directive laying down provisions for strengthening fiscal responsibility and the medium-term budgetary orientation in the Member States, Brussels, 6.12.2017, COM(2017) 824 final, pp. 13–15.

<sup>51</sup> European commission, Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2017/825 to increase the financial envelope of the Structural Reform Support Programme and adapt its general objectives, Brussels, 6.12.2017, COM(2017) 825 final, pp. 9–10.

<sup>52</sup> Performance reserves are a part of contribution of structural and investment funds which are allocated to given Member States at the end of the programming period (in this case, in 2019) to support the best programs as regards realizing objectives, management quality and implementation progress; cf. Komisja Europejska, *Pakiet dokumentów dotyczących pogłębiania unii gospodarczej i walutowej*, “Przegląd Spraw Europejskich”, December 2017–January 2018, p. 7.

<sup>53</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 as regards support to structural reforms in Member States, Brussels, 6.12.2017, COM(2017) 826 final, pp. 6–8.

ropean Minister of Economy and Finance specified the Minister's competences in the EMU's management structure, institutional setting in which the Minister would operate, as well as consequences of combining functions of the Commissioner for economic and financial affairs and President of a Euro Group. The European Minister of Economy and Finance could not infringe the competences of Member States. The position could be established on the basis of treaties in force, that is by the force of Article 2 of Protocol No. 14 on Euro Group, as of which ministers of the Members States whose currency is the euro elect a president for two and a half years by a majority of those Member States (Article 2 of the Protocol).<sup>54</sup> The Euro Group could also agree on electing the Minister for the period of five years, that is for the whole term of the EC. This change would not require treaty amendments. The Minister would be accountable before the EP in all matters falling within his/her competence. The Minister would also be obliged to regular dialogue with the EP and national parliaments.<sup>55</sup>

A European Minister of Economy and Finance shall realize six basic tasks. The first would be managing the works of the newly established European Monetary Fund, where – as has been mentioned – the Minister would *ex officio* be the President of the Board of Governors. The second task would be taking action in EU's and eurozone's general economic interest, which is significant in view of the fact that in the euro area only the monetary policy would be unified, while budget, tax and sectoral policies would not. The function of a European Minister of Economy and Finance would allow to further strengthen the coordination of these policies. The third task shall be ensuring a better internal and external representation for the euro area, that is its effective representation in relations with other EU institutions and organs and Member States, as well as with third countries and international organizations. Thus far, this function has been dispersed between the EC, the ECB, President of Euro Group and EU Presidency. The fourth task would be the further improvement of coordinating economic policies of euro area members and supervising observance of economic, fiscal and financial provisions, *i.a.*, in order to carry out structural reforms in those states. The fifth task would involve supervising fiscal policies of euro area members in cooperation with the Europe-

<sup>54</sup> Protocol (No. 14) on the Euro Group, [in:] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007 (consolidated texts), OJ 2016, C 202, p. 283.

<sup>55</sup> European Commission, Communication from the Commission to the European Parliament, the European Council, the Council and the European Central Bank. A European Minister of Economy and Finance, Brussels, 6.12.2017, COM(2017) 823 final, pp. 6–8.

an Budget Council and national productivity councils. Its objective would be ensuring budget stability and observance of principles of Stability and Growth Pact. The sixth task would be improving the scrutiny of using the funds of the EU general budget and other financial instruments (European Investment Bank, ESM) for the benefit of structural reforms, macroeconomic stabilization (euro area) and convergence (states outside the euro area).<sup>56</sup>

In the communication on new budgetary instruments for a stable euro area, the EC announced establishing budgetary and technical instruments to carry out structural reforms after 2020,<sup>57</sup> presenting a legislative proposal concerning the establishment, also after 2020, of a special convergence instrument to give pre-accession assistance (technical and financial) to Member States on their way to joining the euro, establishing within the EMF a Common Backstop in the form of a credit line or a guarantee to be provided to the Single Resolution Fund, as well as preparing a plan of launching a Stabilization Mechanism as a special instrument to bring the EU public finances together and guarantee proper investment level in the event of large asymmetric shocks in euro area Member States. Stabilization Mechanism supporting investments would be managed by the EC and based on three components: firstly, loans from the EU budget and the EMF;<sup>58</sup> secondly, appropriations from the EU budget; thirdly, means from a special fund called an insurance mechanism based on voluntary Member States' contributions or unspecified "special resources".<sup>59</sup>

The EC's third communication within this package dealt with the plan of action to complete the economic and monetary union. It corresponded with the reform schedule included in the EC's reflection paper of 31 May 2017 and the communica-

<sup>56</sup> One of the goals was establishing a closer connection between the European Semester procedure and the manner of spending funds from the five UE structural and investment funds; *ibid.*, pp. 3–5.

<sup>57</sup> The instruments are a continuation of assistance provided for in the proposal for a regulation of 6 December 2017 granted within the structural reform support program between 2017 and 2020. Structural Reform Support Service established for this very purpose in 2015 grants Member States, on their request, technical support in carrying out reforms and strengthening their public administration. So far it has granted assistance to 15 Member States in realization of over 150 projects. Cf. European Commission, Communication from the Commission to the European Parliament, the European Council, the Council and the European Central Bank, New budgetary instruments for a stable euro area within the Union framework, Brussels, 6.12.2017, COM(2017) 822 final, pp. 3–4, 11.

<sup>58</sup> An alternative to loans from the EMF would be precautionary loans to deliver short-term liquidity support to euro area members in danger of an asymmetrical shock; cf. *ibid.*, pp. 17–18.

<sup>59</sup> *Ibid.*, pp. 5–19.

tion from the Commission of 11 October 2017.<sup>60</sup> The priority task was the completion of the Banking Union, in particular establishing the Common Backstop for the Single Resolution Fund and the European Deposit Insurance Scheme. The Common Backstop and EDIS should be established by mid-2019.<sup>61</sup> The Common Backstop was to be last of several instruments supporting the process of restructuring or liquidating credit institutions. It could be applied, if the shareholders', creditors' or banks' funds as well as the funds of EDIS proved insufficient. It should be financed out of EMF funds, which would come from the Member States' contributions. The EC also considered it a priority to establish by the end of 2025 the Capital Markets Union, which together with the Banking Union would create the Financial Union. As has been mentioned, the Capital Markets Union should facilitate access to capital financing to enterprises and households and relieve banks or even become a competition for them in this scope. With reference to the works of the European Systemic Risk Board, the EC announced – and this was a change compared to the reflection paper – presenting in 2018 a legislative proposal on the establishment of a framework enabling the introduction of sovereign bond-backed securities.<sup>62</sup>

Within the Fiscal Union, one of the main tasks would be the establishment of the Common Backstop for the euro area. The European Commission declared that a legislative proposal on the matter would be published by mid-2019, but its operationalization achieved by the end of 2025.<sup>63</sup> The two main functions of the new structure would be protecting public investments from the effects of an economic downturn (European investment protection scheme) and an insurance system in case of a sudden increase of the unemployment rate (European unemployment reinsurance scheme).<sup>64</sup>

<sup>60</sup> European Commission, Document opening the debate on deepening the economic and monetary union..., pp. 1–44. European Commission, Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions on completing the Banking Union, Brussels, 11 October 2017, COM(2017) 592 final, pp. 1–24.

<sup>61</sup> In the EC's reflection paper of 31 May 2017, the deadlines for establishing the new structures were further: the Common Backstop was to be established by 2019 and EDIS by 2025; cf. European Commission, Document opening the debate on deepening the economic and monetary union..., p. 33.

<sup>62</sup> European Commission, Communication from the Commission to the European Parliament, the European Council, the Council and the European Central Bank. Further steps towards completing Europe's economic and monetary union: a roadmap, Brussels, 6.12.2017, COM(2017) 821 final, pp. 12–13, 17.

<sup>63</sup> *Ibid.*, p. 17.

<sup>64</sup> Already in the reflection paper of 31 May 2017, the EC said that the Common Backstop would complement the national budget stabilizers in the event of severe asymmetrical shocks and

Within the Economic Union, the main objective should be deepening the economic and social convergence in the euro area and the EU. The European Commission therefore proposed the realization of three tasks: firstly, further strengthening the European Semester and thus strengthening the coordination of the Member States' economic policies; secondly, greater access of the euro area and EU Member States to the EU structural and investment funds; thirdly, guaranteeing minimal social standards provided for by the European Pillar of Social Rights, proclaimed on 17 November 2017 in Göteborg.<sup>65</sup> Thereafter, the EC declared to present legislative proposals on establishing multiannual frameworks (until May 2018) and then by mid-2019 to submit legislative proposals concerning assisting the euro area members as regards structural reforms after 2020 and establishing a special convergence instrument for candidates to the euro area.<sup>66</sup>

Contrary to the Report of the Five Presidents, but similarly to the reflection paper of 31 May 2017, in the roadmap of 6 December 2017 the EC did not mention the necessity to establish the Political Union. It only spoke of enhancing "democratic accountability and efficient management" of the euro area. Thereafter, by mid-2019 three legal acts were to be passed: regulation on the establishment of the ECF, the directive specifying the conditions of introducing the fiscal pact to the UE law and the decision on establishing a euro area external representation in the ECF. By 2019 based on Article 2 of Protocol No. 14 on the Euro Group, a European Minis-

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"would also allow running smoother aggregate fiscal policies for the euro area in unusual circumstances when monetary policy reaches its limits". The discussion concerned a number of options of establishing this new structure, including also – as in the Report of the Five Presidents – the euro area fiscal ability mechanism. The mechanism was to be financed – according to the then state of debate – by either ECF (after necessary amendments to the existent provisions had been introduced), or the EU general budget (provided it is included in the EU multiannual financial frameworks) or a new mechanism, financed with the Member States' contributions based on the GDP or VAT percentage, or revenue from excise duty, corporate income tax or other tributes; cf. European Commission, Document opening the debate on deepening the economic and monetary union..., pp. 23–27, 33.

<sup>65</sup> On the 20 principles of the European Pillar of Social Rights, cf. Council of the European Union, European Pillar of Social Rights, press release 673/17, Brussels, 17.11.2017, p. 1; The European Pillar of Social Rights in 20 principles, [https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles\\_en](https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles_en)<https://europa.eu>, pp. 1–5.

<sup>66</sup> European Commission, Communication from the Commission to the European Parliament, the European Council, the Council and the European Central Bank, Further steps towards completing Europe's economic and monetary union..., pp. 14–17.

ter of Economy and Finance should be appointed. The idea was for the Minister to be able to be elected as one of the EC Vice-Presidents for the term 2019–2024.<sup>67</sup>

It should be emphasized that the EC prepared the roadmap against explicit signals that the leaders of the euro area states would not agree to such radical system changes within the eurozone. Hence, they did not react well to the document. On 17 October 2017 in response to both Juncker's address and Macron's proposals, heads of states or governments on the occasion of a meeting of the European Council adopted the Leaders' Agenda including the time schedule for the EU and the euro area system reform for the next 18 months, that is until mid-2019.<sup>68</sup>

During further consultations within the Euro Group it turned out that some of the EC's proposals included in the roadmap were accepted, while others still raised controversies. Ministers of finances agreed on the necessity to establish the ECF, Common Backstop and EDIS (based on ECOFIN's action plan of 17 June 2016).<sup>69</sup> They also resolved an important and disputable issue – they decided that the Common Backstop should take the form of the ECF credit line. On the other hand, however, they did not reach a consensus on establishing the office of a European Minister of Economy and Finance, especially the Minister's scope of competence, creating the Stabilization Mechanism/Fiscal Ability Mechanism<sup>70</sup> and simplifying fiscal regulations.<sup>71</sup>

Several days after the EC had published its roadmap, President of the European Council and at the same time President of the Euro Summit, Donald Tusk, sent a note verbal to all the leaders, including competitive but mostly more cautious reform proposals, requesting they be discussed during the next summit meeting. At the same time he appealed to all participants to authorize the Euro Group or ECOFIN, appropriately for the situation, to continue working on those system solutions, which

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<sup>67</sup> *Ibid.*, pp. 15–17.

<sup>68</sup> European Council, The Leaders' Agenda, Brussels, October 2017, <https://www.consilium.europa.eu/media/21594/leaders-agenda.pdf>, pp. 1–3, accessed 18.10.2017.

<sup>69</sup> On 17 June 2016 ECOFIN adopted political conclusions, including, i.a., a roadmap for further work to complete the EU's Banking Union. The roadmap focused on three main issues: establishing the Common Backstop, establishing EDIS and bank regulations with a view to reducing risks (i.a., additional capital requirements for the banks, reducing divergencies in applying provisions of the Banking Union in individual Member States); cf. Council of the European Union, Political conclusions, Brussels, 17.06.2016, [www.consilium.europa.eu/pl](http://www.consilium.europa.eu/pl), p. 1.

<sup>70</sup> From then on these terms have been used interchangeably in the EU documents, which is how they shall be treated herein as well.

<sup>71</sup> The Euro Summit. Leaders' Agenda, Brussels, December 2017, [www.consilium.europa.eu](http://www.consilium.europa.eu), pp. 1–2.

were mostly agreed on.<sup>72</sup> On 15 December 2017 leaders of states or governments of the euro area states accepted Tusk's proposal to focus solely on the projects for the establishment of the ECF, the Common Backstop and EDIS in the next six months.<sup>73</sup>

On 6 March 2018, governments of eight euro area Member States – the Netherlands, Sweden, Finland, Denmark, Ireland, Lithuania, Latvia and Estonia – announced a declaration in Brussels, in which they opposed the “far-reaching transfer of competences to the European level” as the ultimate model of euro area reform. The initiator of preparing the declaration and making it public was Dutch Prime Minister Marc Rutte, who informed of his plan German Chancellor Angela Merkel four days in advance. Signatories of the new initiative agreed to the establishment of ECF, the Common Backstop and EDIS, but they critically evaluated other proposals included in Juncker's address and Macron's speech. On this occasion they also called on governments of France and Germany not to impose their own euro area reform concept on middle and small Member States.<sup>74</sup>

In this atmosphere, not even two weeks later, Tusk sent another note verbal to leaders of states or governments in the euro area. He proposed that the following questions be answered during the next summit meeting: first, should a Stabilization Mechanism/Fiscal Ability Mechanism be established, and if so, what should its main objectives be; second, should it be macroeconomic stability, support for investment development and employment and promoting structural reforms; third, should the new structure be a part of the EU general budget or an extra-budgetary instrument; fourth, should structural reforms aimed at increasing competitiveness and growth as well as ensuring permanent convergence still be promoted; fifth, what instruments should be applied accordingly.<sup>75</sup>

During the Euro Summit meeting held on 23 March 2018, it was agreed that the priority for the further system reform of the euro area should be mostly the establishment of ECF, the Common Backstop and EDIS. It was therefore proposed that the detailed decisions in these matters be taken by the European Council in June 2018. On the other hand, also other long-term aspects of the reform were discussed, particularly the proposal to establish a Stabilization Mechanism/Fiscal Ability Mechanism for the eurozone. However, the debate was not followed by the adoption of written conclusions.<sup>76</sup>

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<sup>72</sup> *Ibid.*, pp. 1–2.

<sup>73</sup> The Euro Summit. Meeting on 15 December 2017, Brussels, 15.12.2017, [www.consilium.europa.eu](http://www.consilium.europa.eu), p. 1.

<sup>74</sup> “SZ”: *Inicjatywa ośmiu państw UE przeciw niemiecko-francuskiej dominacji*, PAP, 7.03.2018, p. 1.

<sup>75</sup> The Euro Summit. Leaders' Agenda, Brussels, March 2018, [www.consilium.europa.eu](http://www.consilium.europa.eu), p. 1.

<sup>76</sup> *Ibid.*

## 4.2. The reform of the common defense and security policy of the European Union

Along with its reflection paper, on 7 June 2017 the EC also presented two other documents: the legislative proposal concerning the defense industry development program between 1 January 2019 and 31 December 2020 and the communication on the principles for the functioning of the European Defense Fund. The legislative proposal included the draft regulation of the EP and the Council of the EU on the European defense industrial development program between 2019 and 2020. The objective of the program was to increase the competitiveness of the EU defense industry by supporting cooperation between enterprises at the stage of product and defense technology development. The key element of the program was establishing EDF “to support investment in joint research and the joint development of defence equipment and technologies (...) and to promote the Member States’ joint purchase and maintenance of defence equipment”.<sup>77</sup> However, only those projects should be financed that are undertaken in a cooperation of at least three undertakings which are established in at least two Member States (Article 6(2) of the draft). As regards the budget, the amount for the implementation of the program for the period 2019–2020 is set at EUR 500 million in current prices (Article 3 of the draft). The financial assistance of the Union provided under the Program may not exceed 20% of the total eligible cost of the action (Article 11(1) of the draft).<sup>78</sup> The discussed legislative proposal has so far been discussed six times at the meetings of the Council of the EU or its preparatory bodies (22 June, 4 July, 1 August, 16 November and 8 December 2017, as well as 18 January 2018) and has already obtained the positive opinion of the Economic and Social Committee (7 December 2017), but the legislative process has still not been completed.<sup>79</sup>

The detailed principles of the functioning of the European Defense Fund were specified in the already mentioned communication from the Commission. The European Defense Fund should finance three kinds of undertakings: first, re-

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<sup>77</sup> European Commission, Proposal for a regulation of the European Parliament and of the Council establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovative capacity of the EU defence industry, Brussels, 7.06.2017, COM(2017) 294 final, pp. 1–17 (here: p. 4).

<sup>78</sup> *Ibid.*, pp. 15–17, 21.

<sup>79</sup> *Procedure 2017/0125/COD*, <http://eur-lex.europa.eu>, pp. 1–2, accessed 4.05.2018; Opinion of the European Economic and Social Committee on the “European Defence Industrial Development Programme”, OJ C 129, 11.04.2018, pp. 51–57.

search of defense products and technologies; second, projects concerning military capabilities (military assets); third, the process of constituting the European Security and Defense Union. Ultimately, the European Defense Fund should be the engine powering the common armament (defense) market and then also a European Security and Defense Union.<sup>80</sup>

The European Defense Fund should comprise two legally distinct but complementary windows: research window and capability window. They would be coordinated by a Coordination Board composed of Member States' representatives, EU high representative, European Defense Agency representative, EC representative and – “as appropriate” – representatives of defense industry. The programs and instruments developed under the research and capability windows should be open to the participation of beneficiaries from all Member States, regardless of their size. The research window, which has already begun its activity in 2017 as a part of preparatory action, is to be financed solely by the EU general budget. By 2020, EUR 90 million was allocated for the realization of its tasks, and beginning with 2021 its budget should equal about EUR 500 million yearly. This program should finance research projects (to B+T level) taking into account defense capability priorities agreed by Member States, including PESCO projects.<sup>81</sup>

The capabilities window should be responsible for financial support (above B+T level) for prototype development (e.g., drones) and ordering military products and technology, including PESCO projects. It should be primarily financed by national budgets, and additionally also by the EU general budget. The capabilities window budget should equal EUR 500 million until 2020, and about EUR 1 billion yearly after 2020. A disadvantage of the European Defense Fund would be the fact that the expenditure for increasing defense capabilities would be diversified depending on the defense potential of individual Member States. Due to this, there would be two different ways of financing it: by supporting projects of all Member States from the common financial framework (level I) and by financing the projects of those Member States which have greater defense capabilities (level II). Taking into account expenditure for both windows – research window and capability window – the budget of the European Defense Fund would equal at least EUR 1.5 billion yearly after 2020.<sup>82</sup>

<sup>80</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Launching the European Defence Fund, Brussels, 7.06.2017, COM(2017) 295 final, pp. 1–20.

<sup>81</sup> *Ibid.*, pp. 4–5.

<sup>82</sup> *Ibid.*, pp. 5–6.

On 23 June 2017, that is no sooner than seven years after the Lisbon Treaty went into force, the European Council decided to establish the permanent structured cooperation for the first time on the basis of Article 42(6), Article 46(1)–(6) TEU and Protocol No. 10 attached to TEU and TFEU.<sup>83</sup> Thereafter, on 13 November 2017, Ministers of Defense of 23 Member States signed the joint notification expressing their will to establish the permanent structured cooperation and submitted it to the Council of the EU and the High Representative of the Union for Foreign Affairs and Security Policy. Initially, Great Britain, Denmark, Malta, Ireland and Portugal did not decide to participate in PESCO. However, on 7 December 2017, Ireland and Portugal, after the ratification process with the participation of their national parliaments, joined the common notification.<sup>84</sup>

On 11 December 2017, the Foreign Affairs Council adopted the decision establishing PESCO for 25 Member States (without Great Britain, Denmark and Malta).<sup>85</sup> On the same day, the decision went into force. It included provisions on establishing the permanent structured cooperation, the list of participating Member States, the list of their 20 obligations in the fields specified in Article 2(a)–(e) of Protocol No. 10, as well as provisions related to governance, assessment and reporting arrangements, support by the EEAS and the EDA, principles of financing and participation of third states.<sup>86</sup> The governance of the PESCO shall be organized at the level of the EU institutions and organs and at the level of Member States. Decisions and recommendations providing strategic direction and guidance for PESCO should be adopted by the Foreign Affairs Council, based on recommendations of the High Representative and the European Union Military Committee, while executive decisions would belong to participating states headed by a framework state (Article 4(1)–(2), Article 5(1)–(3) of the decision).<sup>87</sup>

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<sup>83</sup> European Council, Conclusions, Brussels, 23.06.2017, EUCO 8/17, p. 5. More on the principles of establishing and the status of the permanent structural cooperation, cf. J. J. Węc, *Traktat Lizboński. Polityczne aspekty reformy ustrojowej Unii Europejskiej w latach 2007–2015*, Kraków 2016, pp. 256–258.

<sup>84</sup> Notification on Permanent Structured Cooperation (PESCO) to the Council and to the High Representative of the Union for Foreign Affairs and Security Policy, [www.consilium.europa.eu/](http://www.consilium.europa.eu/), pp. 1–10, accessed 17.10.2017.

<sup>85</sup> Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States, OJ L 331, 14.12.2017, pp. 57–77.

<sup>86</sup> *Ibid.*, pp. 57–61.

<sup>87</sup> *Ibid.*, pp. 59–60.

Most of the discussed obligations were very general, for instance the declaration on deepening cooperation in cyber defense or the collaborative use of the existent military capabilities of the EU and multinational structures of some Member States “in European external action in the military field”.<sup>88</sup> More concrete were obligations to increase national defense budgets, including expenditure allocated to EU military operations,<sup>89</sup> participation in at least one new project referring to strategically important military capabilities within PESCO or more active participation in “Petersberg Missions” (providing, i.a., staff, equipment, training, infrastructure) and battle groups, i.a., organizing battle group drills (framework state) or participation in the drills (all participating states).<sup>90</sup>

On 11 December 2017 participating Member States also signed a declaration specifying the first list of 17 projects to be realized within a permanent structured cooperation.<sup>91</sup> The declaration was adopted with a view to a formal decision which the Foreign Affairs Council was to pass at the beginning of 2018. Thereafter, on 6 March 2018, the Foreign Affairs Council adopted a decision establishing the list of 17 projects to be realized within PESCO, which entered into force on the same day. The list included the following projects: (1) European Medical Command; (2) European Secure Software defined Radio (ESSOR); (3) Network of Logistic Hubs in Europe and Support to Operations; (4) Military Mobility; (5) European Union Training Mission Competence Centre (EU TMCC); (6) European Training Certification Centre for European Armies; (7) Energy Operational Function (EOF); (8) Deployable Military Disaster Relief Capability Package; (9) Maritime (semi-) Autonomous Systems for Mine Countermeasures (MAS MCM); (10) Harbor & Maritime Surveillance and Protection (HARMSPRO); (11) Upgrade of Maritime Surveillance; (12) Cyber Threats and Incident Response Information Sharing Platform; (13) Cyber Rapid Response Teams and Mutual Assistance in Cyber Security; (14) Strategic Command and Control (C2) System for CSDP Missions and Operations; (15) Armored Infantry Fighting Vehicle/Amphibious Assault Ve-

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<sup>88</sup> In this context the document listed, i.a., the following multinational forces and armed units: EUROCORPS, EUROMARFOR (European Maritime Force) and EUROGENDFOR (European Gendarmerie Force); cf. *ibid.*, pp. 62–63.

<sup>89</sup> In the increased national defense budgets, investment expenditure was to equal 20%, and expenditure allocated to defense research and technology 2% of total defense spending; cf. *ibid.*, p. 62.

<sup>90</sup> *Ibid.*, pp. 62–63.

<sup>91</sup> *Declaration on PESCO projects*, [www.consilium.europa.eu/media/32020/draft-pesco-declaration-clean-10122017.pdf](http://www.consilium.europa.eu/media/32020/draft-pesco-declaration-clean-10122017.pdf), pp. 1–2.

hicle/Light Armored Vehicle; (16) Indirect Fire Support (EuroArtillery); (17) EUFOR Crisis Response Operation Core (EUFOR CROC).<sup>92</sup>

The list of projects included both military and civilian undertakings. Six projects concerned building military capabilities, four – ground forces, three – maritime security, two – trainings, and two – cyber security. The participation of individual Member States in the project development varied. The number of participants ranged from two to 24. Only two states participated in the realization of the European Training Certification Centre for European Armies and Indirect Fire Support (EuroArtillery). As many as 24 countries took part in the realization of the project related to military mobility, and 13 were involved in projects establishing the European Union Training Mission Competence Centre (EU TMCC) and in the Network of Logistic Hubs in Europe and Support to Operations. The most active among Member States were Germany and Italy. Each was to lead the development of four projects. The least active were Poland, Ireland and Luxembourg, which not only did not agree to lead any projects, but also intended to participate in the development of no more than two.<sup>93</sup>

#### 4.3. Reform of the area of freedom, security and justice of the European Union. Divergent positions of the European Commission and Member States' governments

Principal differences of opinion between the EC and some Member States, particularly the Visegrad Group states, concerned the immigration policy, external border control and EU's asylum policy. Nonetheless, the main axis of controversy was a disputatious legislative proposal of the EC of 4 May 2016 on the reform of the Dublin III regulation, establishing a corrective allocation mechanism and imposing a high solidarity contribution on states refusing to accept asylum-seekers (EUR 250,000 per one migrant refused the entry). The proposal was met with criticism of both the states of Southern Europe, and Central-Eastern Europe. The states burdened with the massive influx of migrants – Italy and Greece – questioned provisions allowing refusal to participate in the corrective allocation

<sup>92</sup> Council Decision (CFSP) 2018/340 of 6 March 2018 establishing the list of projects to be developed under PESCO, OJ L 65, 8.03.2018.

<sup>93</sup> Poland declared to take part in the realization of Military Mobility and European Secure Software defined Radio (ESSOR), Ireland – in European Union Training Mission Competence Centre (EU TMCC) and Upgrade of Maritime Surveillance, Luxembourg – in Military Mobility and European Union Training Mission Competence Centre (EU TMCC); *ibid.*, pp. 26–27.

mechanism, even at the cost of a contribution. The Visegrad Group states, on the other hand, questioned the idea of establishing the mechanism and the introducing a solidary contribution. At the end of September 2016, the Visegrad Group states proposed to solve the problems resulting from the weakness of the Dublin system with a concept of “flexible solidarity”. It assumed that the Member States themselves – based on their potential and experience – would decide on their form of participation in the EU asylum policy and solving the migration crisis, while the participation in the refugee allocation programs should be voluntary.

On 17 November 2016, a day before the meeting of the Council of the EU, the Slovak Presidency, during an informal dinner of the Ministers of the Interior, presented the detailed proposals, this time under a concept of “effective solidarity”. The concept assumed three scenarios, depending on the intensity of migrant influx. The first scenario, concerning the pre-crisis situation, imposed on all border states the obligation to register migrants, and on all Member States – the obligation to prevent secondary migrations. Second scenario, for a crisis situation, obligated all Member States to provide collective assistance to the countries most affected by the crisis. The form of assistance would be decided by individual states. Besides relocation, these could be: financial contribution, supporting agencies responsible for counteracting the crisis or organizing the deportation of illegal migrants. The third scenario, for the crisis climax, involved introducing provisional relocations by the force of Article 78(3) TFEU, on condition that the participation in the mechanism would be voluntary, and the political decision on launching it would be taken by the European Council. The concept of “effective solidarity” was criticized by Germany, Malta, Greece and Italy. During the Maltese Presidency the EC’s legislative proposal was backed by Germany, Sweden, Malta, Italy and Greece, while the Visegrad Group states still opposed.

On 8 March 2017, Swedish MEP Cecilia Wikström submitted the proposal to amend the EC’s legislative proposal, proposing to annul provisions on the solidary contribution and decrease the reference key from 150% to 100% as a prerequisite for launching the relocation mechanism. If a state refused to participate in the relocation scheme, it would be restricted the financial means from EU’s structural and investment funds. In this situation, the European Council, at a meeting held on 9 and 10 March 2017 in Brussels, appealed to the EC, the Council of the EU and EP to reach consensus as regards the asylum policy by June 2017.<sup>94</sup> Efforts to

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<sup>94</sup> The European Council discussed the conclusions prepared earlier – they were not formally adopted by the EC as an institution but were supported by 27 heads of states or governments, with

postpone the deadline, taken by representatives of the Polish government already before the meeting of the European Council, proved futile because of the dissent of, i.a., Germany, France and Sweden.

On 21 April the Maltese Presidency in a document on solidarity aspect in the process of reforming the Dublin system proposed a compromise solution to the argument concerning revising the Dublin III regulation. The compromise would be EUR 60,000 for each migrant received within or beyond the agreed quota during the period of the massive migrant influx, paid to the states participating in relocation scheme. The states which received fewer migrants than agreed in the quota system would have to pay this much for each migrant they had not received. On the other hand, the Maltese Presidency's proposals envisaged "alternative forms of solidarity" for the states which did not wish to fulfill commitments resulting from the quota system. An alternative could be delegating an additional number of officials to the European Border and Coast Guard or the European Asylum Support Office. However, the corrective allocation mechanism could only be shut off "in a situation of a deep crisis", that is when the number of migrants to be relocated would exceed 200,000 people for the whole Union in a year. In this situation, there would apply minimal standards as laid down in the Geneva Convention on the status of refugees of 28 July 1951.<sup>95</sup>

Following Juncker's State of the Union Address, in December 2017 heads of states or governments adopted the Leaders' Agenda concerning the immigration and asylum policy reform. In the document it was emphasized that "the migration challenge is here to stay for decades, especially due to the demographic trends in Africa". As a result, it is crucial to introduce such changes in the immigration policy, external border control and EU's asylum policy so as to better "distinguish between refugees and economic migrants". The leaders also stressed that the EC's idea of "mandatory quotas has proven to be highly divisive" in the EU and in this sense it proved inefficient. A condition for ensuring greater efficiency in the immigration and asylum policy should be establishing within the multiannual framework 2021–2027 a special financial instrument to prevent illegal migration, setting up operational mechanisms at both national and European level serving to provide

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the exception of Poland. The reason was an argument between Poland and other Member States related to electing Tusk for the position of the President of the European Council.

<sup>95</sup> The federal government insisted that each Member State fulfill at least 50% of the quota. More on the arguments concerning the directions of the EU immigration and asylum policy, cf. J. J. Węc, *Germany's Position on the System Reform of the European Union in 2002–2016*, Berlin–Bern–Bruxelles–New York–Oxford 2018, pp. 217–247, 259–272.

efficient EU external border protection, the reform of the collective European asylum system, particularly as regards Dublin provisions, the concept of a safe third country, cooperation with selected countries of origin in Africa, and “promoting resettlement as the chief legal pathway for international protection”, as well as signing “tailor-made, long-term partnerships with neighboring countries of transit and origin”. Authors of the document appealed to Member States’ governments and EU institutions to take part in the debate on the most urgent, in their opinion, changes in immigration and asylum policy, that is establishing a special financial instrument aimed at counteracting illegal migration and reaching by June 2018 a consensus as to reforming the Dublin system in a way that would combine “responsibility and solidarity”. If a compromise was not reached by then, President of the European Council D. Tusk would “present a way forward for consideration by leaders”.<sup>96</sup>

Similarly as in the case of the euro area and EMU reform, heads of states or governments only set priority actions in the scope of immigration policy, external border control and asylum policy reform. Thus, unimportant – for the time being at least – became such proposals submitted by the EC or President of France, as establishing a European intelligence unit, European naval forces, a drone and satellite system, vesting the future European Prosecutor’s Office with competences in the scope of prosecuting terrorist transborder crimes (Juncker), appointing a “European border police” or introducing an additional source of financing development policy based on revenue from financial transaction tax (Macron).

## **5. Evaluation of the euro area and European Union system reforms from the Polish perspective**

Due to the gravity and scope of planned reforms, those most significant for Poland shall include the euro area and EMU system reform, the reform of the common security and defense policy and the reform of policies in the scope of the area of freedom, security and justice. It is possible to evaluate implications of these reforms for Poland, but – as has already been mentioned – with the reservation that the assessment shall be quite general. At this stage the reforms’ details are not known.

The basic problem in the process of reforming the euro area for the states outside the eurozone, including Poland, is the scope of system changes and the ability

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<sup>96</sup> European Council, Leaders’ Agenda, Brussels, December 2017, [www.consilium.europa.eu](http://www.consilium.europa.eu), p. 1, accessed 17.10.2017.

to reconcile them with the requirements of EU's integrity. Establishing three new structures within EMU – i.e., Financial Union, Fiscal Union, Economic Union – has so far seemed indispensable for the ultimate overcoming of the debt crisis and improving the functioning and strengthening the stability of the euro area. On the other hand, this process could lead to weakening the EU and enhancing differences between the eurozone and the states outside the area. The risk would depend on the scope of adopted reforms. The smallest risk would be involved in establishing the Financial Union, greater in creating the Financial Union, the Fiscal Union and the Economic Union, and the greatest in establishing foundations of the Political Union within the EMU. Much points to the fact that not only the EU, but mostly euro area Member States' governments resigned in 2017 from the plan to create a Political Union and returned to the compromise proposal from before five years, reduced to the necessity to introduce institutional changes legitimizing reforms commenced thus far (Herman Van Rompuy package of 12 December 2012). Back then it was mostly about expanding the competences of the EC, EP and national parliaments in the euro area. Drawing conclusions from the course of the euro area reform, particularly significant delays in the reform schedule and differences of opinion as regards establishing all structures of the Fiscal Union and Economic Union, euro area Member States' governments also decided to significantly alter the methodology of the reform. The change was that it had been decided to adopt and implement short-term plans of actions, to verify their efficiency and then, after a period of "reflection and consideration", to make decisions on further system changes of the EMU. Evidence confirming this thesis could be the decisions of heads of states or governments of euro area states of 15 December 2017 and 23 March 2018.

Juncker's plan of 13 September 2017 was the first EU document to unambiguously state that the earlier plan of establishing a separate budget, parliament or government for the euro area will not be a part of the reform. This pronouncement was favorable for countries outside the euro area, including Poland. In this situation, of key importance will be the creation of mechanisms ensuring transparency of the adopted reforms to the states outside the eurozone. The best solution would be to at least partially include them in the decision-making process in the zone. Judging by the reforms implemented thus far, this will rather be impossible, as particularly France and Germany will oppose the idea. Therefore, finding another way to ensure a real influence of the states from outside the euro area on the course of the reform, and ultimately to guarantee cohesion between euro area members and non-members is Poland's vested interest.

In conclusion, it shall be stated that joining the euro area would presently be unfavorable to Poland mostly because of low structural competitiveness of Polish economy, the ongoing debt crisis in the area,<sup>97</sup> and the incomplete euro area system reform. On the other hand, the decision on Poland's joining the euro area pre-accession instrument should be considered – establishing the instrument was confirmed in the package of legislative proposals and information documents of the EC of 6 December 2017, and was included in the proposal for a regulation on multiannual financial framework 2021–2027. Nonetheless, it shall be emphasized that the euro area reform will indubitably result in the necessity of carrying out much deeper adaptation processes than it had been assumed in Poland, if in the future the Polish government decides to join the area.

Changes as regards the common security and defense policy shall be evaluated similarly. From Poland's perspective, the reform of the policy may raise some doubts, particularly as regards four issues: firstly, the possibility of weakening the cohesion of the whole Euro-Atlantic system as a consequence of establishing the European Security and Defense Union; secondly, consequences resulting from a closer cooperation within the permanent structured cooperation (PESCO); thirdly, concerns about unequal competition with national and supranational military companies; fourthly, principles of participation in the process of creating international weapons consortiums, unfavorable for Poland.

Despite fears for the cohesion of the Euro-Atlantic security system as a result of enhancing integration within the common security and defense policy, a guideline for the Polish government should be the Warsaw declaration of 8 July 2016 on enhancing the practical cooperation between the EU and the North Atlantic Treaty, where the international roles of both organizations were specified. It should also be assumed that the reform of the common security and defense policy could lead to strengthening the Union's position internationally and reinforcing the Euro-Atlantic security system. Undertaking a closer cooperation within

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<sup>97</sup> According to some economists, the euro area debt crisis has been overcome only partially, as evidenced by a slight GDP increase in the states of indebted economies or reduction of their unemployment rate. On the other hand, the level of debt of some of them shall be regarded as a sort of a "mine laid under the area". According to Eurostat data, the public debt of these states in 2017 compared to GDP was as follows: Greece (178.6%), Italy (131.8%), Portugal (125.7%) and Spain (98.3% GDP). It shall here be added that also Belgium's public debt was high and equaled 103.1% GDP; cf. *Eurostat. Provision of Deficit and Debt Data for 2017 – First Notification*, No. 69/2018, Brussels, 23.04.2018, pp. 5–9. Cf. P. Kalka, *Czy w strefie euro występuje jeszcze kryzys?*, "Przegląd Zachodni" 2017, No. 2, pp. 311–328.

a permanent structural cooperation by a group or even groups of member states could lead to establishing divisions within the EU. In order to prevent isolation in the EU and measurable financial losses, Poland should have influence on the decisions on launching PESCO and possibly actively participate in the permanent structural cooperation.

Meanwhile Poland, along with Ireland and Luxembourg, has so far been one of the least involved PESCO beneficiaries. The three states not only disagreed to lead any of the 17 projects adopted in the decision of 6 March 2018 by the Foreign Affairs Council, but also decided to join as few as two projects. In this context it seems justified to opine that in the future the Polish government should get more involved in the development of the new PESCO projects. It would be advisable because using the European Defense Fund funds is connected with a state's participation in PESCO. Unequal competition with national and supranational arms companies in the procedures of applying for the use of EDF funds and short terms for establishing consortia and submitting projects could also be unfavorable for Poland's security. On the other hand, non-participation in both technological cooperation and then in arms cooperation could reduce Poland's competitiveness even more, as it could lower the chances to acquire EU funds from multiannual financial framework 2021–2027. This is why Polish ordnance factories and defense industry research institutes should actively participate in both preparatory activities and the realization of the defense industry development program for the period from 1 January 2019 to 31 December 2020.

Thus far, there have been too many unknowns concerning the proposals related to reforming policies in the scope of the area of freedom, security and justice, especially EU immigration policy, external border control and asylum policy. This referred mostly to the EC project of 4 May 2016, contested by governments of many Member States, mostly the Visegrad Group members, revising the Dublin III regulation, especially establishing a permanent relocation mechanism for the whole EU and a solidarity contribution for the states refusing to accept migrants. The reform of the immigration policy, external border control and asylum policy, although initiated in 2015, became stagnant because of inefficiency of the temporary relocation system applied thus far, established by the force of the decisions of the Council of the EU of 14 and 22 September 2015, and because of the difference of opinion between Member States as regards the scope of changes regarding the Common European Asylum System. The differences concerned mostly the controversial proposal to introduce a quota system in the migrant relocation system and a solidary contribution imposed on states refusing to accept migrants, as well

as the principle of effective solidarity and voluntariness of accepting migrants, proposed by the Visegrad Group members, instead of establishing a permanent relocation system based on the EC's proposal of 4 May 2016.

Poland would benefit from such changes in immigration policy, external border control and asylum policy which would allow avoiding the establishment of a permanent relocation mechanism, because this solution could encourage economic migrants to infringe the Dublin system. Moreover, establishing a precise verification system for economic migrants and asylum-seekers should be striven for already in the countries of transit and origin. Efforts should be made to liquidate smuggling networks, intensify the EU financial assistance to poor African countries and to strengthen the EU external borders, i.a., by increasing the forces of the rapid response reserve forces operating with the European Border and Coast Guard, presently composed of only 1,500 officers.

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